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In these circumstances, we accept the appeal, set aside the order of the learned Judge of this Court and restore that of the Insolvency Judge. The appellant will get his costs before us.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Addison A. C. J. and Din Mohammad J.

MUSSAMMAT HARNAM KAUR AND ANOTHER (DEFENDANTS) Appellants

versus

JAGAT SINGH AND OTHERS (PLAINTIFFS)
NARAINA (DEFENDANT) } Respondents.

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July 23.

Civil Appeal No. 1288 of 1932.

Custom — Alienation — Gift in favour of married daughter — Collaterals of 5th degree — whether can object — Jats of Village Khera — Tahsil and District Ludhiana — Riwaj-i-am.

Held, that according to custom among *Jats* of village Khera, Tahsil and District Ludhiana, collaterals of the fifth degree have no right to object to the gift of ancestral land made by a sonless proprietor in favour of his married daughters.

Answer to question No.87 in the Ludhiana Customary Law of 1885 and 1911, relied upon.

Second Appeal from the decree of Lala *Devi Dayal*, Dhawan, *District Judge, Ludhiana, dated the 5th July, 1932, reversing that of* Lala *Baij Nath, Subordinate Judge, 2nd Class, Ludhiana, dated the 27th April, 1931, and granting the plaintiffs a declaration to the effect that the gift in question shall not affect their reversionary right after the death of defendant No.1.*

JHANDA SINGH, for Appellants.

Nemo, for Respondents.

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The judgment of the Court was delivered by—

ADDISON A. C. J.—The plaintiffs sued for a declaration that the gift by defendant 1, Naraina, to his daughters, defendants 2 and 3, was null and void as against them and should not affect their reversionary rights after the donor's death. The trial Court held the land not to be ancestral and dismissed the suit. On appeal the District Judge held the land to be ancestral and found that the plaintiffs, who were reversioners within five degrees, could contest the alienation. He accordingly accepted the appeal and decreed the suit. He, however, granted the defendants a certificate under section 41 (3) of the Punjab Courts Act to the effect that a question of custom was involved as to whether a gift of ancestral property by a sonless proprietor to his married daughters in the presence of collaterals of the 5th degree was valid or not, and the defendants on this certificate have preferred this second appeal.

It was first argued that the finding that the land was ancestral was not supported by evidence and that the conclusion was merely a conjecture of the District Judge and not a proper inference from the facts established. The District Judge has relied upon the historical note at the bottom of the pedigree-table of the village. According to it, the village was founded three hundred years before the first settlement by Phirna in the time of the *Moghals* when the *Rajputs* of Raikot ruled over that territory. Phirna came to graze cattle in these parts and settled there. His two sons, Sawla and Bukkan, divided the land into two villages. *Maharaja* Ranjit Singh granted a *jagir* of the land to *Bhai Kaithalwala*, but many people were famine-stricken and left the village. The few who remained cultivated what they could. This was before

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Bhai Kaithalwala got the *jagir*. In his time many of the proprietors returned and divided the land into fifteen *hals* irrespective of ancestral shares, five *pattis* being formed, one of them being *patti* Bhola. On this the District Judge held that it was established that the original proprietors returned and on the authority of *Sadda Singh* v. *Lehna Singh* (1) found that the land did not lose its ancestral character when the original proprietors returned and re-occupied it. On this historical note, however, it cannot be legitimately inferred that it was the original proprietors who returned and not their descendants. The finding of the District Judge on this question, therefore, is not, in our opinion, based on evidence, but on conjecture and we hold that it has not been established that the land is ancestral. We might add that the land at the first settlement was held by Arjan who was three degrees removed from the common ancestor of the parties. This is sufficient to dispose of the appeal, but we shall also proceed to dispose of the question of custom.

According to Question 87 of Mr. Dunnett's Customary Law, prepared in 1911, all Hindu Jats said that to enable a father to make a gift of any part of his property to his daughter, he must obtain the consent of the heirs, but only collaterals related through the great-grandfather could object to such a gift. In the present case, the plaintiffs are related through the great-great-grandfather, that is, in the 5th degree instead of the 4th degree. They are not, therefore, entitled according to this reply to object to the gift.

A similar reply was given in Mr. Gordon-Walker's Customary Law of the District, published in

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1885. The question number is the same, namely, 87. It is there stated that as to immovable property (or rather land), most tribes say that to enable the proprietor to make a gift of any part of it to the relations mentioned in the question, he must obtain the consent of the heirs—the lineal male descendants, or in default of them, the collaterals related through the great-grandfather.

The two Customary Laws of the District, therefore, are against the plaintiffs. But the District Judge has relied upon a *Riwaj-i-am* prepared for *pargana* Ghungrana in Mr. Gordon-Walker's settlement operations. This village is in that *pargana*. A *pargana* was in those days a sub-division of a tahsil. According to the reply to question 87 in it, the consent of all collaterals was said to be necessary in the case of such a gift. There is no other evidence of importance except that there is a judicial decision against the plaintiffs, but it was not in this locality, though the land was situated in the same district. The District Judge has been impressed by the fact that married daughters have no right of succession, and he argues from this that collaterals, being heirs, however distant, should logically have the right to contest a gift to married daughters. Custom is, however, not logical, and as the two Customary Laws of the district are against the plaintiffs and there is no instance in favour of the plaintiffs, we must hold that the plaintiffs have failed to establish that they have the right to challenge the gift as they are only related in the fifth and not the fourth degree.

For both the reasons given we accept the appeal and dismiss the suit with costs throughout.

P. S.

Appeal accepted.