power of alienation is given, the power can be exercised, and it also is consistent with the rule of law laid down in paragraph 571 of Mayne's Hindu Law, 3rd Edition, (S. 617 of 5th Edition) where the author says: 'Immovable property, when given by a husband to his wife, is never at his disposal, even after death. It is her *stridhanam*, so far that it passes to her heirs, not to his heirs. But as regards her power of alienation, she appears to be under the same restrictions as those which apply to property which she has inherited from a male. Of course it is different if the gift is coupled with an express power of alienation.'"

The bulk of the property dealt with by the will of Gobind Ram is immovable. The case of *Moulvi Mohamed Shamsool Hooda* v. *Shewukram* (7), quoted above, is authority for holding that Gobind Ram knew that the immovable property in the hands of his daughters would be *stridhan* and, as such, descendible to their heirs instead of to the heirs of their father. The restrictions placed by the will on *Must.* Mathri's powers of alienation are in accordance with the provisions of Hindu Law, above quoted, and it is quite possible that the testator was under the impression that bequests to daughters were governed by the same rule.

Be this as it may, the intention of the testator obviously was that the property bequeathed should be *stridhan* in the hands of his daughters, and his intentions are important factors in the construction of the will: *Rai Bishen Chand* v. *Must. Asmaida Koer* (11) and *Mangaldas Parmandas* v. *Tribuvandas Narsidas* (12).

The learned Counsel for the appellants contends that, inasmuch as *Must.* Rattan Devi pre-deceased her mother, and *Must.* Raj Rani was not in existence when Gobind Ram died, the estate bequeathed in remainder to *Must.* Rattan Devi falls into the residue, and passes on the death of the surviving daughter to the reversioners of Gobind Ram, while, under the rule, as to gifts over, laid down by their Lordships of the Privy Council in *Ganendra Mohan Tagore* v. *Upendra Mohan Tagore* (6), *Must.* Raj Rani cannot take under the will. The learned Counsel for the respondents relies on the case of *Mangaldas Parmandas* v. *Tribhuvandas Narsidas* (12) and on *Ram Lal Sett* v. *Kanai Lal Sett* (13), and the authorities quoted therein, for the proposition that, inasmuch as the intention of the testator was to benefit his descendants he intended that, if all could not take, so many should take as could and that his whole estate passes by the will even if the construction adopted by the Court below is wrong.

In our opinion the words:

"The above three daughters and their descendants shall be owners of the property in equal shares..... all the three daughters and their descendants shall be absolute proprietors thereof in equal shares"

had the effect of vesting the estate left to *Must.* Manak Devi, as one of the daughters, in her on her father's death. That estate, therefore, passes to *Must.* Manak Devi's descendants and does not fall into the residue. One descendant, the daughter *Must.* Raj Rani, is admittedly in existence. In our view of the estate having vested in *Must.* Manak Devi the rule as to gifts over in *Ganendra Mohan Tagore* v. *Upendra Mohan Tagore* (6) is inapplicable. Similarly *Must.* Rattan Devi is represented by *Must.* Mahesho. We see no reason to differ from the construction of the will adopted by the Court below, and it is unnecessary to consider whether the daughters were treated as a class or individually.

The appeal fails and is dismissed with costs.

R.M./R.K.

Appeal dismissed.

(11) (1884) 6 All. 560=11 I. A. 164 (P. C.).
(12) (1891) 15 Bom. 652.
(13) (1886) 12 Cal. 663.

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CHEVIS, J.

Ram Kishen and *others*—Petitioners.

v.

Mt. Umrao Bibi and *others*—Respondents.

Civil Revn. Petn. No. 1663 of 1912, decided on 2nd March, 1916, from the Order of Divnl. Judge, Multan, dated 14th August, 1912.

(a) Provincial Insolvency Act (3 of 1907), S. 46 (*i*) (4)—Creditor's claims discharged by composition after Insolvency petition—It should be dropped.

When a person after applying to the Court to be made an insolvent effects a composition with his creditors in full discharge of all his liabilities, he can no longer be regarded as an insolvent. Consequently, the insolvency proceedings should be dropped by the Court. [P. 308, C. 1.]

(b) Limitation Act (9 of 1908), S. 5—Scope—It applies to insolvency proceedings.

S. 5 of the Limitation Act (9 of 1908), can be applied to cases under the Prvoincial Insolvency

Act, 3 of 1907. 34 All. 496 (F.B.), foll.; 30 I. C. 703, diss. from. [P. 308, C. 1.]

(c) Punjab Courts Act (1884), S. 23 (*b*)—Notification No. 889—Divisional Court is principal Civil Court for original jurisdiction for purpose of Insolvency Act.

Under the Punjab Government Notification No. 889, dated 18th November, 1908, made under S. 23 (*b*), Punjab Courts Act, 1884, the Divisional Court is deemed to be the District Court or Principal Civil Court of original jurisdiction for the purposes of any proceedings under the Provincial Insolvency Act (3 of 1907). [P. 308, C. 2.]

C. Bevan Petman, Sardar Teja Singh and *Ram Lal*—for Petitioners.

Shah Nawaz, Mohammad Iqbal, Hargopal, Sewa Ram Singh, Moti Lal and *Mohsin Shah* for *Abdul Ghani*—for Respondents.

Judgment.—In reply to the preliminary objection that the appeal to the Divisional Judge was time-barred, Mr. Petman admits that the appeal was presented after the period of thirty days allowed by S. 46 (4) of the Provincial Insolvency Act, but he points out that this sub-section speaks of appeal to the District Judge, and he points out that Punjab Government Notification No. 889, dated 18th November, 1908, declaring that the Divisional Court shall be the District Court for the purposes of S. 46 (1) of the Provincial Insolvency Act is so worded as to leave it quite possible for a litigant to fall into the mistake of thinking that as regards limitation for appeal to the Divisional Court S. 46 (4) did not apply. He urges, too, that his clients took the best legal advice obtainable and were advised that the period of limitation was 60 days. I can see nothing wrong with the Notification myself. I cannot see that it was necessary to refer to S. 46 (4) in the Notification. But I admit that it was quite possible for other purposes to hold different views. And, as Mr. Petman justly urges, the point was not taken in the Divisional Court and had it been taken that Court might have thought fit to extend limitation under S. 5 of the Limitation Act. As to whether S. 5 can be applied to cases under the Provincial Insolvency Act, I fully agree with *Dropadi* v. *Hira Lal* (1), though I am aware that the Madras High Court has expressed a different view, see *Munjuluri Sivaramayya* v. *Singumahanti Bujanga Rao* (2).

(1) (1912) 34 All. 496=16 I. C. 149.
(2) (1915) 30 I. C. 703.

Mr. Petman next urges that the Government Notification is itself invalid, and that the appeal did not lie to the Divisional Court at all. The Notification professes to have been made under S. 23 (*b*) of the Punjab Courts Act, 1884. Mr. Petman, pointing to the words

"Principal Civil Court of *original* jurisdiction"

urges that this does not authorize the Local Government to change the course of appeal. But the words are

"District Court or Principal Civil Court of original jurisdiction."

Now the District Court has also appellate powers and so I fail to see any flaw in the Notification.

In any case my decision on the last point cannot much matter, as if the Divisional Court had no jurisdiction we come back to the order passed by the first Court, and I could revise that order if necessary.

Coming now to the facts, I find that they are follows:—On 1st April, 1899 Hamid Shah applied to the District Court to be made an insolvent. Notice issued to the creditors. On 10th November, 1899 a document was put in by which Hamid Shah agreed with his creditors that his immovable property was to be regarded as sold to them in full discharge of all his liabilities, the creditors agreeing that if any unsecured creditor—here I may note that two creditors held mortgages – offered a higher price than the mortgage debts he should become the owner, the surplus after paying off the mortgagees to be divided amongst the creditors; if no unsecured creditor made any such offer the mortgagees were to be considered the owners of the mortgaged land. As to unmortgaged land certain Commissioners were to be appointed who were (*a*) to fix price of lands, (*b*) to fix debts of each creditor, (*c*) to sell the lands to any creditor or to the public at the prices fixed, (*d*) to distribute sale-proceeds amongst creditors, or (*e*) failing sale of the land to divide it among creditors proportionately to their debts. At first some creditors did not agree, but apparently by 30th April, 1900 opposition died out, and all creditors then agreed. One would have thought that the insolvency proceedings would then have stayed, as under the agreement the land passed to the creditors and all

Hamid Shah's debts were wiped out. When the debts vanished how could the man be regarded as an insolvent? But the Court on the 1st May, 1900, passed an order declaring him an insolvent.

In August 1900 Hamid Shah died. He left four widows, none of whom claimed the property, except that one widow claimed maintenance. The Revenue Authorities sanctioned mutation of names in her favour, for want of some better name to enter.

Since then the insolvency proceedings have remained pending. The *nazir* was appointed Receiver of the movable property, and apparently the lands have been placed in charge of the local Naib Tahsildars.

Finally some of the creditors applied to the District Judge asking to give effect to the composition. The District Judge held that title did not pass in 1899 when the composition was made, and apparently held that any subsequent sale was barred by the Punjab Land Alienation Act. He said "I pass no orders as to the sale of the land, the money realised" —which probably refers to money realised by sale of produce —

"should be divided rateably among the creditors other than those whose debts are secured."

An appeal was preferred to the Divisional Judge, who holds that if the land was not sold to the creditors before the appointment of a Receiver. then it vested in the Receiver and could not be sold subsequently, whereas if the land was sold before the appointment of a Receiver, the Insolvency Court has no further concern in the matter. So the Divisional Judge dismissed the appeal.

This leaves matters just where they were before. The Insolvent has died long ago, the property is locked up, and apparently the insolvency proceedings will go on for ever. The insolvency proceedings should, I think, have been dropped on 1st May, 1900, and all parties before me agree to this. Until the insolvency proceedings are dropped nobody can take any steps either in Court or out of Court to do anything with the property. As far as I can see no one of the parties can break away from the Insolvency Court and attempt to enforce his rights by a regular suit.

All parties before me agree by their Counsel to the following order.

I accept this application for revision and set aside the order of the Divisional Judge and all proceedings in the Divisional Court and in the Insolvency Court back to the 1st May, 1900. I set aside the order of the District Judge, dated 1st May 1900, and instead I pass an order dismissing the application of Hamid Shah to be declared an insolvent.

The parties will bear their own costs throughout as there is no decision on the merits.

R.M./R.K.

Order accordingly.

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JOHNSTONE, C. J. AND CHEVIS, J.

Isa and *others*—Plaintiffs—Appellants.

v.

Samman and *others*—Defendants—Respondents.

Second Appeal No. 2040 of 1913, decided on 28th October, 1915, from the Decree of Divnl. Judge, Jullundur, dated 14th July, 1913.

Custom (Punjab) — Alienation — *Gujars* of Phillour Tahsil—Gift to daughter and her son when valid stated.

A sonless proprietor among *Gujars* of the Phillour Tahsil in the Jullundur district can gift his land to a daughter whose husband was a *khana-damad* and to a daughter's son whom he had appointed as his heir. 67 P.R. 1901; 2 P.R. 1910 and 50 P.R. 1893 (F.B.), dist. [P. 311, C. 1.]

Lakshmi Narain—for Appellants.

Nand Lal—for Respondents.

Johnstone, C. J.—In this case four issues were drawn by the First Court, in whose judgment the facts and pleadings are fully set forth: The first of these issues is concerned with the question whether the land is ancestral. Before us both sides states that it is so. The second issue is on a fact, *viz.*, did *Must.* Said's *doli* remain in the house of her father? This question has been decided in the affirmative by both the lower Courts and in second appeal we cannot discuss it again. A similar remark applies to the third issue, *viz.*, whether Suleman was actually appointed as heir by defendant No. 1. In short, the only question that we really have to decide is that of custom, in connection with which the learned Divisional Judge has given a certificate under S. 40 (3) of the Act.