

APPELLATE CIVIL.

*Before Agha Haidar J.*K. L. GAUBA (JUDGMENT-DEBTOR) Appellant
*versus*THE INDO-SWISS TRADING COMPANY,
LIMITED (DECREE-HOLDER) Respondent.

Civil Appeal No. 2033 of 1935.

Civil Procedure Code, Act V of 1908, Order III, rule 4 (as amended by Act XXII of 1926) — Appeal presented by an Advocate other than the one in whose favour the appellant made a Power of Attorney — Whether properly presented.

Held, that an appeal presented by an Advocate, other than the one in whose favour the appellant's power of attorney was given, is not properly presented and cannot be entertained.

In the Matter of filing Powers by an Advocate or Pleader (1), Anir Shah v. Abdul Aziz (2), and Mohammad Qanmar Shah Khan v. Mohammad Salamat Ali Khan (3), relied upon.

Miscellaneous first appeal from the order of Lala Ganga Ram Mehta, Subordinate Judge, 1st Class, Lahore, dated 26th July, 1935, dismissing the judgment-debtor's application praying that the ex-parte order relating to the attachment of the petitioner's property and other process orders, may be withdrawn, etc.

TIRATH RAM, for DARBARI LAL, for Appellant.

M. L. PURI, for Respondent.

AGHA HAIDAR J. — In the appeal before me Mr. K. L. Gauba is the appellant. He engaged Mr. Darbari Lal as his Advocate for filing the appeal and duly executed a power of attorney in his favour. The memorandum of appeal presented in this Court is not

(1) (1926) I. L. R. 4 Rang. 249.

(2) 1932 A. I. R. (Lah.) 373.

(3) (1927) 121 I. C. 546.

signed by Mr. Darbari Lal, Advocate, but by one Mr. Duni Chand, Advocate, for Mr. Darbari Lal, Advocate. Mr. Mukand Lal Puri, the learned counsel for the respondent, has taken a preliminary objection that there is no proper appeal before this Court, inasmuch as the appeal was not presented by a duly authorized person. He further developed his argument by urging that Mr. Darbari Lal had been duly appointed as an Advocate and he alone could present this appeal; in other words, Mr. Darbari Lal alone could 'act' by filing the appeal and that Mr. Duni Chand in the absence of any power of attorney in his favour, could only 'plead' and not 'act.' He has referred me to *In the Matter of filing Powers by an Advocate or Pleader* (1), as an authority in support of the proposition that the presentation of an appeal amounts to 'acting' and not 'pleading.' This rule of law is well understood and a clear distinction is recognised in forensic parlance between 'pleading' and 'acting.' It has been held in *Amir Shah v. Abdul Aziz* (2), that a pleader who appears on behalf of another pleader engaged by a party, can appear for the latter pleader only "to plead" on behalf of the party, but he has no power "to act" on his behalf without a document in writing being executed in his favour in the manner prescribed by Order 3, rule 4, Civil Procedure Code. This proposition of law is perfectly correct and I have no hesitation in following it.

The result, therefore, is that the present appeal was not properly presented; in other words, there is no proper appeal before me *Mohammad Qammar Shah Khan v. Mohammad Salamat Ali Khan* (3). The

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preliminary objection prevails and the appeal is accordingly dismissed with costs.

P. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Tek Chand and Skemp JJ.

1935
 May 15.

ISHAR DAS (DECEASED) THROUGH HIS REPRESENTATIVE AND OTHERS (DEFENDANTS) Appellants
versus
 BHAGWAN DAS (PLAINTIFF) Respondent.

Civil Appeal No. 1904 of 1930.

Custom or Hindu Law — Alienation — Gift of ancestral property to sister's son — Lakhanpal Brahmins — Mauza Lakhanpal — Tahsil Phillour — District Jullundur — Onus probandi — that they are governed by custom — Locus standi of donor's brother to contest the gift.

Held, that in the case of Brahmins the initial presumption is in favour of personal law, which those asserting custom have to disprove.

Abdul Hussein Khan v. Sona Dero (1) and *Vaishno Dittu v. Rameshri* (2), relied upon. Other case-law, discussed.

And, that the plaintiff in the present case had failed to prove that Lakhanpal Brahmins of *Mauza Lakhanpal*, Tahsil Phillour, District Jullundur, are governed by custom in the matter of alienation of ancestral property.

Held also, that by Hindu Law the plaintiff had no *locus standi* to challenge the gift of his separated brother of ancestral and self-acquired property in favour of their sister's son.

Second Appeal from the decree of Khan Zaka-ud-Din Khan, District Judge, Jullundur, dated 2nd April, 1930, modifying that of Lala Ram Rang, Subordinate Judge, 2nd Class, Jullundur, dated the 11th

(1) (1918) I. L. R. 45 Cal. 450 (P. C.). (2) (1929) I. L. R. 10 Lah. 86, 103 (P. C.).