

expended. The deceased tenant cannot have contributed towards (b) or (c), while (a) even in his hands was not liable to attachment or sale. It seems to us, therefore, to be impossible to hold that the product of (a), (b) and (c) can be liable to attachment and sale in the hands of the heir.

We, therefore, accept the appeal and set aside the order of the lower Court, but in the circumstances we order parties to bear their own costs in this Court.

R.M./R.K.

Appeal accepted.

A. I. R. 1916 Lahore 314

CHEVIS, J.

Sher Zaman and others—Defendants—Appellants.

v.

Karm Bakhsh and others—Plaintiff and others—Defendants—Respondents.

Second Appeal No. 634 of 1912, decided on 8th February, 1916, from the Decree of Divnl. Judge, Attock, dated 25th January, 1912.

Custom (Punjab) — Alienation — Awan of Fattehjang Tahsil not entitled to bequeath property to prejudice of reversioners.

A sonless *Awan* proprietor of the Fattehjang Tahsil is, not by custom, entitled to bequeath his property to the prejudice of his reversioners.

[P. 314, C. 2.]

Muhammad Iqbal—for Appellants.

Gobind Das—for Respondents.

Judgment.—Karm Dad, a *Bhudal* of the Fattehjang Tahsil, executed a will by which he left one half of his property to his sister's sons and the other half to his widow. Karm Dad had no sons. On his death the property was mutated according to the will. Gulab Khan, a collateral in the sixth degree, brought a suit for a declaration that the will should not affect his reversionary rights. Other reversioners were impleaded as defendants, but some of them at their own request were subsequently joined as plaintiffs. The first Court dismissed the suit holding that the will was valid. Of the plaintiffs Gulab Khan alone appealed to the Divisional Judge, who held that the will was invalid and gave all the plaintiffs a decree. The defendants in whose favour the will stands have preferred a second appeal to this Court, but of the plaintiffs only Gulab Khan has

been made a respondent. It is evidently by an oversight that the other plaintiffs in whose favour the decree of the learned Divisional Judge stands have not been made respondents. It is, however, too late to add them now as limitation has long ago expired.

The first question for consideration is whether *Bhudals* are *Awans* or *Rajputs*. In the first Court the question of their being *Rajputs* seems not to have been contemplated. The parties are described as *Bhudal Awans* in the revenue papers, and the plaintiffs described themselves in the same manner in the plaint. The Divisional Judge, however, states that *Bhudals* are *Rajputs*, and this is very possibly correct for they are so described both in the Customary Law of the Rawalpindi District and in the Gazetteer of that District and also in Ibbetson's Census Report. Still we see that the plaintiffs were content to pose as *Awans* in the first Court and I doubt whether the Divisional Judge was well advised in taking up the question of their being *Rajputs*. But assuming the parties to be *Awans*, the question still remains whether Karam Dad had the power to make the will in favour of his sister's sons. Counsel for the appellants owns that there are no reported cases of alienations by sonless *Awans* of the Fattehjang Tahsil and he also owns that no instances in point relating to that Tahsil have been produced in evidence, nor can he point to anything in the Customary Law of the Attock District, to which the Fattehjang Tahsil now belongs, in his favour. He merely pleads that Karam Dad being an *Awan* of the Western Punjab District the presumption should be in favour of the validity of the will. It may be admitted that in many cases it has been found that *Awans* in the Western part of the Punjab have greater powers of alienation than ordinary agriculturists, but at the same time the general custom of the Province is against alienation to the prejudice of the reversioners, and it is for the defendants to prove that the will is valid by custom. Whatever may be the custom amongst *Awans* of other Tahsils such as Talagang, Attock and Rawalpindi, I am unable to find any proof of a custom amongst *Awans* of the Fattehjang Tahsil whereby a sonless proprietor is entitled to bequeath his property to the prejudice of

