

MISCELLANEOUS CIVIL.

Before Tek Chand and Abdul Rashid JJ.

ALLAH BUX (DEFENDANT) Petitioner

versus

MST. SARDARAN (PLAINTIFF) Respondent.

Civil Miscellaneous No. 495 of 1934.

*Letters Patent Appeal—from judgment of Single Judge
—Declaration that case is a fit one for appeal—by whom to be
made.*

Held, that under Clause 10 of the Letters Patent of the Lahore High Court an appeal from the judgment of a Single Judge of the High Court in a second appeal lies only when the Judge, *who passed the judgment*, has declared that the case is a fit one for appeal, and that no other Judge is competent to make the declaration.

Ma Than v. Mawng Ba Gyaw (1), *Sheikh Lal Shaikh Sharif v. Ahmed Khan Sharif Khan* (2), and *Dasaumtha Singh v. Ganda Singh* (3), relied upon.

Petition under clause 10 of the Letters Patent, for grant of permission to file a Letters Patent Appeal against the judgment passed by Beckett J. in C. A. No. 182 of 1934, on 6th July, 1934, reversing that of Lala Gulwant Rai, Additional District Judge, Lahore, dated 14th November, 1933 (who reversed that of Lala Des Raj Pahwa, Subordinate Judge, 4th Class, Lahore, dated 10th January, 1933), and restoring the decree of the trial Court in favour of the plaintiff.

SAUNDERS, for Petitioner.

Nemo, for Respondent.

The Order of the Court was delivered by—

TEK CHAND J.—This order will dispose of six petitions (Nos. 495, 496, 499, 509, 603 and 604 of

(1) (1925) I. L. R. 3 Rang. 546 (F.B.). (2) (1930) 125 I. C. 716

(3) 1933 A. I. R. (Lah.) 534.

1934). In each of these petitions, the prayer is for grant of a certificate that the case is a fit one for further appeal under clause 10 of the Letters Patent. Five of these cases were decided on second appeal by Beckett J., and the sixth by Sale J., sitting in Single Bench in July last. Both Beckett J. and Sale J. had been appointed Acting Judges in certain leave vacancies and reverted on the 19th of July, 1934. Neither of them is a Judge of this Court in these days.

Under clause 10 of the Letters Patent, an appeal from the judgment of a Single Judge of this Court in a second appeal lies only "where the Judge, *who passed the judgment* declares that the case is a fit one for appeal." The phraseology is clear and unambiguous, and leaves no doubt that the authority to make the declaration is conferred only on the Judge who had passed the judgment and on none other. It is obvious, therefore, that we, or any other Judge or Judges of this Court, have no jurisdiction to grant the required certificate. In this connection reference may be made to *Ma Than v. Maung Ba Gyaw* (1), *Sheikh Lal Shaikh Sharif v. Ahmed Khan Sharif Khan* (2) and *Dasaundha Singh v. Ganda Singh* (3), where the same view has been taken. The petitions, therefore, must be dismissed.

It may be mentioned that at the conclusion of the hearing counsel in each case made a verbal prayer that the petitions might be treated as applications for review of the judgments of the Single Bench in second appeal. We are unable to accede to this request, as the grounds on which a review is competent are different from those on which a further appeal lies under clause 10 of the Letters Patent after a certificate

1934

ALLAH BUX

v.

MST.

SARDARAN.

(1) (1925) I. L. R. 3 Rang. 546 (F.B.). (2) (1930) 125 I. C. 710.

(3) 1933 A. I. R. (Lah.) 534.

1934
 ALLAH BUX
 v.
 MST.
 SARDARAN.

has been granted by the Judge who had decided the case. It is, of course, open to the petitioners, if so advised, to prefer separate applications for review, which will be considered on their merits, if and when presented.

A. N. C.

Petition dismissed.

APPELLATE CIVIL.

Before Tek Chand and Abdul Rashid JJ.

1934
 Nov. 2.

MUHAMMAD ASGHAR (DEFENDANT) Appellant
versus

MST. GHULAM FATIMA AND OTHERS (PLAINTIFFS)
 Respondents.

Civil Appeal No. 186 of 1934.

Punjab Custom (Power to Contest) Act, II of 1920, sections 2, 7 : Alienation by will of non-ancestral immovable property—whether can be contested by any person on the ground that the alienation is contrary to custom.

Held, that according to section 7 of the Punjab Custom (Power to Contest) Act, II of 1920, notwithstanding anything to the contrary in the *Riwaj-i-am*, no person is competent to contest any alienation by a male proprietor of his *non-ancestral* immovable property, on the ground that such alienation is contrary to custom, and that it is immaterial whether the contest to the alienation is raised by the descendants, collaterals or relations of the alienor, in a suit instituted by them, or by way of defence to a claim brought by the alienee.

First Appeal from the decree of Sheikh Mohammad Akbar, Senior Subordinate Judge, Sheikhpura, dated 28th November, 1933, decreeing plaintiffs' suit.

ZAFRULLAH KHAN, ASAD ULLAH KHAN and MOHAMMAD ASLAM KHAN, for Appellant.

GHULAM MOHY-UD-DIN and MOHAMMAD AMIN, for Respondents.