LETTERS PATENT APPEAL.

Before Addison and Coldstream JJ.

NARENDAR CHAND (PLAINTIFF) Appellant

versus

TARAPAT (DEFENDANT) Respondent

1934

May 4.

Letters Patent Appeal No. 28 of 1931.

Custom—Succession—village Nadaun in Tahsil *Hamirpur, District Kangra*—Adna Malik *dying without male issue —whether* Ala Malik *succeeds in preference to a daughter*—Wajib-ul-arz, *not signed by the* adna Maliks—*Customary Law, questions 49, 54.*

One G, an *adna malik* in village Nadaun in *tahsil* Hamirpur of the Kangra District, died in October, 1918, and in May, 1919, the land held by him was mutated in favour of his daughter, who sold the land to defendant in March, 1925. The plaintiff, the *Raja* of Nadaun, an *ala malik* and *jagirdar* of the village, sued the defendant in June, 1927, for the possession of that land on the ground that the land escheated to him on the death of G and that the daughter had no right to succeed and had no power of alienation. Reliance was placed on the *wajib-ul-arz* of the village and the Customary Law 1914-1918, reply to question 49.

Held, that as the *wajib-ul-arz* was not signed by the *adna maliks*, they having refused to sign it, it could not be taken as a proof of the custom in favour of the plaintiff.

Held further, that the order of succession in this case was contained in the answer to question No. 54 of the Customary Law of the Kangra District and not question No. 49, relied upon by the plaintiff.

And, that plaintiff had failed to prove that by the custom prevailing in *Tahsil* Hamirpur of the Kangra District, on the death of an *adna malik* without male issue, the *ala malik* succeeds in preference to a daughter.

Letters Patent Appeal from the decree passed by Bhide J. in C. A. No. 2344 of 1929, on the 23rd March, 1931, affirming that of R. B. Lala *Rangi Lal.*

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District Judge, Hoshiarpur, dated the 21st June, 1929 (who affirmed that of Sardar *Jawala Singh, Additional Subordinate Judge, 4th Class, Kangra, dated the 18th June, 1928), dismissing the plaintiff's suit.*

FAKIR CHAND and CHANDAR GUPTA, for Appellant.

M. C. MAHAJAN, for Respondent.

ADDISON J.

ADDISON J.—The *Raja* of Nadaun, which is in *tahsil* Hamirpur of the Kangra district, sued Tarapat for possession of 3 *kanals*, 11 *marlas* of land. The plaintiff is recorded in the revenue papers as an *ala malik* of the village and he is *jagirdar* as well. The land was held by Gurditta who was recorded as an *adna malik*. He died on the 2nd October, 1918, and on the 7th May, 1919, the land was mutated in favour of his daughter *Mussammat* Durgi. She sold the land to Tarapat on the 14th March, 1925, and there is a finding that this sale was for consideration and necessity. On the 1st June, 1927, the present suit was instituted for possession of this small area of land on the ground that the land escheated to the Raja on the death of Gurditta and that the daughter had no right to succeed and had no power of alienation. The suit was dismissed by the trial Court and the District Judge dismissed the appeal. He granted a certificate for further appeal to this Court under section 41 of the Punjab Courts Act and a Single Judge dismissed the second appeal. This is a Letters Patent Appeal from his decision.

It appears to me to be doubtful if Gurditta, who was a *Jhiwar* and whose main occupation was catching fish and running mills for grinding *ata*, followed Customary Law. But assuming that he did, it

seems to me that the decision of the Courts below is correct. Some argument was addressed to us on the question of the construction of section 41 of the Punjab Courts Act, but it is unnecessary to go into this matter as on the merits the appeal has no force.

In the first two Courts reliance was placed on the *wajib-ul-arz* of this village which states that land would revert to the *Raja* if the *adna malik* died without leaving an heir near or distant. This *wajib-ul-arz*, however, was not signed by the *adna maliks*. In fact they refused to sign it. The appellant's counsel now relies only on the reply to question No. 49 of the Customary Law which deals with the question of the succession of daughters in the presence of collaterals. At the end of the reply occurs the following sentence :—" In *Jagir* villages daughters are not allowed to succeed at all." Question No. 54 is, however, the question dealing with the order of succession when a man dies without male lineal descendants and leaving no widow, daughter or descendants through a daughter. The order of succession in such cases is stated to be (1) donees by will; (2) collaterals according to their relationship; (3) persons from whom the deceased had received the land in gift; (4) *ala maliks;* and (5) descendants of the founders of the Tika. The *ala maliks*, therefore, do come in but very low down when there are no daughters. It is obvious that that is the reply which applies to a case like the present. This Customary Law was compiled only at the revised Settlement of 1914-18. Amongst the illustrations to question No. 49 in *tahsil* Dehra there are three instances given where the *ala malik Jagirdar* excluded a daughter. These apparently were cases occurring in the *Jagir* of the Raja of Goler. It may be the case

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that there is such a custom there but that is not before us. The *Raja* of Nadaun is an *ala malik* in *tahsil* Hamirpur. In his *jagir* there are at least two instances where the *Raja* claimed to succeed in preference to a daughter and failed. One of these took place in August, 1905, and the other on the 24th May, 1922. The *Raja* has been unable to show one instance in which he has succeeded in preference to daughters.

It may also be mentioned that the last sentence in the reply to question No. 49 occurs for the first time in the Customary Law compiled in 1914-18. In view of the fact that *adna maliks* refused to sign the *wajib-ul-arz* which contained a provision of a similar nature, it appears to me that this sentence crept in at the instance of the *Raja* or his agents and was not the opinion expressed by the *adna maliks*. This is apart from the fact that the proper reply to consider in the present case is that given to question No. 54.

For the reasons given, I would dismiss this appeal with costs.

COLDSTREAM J. COLDSTREAM J.—I agree.

P. S.

Appeal dismissed.