APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

SUDHAN AND OTHERS (PLAINTIFFS) Appellants

versus

MST. SURTI AND OTHERS (DEFENDANTS) Respondents.

1934

May 29.

Civil Appeal No. 1985 of 192 .

Custom — Succession — Reversion — principle of — whether applicable to self-acquired property—donee leaving daughters but no son—whether line extinct—" Lawald *"— meaning of—*Riwaj-i-am*—*Tahsil *Gohana, District Rohtak.*

One S. R. *Brahmin* was given the land in suit by H. S. and R. S., when they founded village Nivayat in the Rohtak District, S. R. having followed them to the village as their *prohit*—S. R. was succeeded by his son and he in turn was succeeded by his son R. L. who died sonless (but left daughters) and was succeeded by his widow *Mussammat* S. She adopted R. R., defendant 2, and passed on the entire estate to him. The plaintiffs, the descendants of the original founders (H. S. and R. S.), who had made the grant, brought the present suit for a declaration that the adoption of R. R. by *Mussammat* S. should not affect their reversionary rights upon the death of the widow.

Held, that the suit must be dismissed (*i*) as under the circumstances the land was the self-acquired property of H. S. and R. S., while the principle of reversion applies only to ancestral property; (*ii*) as R. L. and *Mussammat* S. left daughters and daughter's sons alive there was therefore no extinction of the donee's line.

Held, further that the word "*Lawald*" means without descendants both male or female.

Sardar Khan v. *Aisha Bibi* (1), relied upon.

First Appeal from the decree of Mirza *Abdul Rab, Senior Subordinate Judge, Rohtak, dated the 31st July, 1928, dismissing the plaintiff's suit.*

(1) (1933) 141 I. C. 440.

1934

SUDHAN
v.
MST. SURTI.

SHAMAIR CHAND and QABUL CHAND, for Appellants.

KISHEN DAYAL, N. C. MEHRA and BHAGWAT DAYAL, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.

ADDISON J.—Sada Ram, *Brahmin*, of village Nivayat, Tahsil Gohana, District Rohtak, was given the land in suit on the foundation of the village by Hari Singh and Ram Sahai who founded the village. They came from village Hudda in the Sonepat Tahsil and settled in the new village in 1811. Sada Ram, who was a *Brahmin* and their *prohit*, followed them to their new home in the Gohana Tahsil and was granted this land by the original founders. Sada Ram was succeeded by his son Sobha and he was succeeded by his son Ramji Lal. *Mussammat* Surti, defendant No. 1, is the widow of Ramji Lal and she succeeded her husband. She adopted Ram Richhpal, defendant No. 2, and passed on the entire estate to him. The plaintiffs are the descendants of Hari Singh and Ram Sahai who founded the village and made the grant. They have sued for a declaration that this adoption shall not affect their reversionary rights upon the death of the widow. Their claim is based on the allegation that on the extinction of the donee's line the land reverts to them as the descendants of the original donors. The Subordinate Judge, first class, has dismissed the suit and the plaintiffs have preferred this appeal.

In the circumstances described the land must be held to have been self-acquired by Hari Singh and Ram Sahai, while the principle of reversion applies only to ancestral property. Apart from that Ramji

Lal has got daughters and daughters' sons alive, so that it cannot be said that there has been an extinction of the donee's line. The appellants rely on the reply to question 14 of the *Riwaj-i-am* of Tahsil Gohana prepared at the Settlement of 1909. This is printed at pages 45 to 49 of the paper book but this document has been wrongly translated. The reply should read as follows :—If any person acquired an estate under a gift or as a *bhum-bhai* or on account of any relationship, and if, after a few generations, the holder should die *lawald* such an estate reverts to the original proprietors, that is, the donors, and does not go to the *pana, thulla,* or village *shamilat*. Such an estate however goes to the *shamilat* if it is given out of it.

It was contended before us that *lawald* means without male issue. This is not the case. It means without descendants, male or female. The meaning of the word " aulad " is discussed in *Sardar Khan* v. *Aisha Bibi* (1). A Division Bench held there that that word connotes both male and female children and is not limited to males only. *Lawald* therefore also must mean " without descendants either male or female " and this is the meaning given in Fallon's dictionary. This means that the present suit by the descendants of the donors cannot proceed, seeing that there are daughters and daughters' sons of the widow of Ramji Lal in existence.

This view was taken in three decisions of the Courts in the Rohtak District though there is one decision in favour of the view advanced by the appellants' counsel. The reply to question 14 of the *Riwaj-i-am* is, however, perfectly clear and it follows from

(1) (1933) 141 I. C. 440.

1934

SUDHAN
v.
MST. SURTI.

it that the descendants of the original donors have no right in the property so long as there is any female or male descendant of the donee's line in existence.

There is no force in the appeal which we dismiss with costs.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Bhide and Din Mohammad JJ.

1934

June 1.

NIHALU RAM-CHELA RAM (PLAINTIFF)
Appellant
versus
RADHU RAM-HUKMI RAM, ETC. (DEFENDANTS)
Respondents.

Civil Appeal No. 653 of 1928.

Indian Limitation Act, IX of 1908, Section 19, Explanation I and Article 120: Acknowledgment—what amounts to and whether amounts to a 'promise to pay' under Section 25 of the Indian Contract Act, IX of 1872—Indian Evidence Act, I of 1872, Sections 93, 96: Acknowledgment silent as to the identity of debt referred to—whether oral evidence admissible—Practice—whether the evidence of the plaintiff can be recorded after the opposite party has been put into the witness box.

An account commenced between the parties on 13th July 1906. Certain acknowledgments were said to have been made by the defendant firm on the basis of which a suit for the recovery of the amount due was brought on 12th April 1926. One of the acknowledgments, dated 19th October, 1914, contained the words " Rs. 4,049-11-6 *lekhe bagi dewne kite*." Of this sum only Rs. 1,600 had been advanced within six years of the date of acknowledgment. Three other acknowledgments, dated 9th January, 1919, 14th October, 1921, and 15th April, 1923, were letters addressed by the defendant to the plaintiff without any indication as to which