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question before us is the taxing question referred under section 5 of the Court-fees Act, and at the present stage we have no jurisdiction to go further. There will be no order as to costs.

P. S.

Reference answered.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

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Dec. 17.

BAKHSH (PLAINTIFF) Appellant

versus

AZMAT ALI AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 273 of 1936.

Custom — Alienation — Nangianas *of Shahpur District — without male issue — whether have unrestricted powers of alienation —* Wajib-ul-arz — Riwaj-i-am.

Held, that *Nangianas* of Shahpur District, in the absence of male issue, have unrestricted powers of alienation.

Wajib-ul-arz and *Riwaj-i-am* (1896), page 73, followed.

Ghulam Ali v. Inayat Ali (1), *Ali v. Ziada* (2), *Bahaduri v. Qadu* (3), and *Sher Muhammad Khan v. Dost Muhammad Khan* (4), relied upon.

First appeal from the decree of K. S. *Agha Mohammad Sultan Mirza, Subordinate Judge, 1st Class, Sargodha, dated 25th March, 1936, dismissing the plaintiff's suit.*

MEHR CHAND SUD and P. R. KHOSLA, for Appellant.

GHULAM MOHY-UD-DIN, BHAGU MAL and ABDUL AZIZ KHAN, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—The plaintiff is the collateral of Pir Bakhsh. The latter has no issue and executed a sale

(1) 1933 A. I. R. (Lah.) 158.
(2) I. L. R. (1935) 16 Lah. 656: 1935 A. I. R. (Lah.) 208.
(3) 1921 A. I. R. (Lah.) 213.
(4) 1925 A. I. R. (Lah.) 231.

deed of certain land in favour of Azmat Ali, defendant No.1. The suit was for a declaration that, according to the custom followed by the parties, he had no power to do so without necessity and that the sale deed, dated the 25th May, 1934, would have no effect, so far as the reversioners' rights are concerned, after the death of Pir Bakhsh. The suit has been dismissed on the ground that Nangianas of this district, namely Shahpur, in the absence of male issue, have unrestricted powers of alienation. The plaintiff has appealed.

The learned counsel for the appellant has relied on the *Wajib-ul-arz* of the village Dhareman, to which the parties belong, recorded at the first settlement of 1858. What was stated there was that in this village the estate of no proprietor had so far been alienated; but if this happened in the future he would have a right to do so in accordance with the *dasturi sircar*. As we interpret this phrase, this means, " as is the practice or custom recorded by the authorities." There is a judgment of the Divisional Judge of this District, dated the 10th May, 1899, in favour of the appellant. There the phrase " *Dasturi Sircar* " was interpreted as meaning " the decision of the Judicial authorities " and as the Divisional Judge was of opinion that the trend of Judicial decisions in the Province as a whole was against unrestricted powers of alienation, he upheld the contention then put forward that necessity had to be established for sales by Nangiana proprietors. It is this *Wajib-ul-arz* of 1858 and this decision of the Divisional Judge that alone are relied upon by the appellant's counsel, apart from certain very indefinite oral evidence, the value of which is little or nothing. As already pointed out, the judgment is of no importance as the interpretation given to the *Dasturi Sircar*

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does not appear to us to be correct as it cannot be said that there is any such thing as general custom applicable to the Punjab as a whole.

Further, the practice of recording village custom in the village *Wajib-ul-arz* ceased and, when the next Settlement of 1896 came on, custom was only recorded in the *Riwaj-i-am* of the whole Tahsil or district.

Mr. Wilson, Settlement Officer, drew up a general Code of Tribal Custom in the Shahpur District in that year and therein at page 73 the answer of Awans and Miscellaneous Mussalmans as regards alienation of immoveable property was that a proprietor having no son or son's son can, without the consent of agnate heirs, make a gift of immoveable property, ancestral or acquired, divided or not, to a person not related to him. That means that amongst Miscellaneous Mussalmans there is unrestricted power of alienation in this district. *Nangianas* are included amongst Miscellaneous Mussalmans. This *Riwaj-i-am* does not contradict the earlier village *Wajib-ul-arz* of 1858 and is therefore an important piece of evidence, entitled to great weight. It was held by this Court in *Ghulam Ali v. Inayat Ali* (1) that by custom *Nangianas* of Shahpur District have unrestricted powers of alienation. There are five other judicial decisions about Miscellaneous Mussalman tribes to the same effect. In *Ali v. Ziada* (2) it was held that the Vain tribe, who belong to the Miscellaneous Mussalman tribes, had unrestricted powers of alienation. The same was held as regards *Harrals* of this district—another Miscellaneous Mussalman tribe—in *Bahaduri v. Qadu* (3) and about *Tiwanas* in *Sher Muhammad Khan v. Dost Muhammad Khan* (4). There are two other decisions

(1) 1933 A. I. R. (Lah.) 158.
(2) I. L. R. (1935) 16 Lah. 656: 1935 A. I. R. (Lah.) 208.
(3) 1921 A. I. R. (Lah.) 210.
(4) 1925 A. I. R. (Lah.) 231.

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of the Subordinate Courts to the same effect as regards *Khokhars* and *Kuts*, these also being Miscellaneous Mussalman tribes (See Exs.D.1 and 2). The *Riwaj-i-am* has thus been followed in six cases by the Courts, while there is only one case where it was not followed and in that case the *Riwaj-i-am* or Customary Law of the district was not referred to. It follows that the decision of the Subordinate Judge is correct that it has been established that amongst *Nangianas* of the Shahpur District there is unrestricted power of alienation.

We, therefore, dismiss the appeal but make no order as to costs.

A. N. C.

Appeal dismissed.

PRIVY COUNCIL.

Before Lord Russell of Killowen, Lord MacMillan and Sir John Wallis.

1937

Feb. 18.

NATHU MAL—Appellant

versus

RAMAN MAL AND OTHERS—Respondents.

P. C. Appeal No. 19 of 1936.

On Appeal from the High Court at Lahore.

Mortgage — Interpretation of deed — Rule where more inferences than one may be drawn from a clause.

Held, that where it is possible to draw more than one inference from a clause in a deed of mortgage, that inference should be drawn which is not inconsistent with, or repugnant to, the deed, in preference to an inference which may result in the destruction of the security.

Appeal (No.19 of 1936) from a decree of the High Court (July 5, 1934), which modified preliminary and final decrees of the Senior Subordinate Judge of Amritsar (December 22, 1928 and February 25, 1929).

A deed of mortgage contained the following clause: " If I sell any house out of the said property, I