APPELLATE CIVIL

Before Harnam Singh, J.

1950

June 21st

KIRLU, SON OF KHARKU AND TWO OTHERS,—*Plaintiffs-Appellants,*

versus

Mst KISHAN DA'I, WIFE OF BAJ AND ANOTHER,—*Defendants-Respondents.*

Regular Second Appeal No. 256 of 1947.

Custom—Gift of part of ancestral holding by father to daughter—Collaterals of 5th degree—Whether near collaterals according to Customary Law of Kangra District and competent to challenge the gift—Gift of less than one-fourth of ancestral holding—Whether gift of reasonable and moderate portion of ancestral holding.

Held that in the case of a gift of a part of his ancestral holding by the father to his daughter, the plaintiffs, who were connected with the alienor in the fifth degree, were not his near collaterals within the meaning of the answer to question 92 of the Customary Law of the Kangra District prepared in the Settlement of 1914-18 and were not competent to challenge the gift, as accoring to the answer to question 9 of the Customary Law prepared in 1868 a sonless proprietor must obtain permission from the relations, who can offer up the *'pind'*, for making a gift of a part of his ancestral holding and the relations who can offer up the *'pind'* are persons related to the prepositus through the great-grand-father and the permission of more distant relations is not necessary.

That gift of less than one-fourth of the ancestral holding was a gift of reasonable and moderate portion of his holding held by the donor.

Rabidat v. Mst. *Jawali and others* (1).

Second Appeal from the decree of Shri Mani Ram, Senior Sub-Judge, invested with enhanced appellate powers, Kangra at Dharamsala, dated the 21st of December 1946, reversing that of Harcharan Singh Bhandari, Sub-Judge, 1st Class, Nurpur, dated the 26th April 1946 and dismissing the plaintiffs' suit with costs throughout.

A. N. GROVER, for Appellants.

DAYA KRISHAN MAHAJAN, for Respondents.

(1) (194) 48 P.L.R. 350.

JUDGMENT.

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HARNAM SINGH J. On the 7th of August, 1944, Kirlu, Anant Ram and Rulia instituted the suit out of which this appeal has arisen for declaration in respect of 12 *kanals* 18 *marlas* of land with share in *shamilat* situate in Sangharal Tappa Nanawan, Tahsil Hamirpur, that the oral gift of one-fourth share of his holding made by Ghansara, defendant No. 2, his daughter, Mst. Kishan Dai, defendant No. 1 was invalid and not binding on the plaintiffs, collaterals of the alienor. *Mst* Kishan Dai Defendant No. 1, contested the suit. On the pleadings of the parties the following issues were fixed by the trial Court :—

(1) Are plaintiffs collaterals of Ghansara, deceased ? If so, in what degree ?

(2) Is the land in suit ancestral *qua* the plaintiffs ?

(3) Are the parties governed by custom ? If so, what that custom is ?

(4) Whether the gift in dispute is valid ?

(5) Whether plaintiff No. 3 is minor and the suit is properly instituted ?

(6) Relief.

On issue No. 1 the trial Court found that the plaintiffs were connected with the deceased Ghansara in the fifth degree. On issue No. 2 the trial Court found that all the field numbers in suit except *Khasra* No. 59 were ancestral in the hands of Ghansara *qua* the plaintiffs. The trial Court then found that according to the custom governing the parties Ghansara could not make a gift of the land in dispute in favour of his daughter. On issue No. 5 the trial Court found that plaintiff No. 3 was minor and that the suit was properly instituted. Finding, however, that Ghansara

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could not make a gift of the land in suit to *Mst.* Kishan Dai, his daughter, the trial Court decreed with costs the plaintiffs' suit with regard to the land in suit except *Khasra* No. 59.

Mst. Kishan Dai, defendant No. 1, went up in appeal in the Court of the Senior Sub-Judge, Kangra, from the decree passed by the trial Court on the 26th of April 1946. Now, the lower appellate Court has found that *Mst.* Kishan Dai, defendant No. 1 lived at the house of the donor and rendered services to him. On that finding the lower appellate Court has found that the gift was valid and that the donor had power to give away a portion of his ancestral holding to his daughter. That being so, the lower appellate Court has allowed the appeal and dismissed the plaintiffs' suit, leaving the parties to bear their own costs throughout.

Plaintiffs now appeal under section 100 of the Code of Civil Procedure from the decree passed by the lower appellate Court on the 21st of December 1946.

Mr. Amar Nath Grover, learned counsel for the appellants, contends that there is no evidence to prove services rendered by the donee to the donor. He then contends that even if services rendered are held to be proved, no gift could be validly made of ancestral property in favour of a daughter by a sonless male proprietor in Kangra District.

Now, on a perusal of the record I find that Indar, D. W. 1, and Mulkh Raj, D. W. 2, have given evidence on the point covered by the first contention. That being so, the finding reached by the lower appellate Court that the gift in suit was made for services rendered is not open to challenge in his appeal.

I now pass on to examine the second contention raised in these proceedings, namely, that it was not open to Ghansara to give away one-fourth of his ancestral holding to *Mst.* Kishan Dai for services rendered to him. The point raised in these proceedings

is covered by answer to question No. 92 of the Customary Law of the Kangra District prepared in the Settlement of 1914—18. Question No. 92 and the answer to that question reads :

> "*Question 92.* Can a father make a gift of the whole or part of his property (i) moveable, (ii) immoveable, to his daughter otherwise than in dowry, to his daughter's son, to his sister or her children, to his son-in-law or to any relative ? If there are no male lineal descendants or near collaterals, does this make a difference ? Whose consent for such a gift is necessary ?
>
> *Answer.* Such gifts can be made only with the consent of his heirs. Where there are no male lineal descendants or near collaterals nobody's consent is required. Presumably self-acquired property and moveable property can be gifted without any restriction."

Clearly a sonless male proprietor governed by custom in the Kangra District can make a gift of a part of his ancestral immoveable property to his daughter with the consent of his heirs if there are male lineal descendants or near collaterals in existence. In the present case it is common ground that there was no male lineal descendant of Ghansara in existence at the time Ghansara made a gift of one-fourth of his ancestral land to *Mst.* Kishan Dai, defendant No. 1. But as stated above, there were in existence at that time collaterals of the said Ghansara in the fifth degree. On these facts the question that arises for decision is whether collaterals of the said Ghansara are near collaterals of Ghansara within the meaning of the answer to question No. 92. On this point Mr. Mahajan relies on the answer to question No. 9 in the Customary Law of the Kangra District prepared in 1868. In that Settlement the tribes stated that a sonless male proprietor must obtain permission from the relations who can offer up the "*pind*" for making a

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gift of *a part of* his ancestral holding. In the answer to that question it is then stated that relations who can offer up the "*pind*" are persons related to the prepositus through the great-grandfather and that permission of more distant relations is not necessary.

Rowe in his celebrated book "Tribal Law in the Punjab" states :

> "The Gosains and all classes of Dagis deny any power of gift, but the general rule is that gifts can be made to daughters if there are no agnates 'as far as the "*pind*" of the *Shastras* reaches', i.e., descendants of the great-grandfather (*pardada*)."

On the material that has been brought to my notice I find that the plaintiffs in the present suit are not near collaterals of Ghansara, deceased, within the rule laid down in answer to question No. 92. That being so, I find that Ghansara was competent to make a gift of a part of his ancestral holding to his daughter *Mst.* Kishan Dai.

The question that arises for determination is whether the gift made by Ghansara was a gift of a reasonable and moderate portion of the entire estate held by him. Now on this point it is not possible to lay down any absolute rule of universal application. Each case has to be decided with reference to its own facts. In the present case Ghansara has given to his daughter one-fourth of the entire estate held by him. Of the property covered by the gift *Khasra* No. 59 measuring 1 *kanal* 16 *marlas* has been proved to be non-ancestral *qua* the plaintiffs with the result that Ghansara has gifted to his daughter a part of his ancestral property which is less than one-fourth of his ancestral holding. On this point reference may be made to *Rabidat* v. Mst. *Jawali and others* (1). In that case a Full Bench of the Lahore High Court laid

(1) (1946)48 P.L.R. 350.

down that a gift of one-fourth of the husband's estate by a widow should be regarded as a gift of a small or a moderate portion of such estate. That being so, I find that the gift in suit was a gift of a reasonable and moderate portion of the ancestral land held by Ghansara.

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No other point was pressed before me.

For the foregoing reasons, the appeal fails and is dismissed with costs.

APPELLATE CIVIL

Before Harnam Singh, J.

FAUJA SINGH AND OTHERS,—*Defendants-Appellants,*

versus

CHANAN SINGH AND OTHERS (PLAINTIFFS) SOHNU AND ANOTHER (DEFENDANTS),—*Respondents.*

1950

June 22nd

Regular Second Appeal No. 595 of 1948.

Punjab Pre-emption Act (I of 1913) as amended by Act II of 1928 and Act I of 1944—Section 15(c) secondly—Village Bhumli, Tahsil and District Gurdaspur—Whether comprises recognised sub-divisions within the meaning of section 15(c) secondly of the Act.

Section 15(c), secondly provides that the right of pre-emption vests in the owners of the *pattis* or sub-divisions of the estate within the limits of which such land or property is situate, if no person having a right of pre-emption under clause (a) or clause (b) of section 15 seeks to exercise that right.

A particular town or city may or may not, as a matter of fact, comprise recognised sub-divisions and it is a matter of fact both whether the town or city comprises sub-divisions and what the sub-divisions are which are comprised in it.

Held that village Bhumli is divided into recognised *pattis* or sub-divisions within the meaning of section 15(c) secondly of the Punjab Pre-emption Act and that *taraf* Bakhtu is a distinct sub-division of the village and that the plaintiffs being owners in that sub-division in which the