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As pointed out, however, in *Mussammat Nadran* v. *Muhammad Hussain* (1), the power of testation is co-extensive with the power of gift and in fact in Mr. Talbot's Customary Law no distinction is drawn between the two powers by the various tribes.

In the circumstances we hold that it has been established that Karam had power to make such a will and we dismiss this appeal with costs.

A. K. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

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Jan. 31.

UMRA AND OTHERS (PLAINTIFFS) Appellants,

versus

FATEH-UD-DIN AND OTHERS (DEFENDANTS) Respondents

Civil Regular Second Appeal No. 741 of 1937.

Custom — Alienation — Gift — Ancestral land — Arains *of Jullundur Tahsil — sonless proprietor — whether competent to make a gift of ancestral land to relations.*

Held, that by custom, among the *Arains* of Jullundur Tahsil a sonless proprietor is competent to make a gift of his ancestral land in favour of his relations.

Abdulla v. *Khair Din* (2) and *Barkat Ali* v. *Jhandu* (3), relied upon.

Ilahia v. *Qasim* (4), distinguished.

Second appeal from the decree of Sardar *Teja Singh, District Judge, Jullundur, dated 2nd April, 1937, affirming that of* Lala *Basant Lal, Subordinate Judge, 4th Class, Jullundur, dated 10th February, 1936, dismissing the plaintiff's suit.*

(1) (1931) 132 I. C. 209.
(2) (1920) 57 I. C. 248.
(3) 127 P. R. 1907.
(4) 24 P. R. 1905.

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L. M. DATTA, for Appellants.

ACHHRU RAM, for Respondents.

The Judgment of the Court was delivered by—

ADDISON J.—The collaterals of Imam Din instituted two suits for a declaration that two gifts of land made by Imam Din in favour of his sister's son and a collateral respectively would not affect their reversionary rights upon his death. The trial Judge dismissed the suits and the District Judge dismissed the appeals. He has, however, granted a certificate under section 41 of the Punjab Courts Act for second appeals to this Court on the question of custom involved.

This judgment will dispose of both appeals which are Nos.741 and 785 of 1937. The answer to question 84 (A) of the Customary Law of the Jullundur District compiled in 1914 is to the effect that the *Arains* and *Awans* of the Jullundur Tehsil say that in the absence of male issue they can alienate by gift the whole or part of their property in favour of their relations without the consent of their legal heirs. This is definite enough but the answer to question 90 (A) throws some doubt upon the question. That question was as to whether a father could make a gift of his property to his daughter, his daughter's son, his sister or her sons or his son-in-law, and the answer given is that all tribes in the Jullundur Tehsil admitted that a father could gift his self-acquired property to his daughter, to his daughter's sons, to his sister or her sons, or to his son-in-law even in the presence of sons or near kindred but could not make a gift of his ancestral property without the consent of sons or near kindred. The *Awans* and *Arains* of Jullundur Tehsil are not specially noted as objecting to this reply, though the answer given to question 90 (A) seems to be

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in part contradiction of the answer given to question 84 (A) so far as they are concerned. It may be noted here that the parties are *Arains* of Jullundur Tehsil.

In *Ilahia* v. *Qasim* (1) it was held that the defendants had failed to prove that by custom among *Arains* of the Jullundur *tehsil* a sonless proprietor was competent to gift his ancestral property to his sister's son in the presence of his male agnates. That decision appears to be in favour of the appellants but was given before the present Customary Law was compiled.

In *Barkat Ali* v. *Jhandu* (2) it was held that by custom among *Awans* of the Jullundur District a childless proprietor was not competent to make a free and absolute gift of his ancestral land to strangers and non-relations in the presence of his male agnates.

In *Abdulla* v. *Khair Din* (3), another Division Bench held on the Customary Law that among *Awans* of the Jullundur *tahsil* a gift by a sonless proprietor of ancestral land partly to his sister's son and partly to his mother's sister's son was valid. They relied upon *Barkat Ali* v. *Jhandu* (2) as stating that though *Awan* proprietors had by custom undoubtedly large powers of disposition, these powers did not extend to gifts to complete strangers. The learned Judges, who decided that case, had apparently in view the terms of the Customary Law. The Judges, who decided *Abdulla* v. *Khair Din* (3), therefore, held that as given in the answer to question 84 (A), *Awans* of the Jullundur *tahsil* in the absence of male issue could transfer the whole or part of their property in favour of their relations without the consent of their legal heirs. The

(1) 24 P. R. 1905. (2) 127 P. R. 1907.
(3) (1920) 57 I. C. 248.

case before us is similar as the *Arains* of the Jullundur *tahsil* gave the same answer as the *Awans*.

It would seem that the Compiler of the Jullundur Customary Law put down too many questions with regard to gifts so that the questions overlap. Question 90 (A) and its answer as to gifts to daughters, etc., overlaps question 84 (A). It is most probable that the *Arains* and *Awans* of Jullundur *tahsil* thought that they had given a full answer to question 84 (A) and for that reason they are not again specifically mentioned in the answer to question 90 (A). We hold, therefore, that the *riwaj-i-am* allows such gifts of ancestral land made by sonless proprietors to relations. Instances of such gifts have also been relied upon by the Courts below.

On the evidence, therefore, the suits were properly decided and we dismiss these appeals with costs.

A. N. K.

Appeal dismissed.