

APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

GHULAM RASUL AND OTHERS (PLAINTIFFS)

Appellants

versus

MST. MOHAMMAD BIBI AND OTHERS

(DEFENDANTS) Respondents.

Civil Appeal No. 1561 of 1929.

Punjab Colonization of Government Land Act, V of 1912, Sections 19, 21 (a): Widow of an occupancy tenant allowed to succeed to her son by Government—tantamount to fresh allotment by Government—Gift by her in favour of her daughter—sanctioned by Commissioner—Locus standi of reversioners—to contest the gift.

N was granted occupancy rights in a square of land by Government. He died in 1897 and was succeeded by his son who died in 1898. Government allowed his mother *Mst. M.*, widow of N, to succeed to the occupancy rights. She made a gift of those rights in favour of one of her daughters, which was sanctioned by the Commissioner under Section 19 of Act V of 1912 (Punjab Colonization of Government Land Act). The plaintiffs, the nephews of N, brought the present suit for a declaration that the gift by the widow should be held to be inoperative after the death of the widow.

Held, (dismissing the suit) that prior to Act V of 1912 the succession to these special occupancy rights was regulated by Section 59 of the Punjab Tenancy Act, XVI of 1887, and *Mst. M.* was not heir to her son under that Section when she was allowed to become the occupancy tenant in 1898. This act of Government therefore amounted to allotting to her the occupancy tenancy and she must be treated as a person to whom the tenancy was first allotted by Government, succession to whom would now be governed by Section 21 (a) of Act V of 1912 and her right of alienation was thus restricted only by the provisions of Section 19 of the Act, *i.e.* the sanction of the Commissioner was necessary to validate the gift which had been given in the present case, and therefore

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the reversioners of the husband had no *locus standi* to contest it.

Sahibzada v. Jawaya (1), referred to.

Second Appeal from the decree of K. B. Sheikh Din Mohammad, District Judge, Lyallpur, dated the 15th April, 1929, affirming that of Faqir Sayed Said-ud-Din, Senior Subordinate Judge, Sheikhupura, dated the 22nd December, 1928, dismissing the plaintiff's suit.

KHURSHAD ZAMAN, for ZAFRULLAH KHAN, for Appellants.

Malik MOHAMMAD AMIN, for Respondents.

The Judgment of the Court was delivered by—

ADDISON J.—The plaintiffs are nephews of one Nikka who was granted occupancy rights in a square of land by Government. Nikka died in 1897 and was succeeded by his son, Ghulam Nabi, who died in 1898. Government allowed his mother *Mussammat Mahtab Bibi*, widow of Nikka, to succeed to the occupancy rights. Later she made a gift of those rights in favour of *Mussammat Mohammad Bibi*, one of her daughters. This gift was sanctioned by the Commissioner under Section 19 of Act V of 1912. The plaintiffs then sued for a declaration that the widow had no power to make this gift or the Commissioner to sanction it and that it should be held inoperative after the death of *Mussammat Matab Bibi*. The Courts below have dismissed the suit and the plaintiffs have preferred this second appeal.

Prior to the enactment of Act V of 1912 it was held in *Sahibzada v. Jawaya* (1), that succession to these special occupancy rights was regulated by section 59 of the Punjab Tenancy Act. *Mussammat Matab*

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Bibi was not an heir to her son under this section when she was allowed to become the occupancy tenant in 1898. This act of Government, therefore, amounted to allotting to her the occupancy tenancy. In these circumstances she must be treated as a person to whom the tenancy was first allotted by Government, succession to whom would now be governed by Section 21 (a) of Act V of 1912, and her right of alienation is thus restricted only by the provisions of section 19 of the Act, that is, the sanction of the Commissioner is necessary to validate the gift. This has been given and, therefore, the reversioners of the husband have no *locus standi* to contest it.

The suit was rightly decided and we dismiss this appeal with costs.

A. N. C.

Appeal dismissed.