THE

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APPELLATE CIVIL

Before Kapur, J.

RISALDAR JOWAND SINGH,—*Appellant,*

versus

CHANDA SINGH, ETC.,—*Respondents.*

1951

June 13

Regular Second Appeal No. 284 of 1948.

Custom—Punjab—Gift—Powers of a proprietor in Tarn Taran Tehsil of District Amritsar—Whether he can make a gift of a small portion of his ancestral estate to his daughter.

Held, that the statement of custom in the three *Riwaj-i-am's* of 1865, 1914 and 1940, shows a progressive acceptation of the increased power of gift of the proprietors.

Held also, that a gift of 4 kanals of agricultural land out of 60 kanals by the father to his daughter is valid under custom.

Second Appeal from the decree of Shri Mani Ram, Senior Sub-Judge, with enhanced appellate powers, Amritsar, dated the 12th March 1948, affirming that of Shri Bahal Singh, Sub-Judge, 2nd Class, Tarn Taran, dated the 11th December, 1947, dismissing the suit with costs. The lower appellate Court ordered the parties to bear their own costs throughout.

S. L. PURI, for Appellant.

J. L. BHATIA, for Respondent.

JUDGMENT

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Kapur J.

This is an appeal against an appellate judgment and decree of the Senior Subordinate Judge, Amritsar, dismissing the appeal against the decree of the Subordinate Judge in which it had been held that gift made by a father of a small portion of his ancestral property in favour of his daughters was valid according to custom.

Chanda Singh, a Malli Jat of Muradpur in Tarn Taran Tahsil, made a gift of about 4 kanals of land situate in Tarn Taran in favour of his daughters, Guro and Gauri. The plaintiff who is a real brother of the donor brought a suit to contest this gift. The trial Court held the gift to be valid and this was upheld on appeal to the Senior Subordinate Judge.

Plaintiff's counsel in appeal has submitted that the present Riwaj-i-am—of 1940—on which reliance has been placed by the Senior Subordinate Judge is of extraordinary nature and is opposed to general custom of the Punjab and therefore should not be relied upon and in support he has quoted a judgment, *Chet Singh* v. *Rur Singh* (1), where Question No. 52 of the Riwaj-i-am of 1940, which related to the absolute power of widows to make alienations of the self-acquired property of their husbands was held not to be a true statement of the existing custom. But the question to be decided in this case is different and the statement of the custom as given in three Riwaj-i-am's of 1865, 1914 and 1940 shows a progressive acceptation of the increased power of gift of proprietors.

In the present case the donor made a gift of about 4 kanals of land to his daughters, the total area that he possessed was about 60 kanals. The appellate Judge has held that it has not been shown that the property gifted was not a small portion of the total area possessed by the donor and has disbelieved

(1) A.I.R. 1949 E.P. 209.

the evidence of the plaintiff on this point. The question is whether the gift is valid according to custom of Tarn Taran Tahsil.

In the Riwaj-i-am of 1865, Exh. P. 1, which is the custom of the Mallis of the Amritsar District, it is stated that daughters do not inherit along with sons nor is it allowed to a proprietor or his widow to make a gift of any portion of his property ancestral or self-acquired in favour of daughters or daughters' sons. But this custom cannot be absolutely correct because I find that there is an instance given, which is No. 3, where one of the proprietors made a gift in favour of Mst. Nandan, his daughter, "and they, the heirs, are still in possession. This proprietor had no sons." The gift was not in writing. It was no doubt stated that this instance would not be binding in future.

In the English Riwaj-i-am of the Amritsar District prepared in the year 1865, Question No. 8 deals with the power of gift by a proprietor. Even there the replies showed that there were some Hindu Jats whose replies showed that a transfer could be made by a proprietor but it should be in writing and should be in the lifetime of the donor. This Riwaj-i-am also shows that the power of making a gift to daughters was not an absolutely unknown custom in this district.

In Sir Henry Craik's Riwaj-i-am of 1914, Question No. 113 relates to gifts allowed to be made to daughters by way of dowry and Question No. 117 gives the power of a father to make gift to his daughter otherwise than as dowry. Questions Nos. 113 and 117 and their answers are as follows :—

> "*Q. 113.* Can a father make a gift to his daughter by way of dowry (*Jahez*) out of his property, movable or immovable, ancestral or acquired, whether or no there be (*1*) sons, or (*2*) near kindred, and whether or no the sons or near kindred as the case may be, consent ?

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A. All tribes with the exception of Mughals—such gifts to daughters are allowed in the case of movable ancestral property and both movable and immovable non-ancestral property. No consent of the sons or kindred is necessary. With respect to immovable ancestral property such gifts will not be valid except where only a very small portion, not more than one twentieth or one-tenth of the property is concerned—Mughals—

such gifts are valid regarding all classes of property both acquired and ancestral.

Q. 117. Can a father make a gift of the whole or any specific share of his property, movable or immovable, ancestral or acquired, to his daughter otherwise than her dowry, to his daughter's son, to his sister or her sons, or to his son-in-law? Is his power in this respect altered, if he has (1) sons, (2) near kindred and no sons? If the consent of the near kindred is essential to such gifts, state the degree of such kindred towards him in which the persons must stand by whom such gift can be prohibited.

A. The answer is the same as given under questions 113 to 116."

These questions show that a father has the right to make gift of a portion of his property, to the extent of one-tenth of his estate, to his daughter and this can be done without the consent of the collaterals.

In Question No. 118, it is stated that similar gift to the extent of one-tenth can be made even to non-relatives. This is supported by five reported cases decided by the Chief Court of the Punjab.

In the Riwaj-i-am of the year 1940, in answer to Question No. 112, it is stated that " a proprietor can make a gift of the whole or part of his property to his daughter or his sister or his sister's son or to his son-in-law ". For instance reference is made to Appendix 1 giving the mutations and Appendix 2 for civil cases decided. It is unfortunate that these appendices have not been placed on the record.

It has been held more than once that there is a presumption of correctness attached to these Riwaj-i-am's. Counsel submits that the Riwaj-i-am of 1940 is so opposed to the general custom of the Punjab that no reliance can be placed upon it, and in support has relied upon the judgment of Mahajan, J., which I have already referred to in A. I. R. 1949 E. P. 209. I am unable to agree with the contention of the appellant's counsel. It is true that in 1865, the proprietors did state that no part of the ancestral property or even non-ancestral property can be gifted by a proprietor to his daughter or daughter's sons. But that does not seem to be correct because at least there is one instance in support of a gift to a daughter. I have already referred to the English copy of the Riwaj-i-am of 1865, which in regard to some tribes at least did not absolutely prohibit the power of making a gift to daughters.

Coming to the Riwaj-i-am of 1914, in answer to Question No. 117, it is stated that proprietor can make a gift from one-twentieth to one-tenth of the property and the Riwaj-i-am of 1940, only extends that principle. It is not necessary for me to decide whether the present Riwaj-i-am, that is of the year 1940, in regard to the very wide powers which have been given to the proprietors correctly states the custom, but it cannot be said that because it is opposed to the general custom of the Punjab it can have no evidentiary value. Reported cases show that the power to make a gift in favour of daughters was successfully asserted in Amritsar District as far back as 1894.

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In *Jiwan and others* v. *Hakam Khan* (1), which was a case of Manj Rajputs of Tarn Taran Tahsil, a gift was made to a son-in-law and the question to be decided was whether this was valid according to custom and it was held that it was. Custom had been set up as follows :—

> "But the custom of the Tarn Taran Tahsil, except in the case of one Village Khair-ud-Din, is declared to be an exception to the general rule, and in that area the restrictive conditions above-mentioned do not exist, and a sonless proprietor may convey by gift in writing, without any limitation upon his power of disposition."

The gift was upheld and this portion of the custom was held to be correctly recorded.

In *Sher Muhammad Khan* v. *Muhammad Khan* (2), the contestants were Manuzai Pathans of the Ajnala Tahsil. Reference was again made to the Riwaj-i-am of Tarn Taran Tahsil in the following words :—

> "This is the general answer. But the proprietors of Tarn Taran state that a sonless proprietor during his life, and his widow after, may gift the whole or part of his estate by a deed executed before the brotherhood, without consent of his collaterals. If the proprietor or his widow die without executing such a deed, then his daughter will succeed to one-third and the collaterals to two-thirds."

In *Khan and another* v. *Hira* (3), which was a case of Mohammadan Gaman Jats of Tarn Taran Tahsil, it was held that the Riwaj-i-am permits gifts of both ancestral and self-acquired property by a

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(1) 140 P.R. 1894.
(2) 5 P.R. 1895.
(3) 98 P.R. 1895.

childless priprietor in favour of daughter's and sister's sons. Chatterji, J., at p. 466 said :—

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> As pointed out by the Courts below, the Riwaj-i-am permits gifts of both ancestral and acquired property by a childless proprietor in favour of daughter's and sister's sons. The provision is rather unusual among agricultural tribes dependent on land, but it appears to have been entered after a careful inquiry; for the general rule recorded for the whole district is, that such gifts can only be made with the assent of the next heirs and the knowledge of the brotherhood, while it is noted that the landowners of the Tarn Taran Tahsil, except one village, Khair-ud-Din, propounded the above as an exception. The defendant has adduced two instances in support of this custom which, though not sufficient by themselves to establish it affirmatively, go far to show the correctness of the entry in the Riwaj-i-am. In No. 140, Punjab Record, 1894, this entry was held to be a correct record of custom among Manj Rajputs of the Tarn Taran Tahsil and the enquiry made in that case supported it."

In *Jai Dial* v. *Santu and others* (1), it was stated as the custom that where a gift is made to a daughter and on her dying childless the property would be inherited by the collaterals of the daughter's husband and not by the reversioners of the donor. This is rather extraordinary kind of custom but it was propounded and was accepted.

I may here mention that the Riwaj-i-am of 1865 was adversely criticised in *Dial Singh and others* v. *Dewa Singh and another* (2). It cannot be said

(1) 74 P.R. 1899.
(2) 5 P.R. 1885.

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therefore that the power of a proprietor to make a gift in favour of his daughter is not supported by at least two latter, if not by all the three, Riwaj-i-am's of the Amritsar District. It may be that the custom as given in Question No. 52 and relating to the powers of widows is not a correct statement, but from the history of custom given above it cannot be said that the answer to Question No. 112 of the Riwaj-i-am of 1940 is so incorrectly compiled that it would not raise a presumption even in regard to a small portion of the estate specially in view of the statement of custom made in 1914 supported as it is by some of the judgments of the Chief Court. It has been held in *Kaman* v.*Ghafur Ali* (1), that a custom recorded in the Riwaj-i-am which is in favour of daughters or other females is of great evidentiary value. The parties in the present case belong to Tahsil Tarn Taran and as long ago as 1894 and in the cases which were subsequently decided it has never been said that the unrestricted power of making a gift given to proprietors of Tarn Taran Tahsil was in any way incorrect.

No instance of any kind to rebut the presumption raised by the statement of the Riwaj-i-am has been produced by the plaintiff. He has contented himself by giving six oral witnesses whose testimony in my opinion has been rightly rejected by the appellate Court. The gift of 4 kanals as made by the father must therefore be held to be valid under custom.

As I have already stated it is not necessary for me in this case to say whether the custom recorded in Question No. 112 in the year 1940 is a correct custom because I do not find it necessary to go into that question, but I must say that in this case nothing has been shown which would rebut the presumption which arises from a statement of custom made in a Riwaj-i-am but I do not finally decide this question.

In the result, this appeal fails and is dismissed, but the parties will bear their own costs throughout.

(1) I.L.R. 9 Lah. 496.