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High Court intended to lay down the general proposition of law now attributed to them; but if they did, I am not prepared to follow them. The case is not analogous to a suit for damages against joint tortfeasors. The second ruling relied on is not really in point. I hold that the contention is bad in law and reject it. With regard to the sentence, the complainant is apparently a man who in the case of some of the accused regards his wrongs as met by an apology, though probably accompanied by money; and under these circumstances I do not think a severe sentence is called for. It is suggested that the petitioner was too poor to meet the complainant's demands. I see also that the Magistrate awarded the present sentence under S. 324, I. P. C., and that although the lower appellate Court altered the conviction to one under S. 323, I. P. C., it did not reduce the sentence. I think justice will be met by my present order. I maintain the conviction but reduce the term of imprisonment to the period already undergone which is roughly about 2½ months, and maintain the fine. To avoid remanding the petitioner to jail his counsel tendered Rs. 50, the amount of fine which money has now been deposited in the office of this Court. I direct that the petitioner be discharged from his bail bond.

R.M./R.K. *Sentence reduced.*

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Abdul Raoof and Petman, JJ.

Mt. Umrao Bibi and *anothers*—Plaintiffs—Appellants.

v.

Muhammad Bakhsh and *others* — Defendants—Respondents.

First Appeal No. 3349, of 1915, Decided on 28th January 1920, from decree of Sr. Sub-Judge, Multan, D/- 31st August 1915.

(a) Mahomedan Law—Dower— Presumption is that dower was fixed and husband can increase it subsequent to marriage.

It must be presumed in the case of a Mahomedan marriage that dower was fixed, and it is open to the husband to increase the amount of the dower subsequent to the marriage. [P 110 C 2]

(b) Mahomedan Law—Dower—Transfer in lieu of.

A transfer in lieu of dower is not a gift. [P 110 C 2]

(c) Punjab Alienation of Land Act (1900), S. 4—Adoption of profession (such as prostitution) cannot change man's status (e. g. that of agriculturist) for purposes of Punjab Alienation of Land Act.

The adoption of a profession cannot change man's status for the purposes of the Punjab Alienation of Land Act.

Members of an agricultural tribe do not cease to hold that status if they adopt or if their ancestors adopted prostitution as a profession, nor can such adoption vary their custom in respect of inheritance. [P 112 C 2]

(d) Punjab Alienation of Land Act (1900), S. 4 — Mahomedan agriculturist marrying woman of other tribe—Wife cannot attain status of agriculturist—(Obiter.)

Obiter.— In the case of a Mahomedan belonging to an agricultural tribe marrying a woman not a member of such a tribe, his wife does not attain the status of belonging to his agricultural tribe. [P 111 C 1]

Fazli Husain and *Muhammad Iqbal*—for Appellants.

Sheo Narain—for Respondents.

Judgment.—This appeal arises out of a suit instituted by two widows, Mt. Umrao Bibi and Mt. Jindwaddi, of one Hamid Shah, a Gardezi Sayad, against Muhammad Bakhsh and Ali Muhammad, the minor nephews of Mt. Mughlani, deceased, a third wife of the said Hamid Shah. There was a fourth wife, Mt. Allah Wasai, also deceased. The plaintiffs are themselves Sayads, whilst the other two wives were of the prostitute class. In the plaint the minor defendants are described as "Darkhan Kaniars". It is admitted that "Darkhan" is the same as "Tarkhan." Hamid Shah, who came of an ancient and good family, at one time possessed considerable landed estates, but by 1896 he was heavily in debt owing to extravagance and debauchery, and by 1897 he had to seek the assistance of the insolvency Court. On 1st October 1896 Hamid Shah executed four deeds: one in favour of each of his three wives and the fourth in favour of his daughter by Mt. Allah Wasai. It should be noted that he did not marry Mt. Umrao Bibi till 1898. All four deeds were transfers of land and other property, but whereas the deeds in favour of Mt. Jindwaddi and Mt. Allah Wasai gave them only a life interest, those in favour of Mt. Mughlani and his daughter purported to give them absolute ownership. The transfers in favour of his wives were in lieu of dowers and maintenance and that in favour of his daughter was a gift because he had no male issue. We are concerned in this appeal with the transfer to Mt. Mughlani, which was followed by mutation of names in the

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revenue record in her favour. Hamid Shah died in 1900 and on 4th April 1911 Mt. Mughlani gifted a part of the property, so transferred to her, to her brother's sons, the present defendants, and it is the part so gifted which is the subject of the present suit and appeal. After Mt. Mughlani's death such portions of the property as had not been disposed of by her were mutated in the names of the plaintiffs, the surviving widows of Hamid Shah. The lower Court, holding that the transfer to Mt. Mughlani was a genunie transaction, that she became absolute owner of the property conveyed to her by Hamid Shah and that, her nephews being members of an agricultural tribe, the gift to them was valid, dismissed the suit. The plaintiffs therefore appeal. It is admitted by both parties that Hamid Shah was governed by custom. For the appellants it is contended that the conveyance to Mt. Mughlani was merely a colourable transaction to defeat creditors and to save the property from their hands, that it was not intended to take effect as a transfer of the property conveying absolute rights to her, and that this was apparent from the facts that Hamid Shah was heavily indebted, that he shortly after applied to be declared an insolvent, that the property was considerable and substantial, that there was no ostensible reason for the transfers to his wives other than insolvency, that all the deeds were executed on the same day, that there was no evidence of any dower having been fixed in the case of Mt. Mughlani or showing the amount of it and that possession as contemplated in the deed was not given.

The further contention that the words in the deed "and I have been left no concern or connexion whatever, nor shall have I any with it" qualify the preceding words granting absolute ownership and mean that Mt. Mughlani was granted absolute ownership so far as he, Hamid Shah, alone was concerned, may conveniently be dealt with first. We see no force whatever in this last contention. The preceding words "From today my wedded wife aforesaid shall be the absolute owner of the property settled" are clear and have a definite meaning and the subsequent words are merely an amplification. They in no way qualify the absolute ownership granted. In the cases in which Hamid Shah intended to convey a life-interest he expressed himself differently. It is true that in the deed the following words occur:

"and have put her in its (property transferred) actual possession through the management (wrongly translated as guardianship) of Syad Shah Nawaz Khan,"

and we do not know whether the property was so managed or not, but it is proved and admitted that Hamid Shah caused mutation to take place in Mt. Mughlani's name. That dower was fixed must be presumed, and its amount is immaterial because a Mahomedan husband can increase it. The creditors never objected to the transfer and never challenged it. The mere fact that Hamid Shah was heavily indebted does not necessarily imply that he was not desirous of making ample provision for his wives. It by no means follows that he intended to retain his rights in the property. The fact that he granted Mt. Mughlani and his daughter absolute ownership is probably because the one was his latest and most loved wife and the other was his daughter. For the above reasons we agree with the lower Court that the deed conveyed absolute ownership to Mt. Mughlani.

The next contention is that the gift, not having been followed by possession, is invalid. The possession subsequent to 1900, it is urged, was based merely on the rights of a widow. It is clear however that Mt. Mughlani held the property transferred to her from 1900 by virtue of the deed. A transfer in lieu of dower is not a gift. Under the circumstances of the case we see no force in the contention. Hamid Shah did all he could to give effect to the transfer. The contentions most strongly pressed before us however are that Mt. Mughlani was a Kanjari, that on her marriage with Hamid Shah she became a member of his tribe, in other words, a Gardezi Sayyadani, and continued as such after his death, that by a notification under the Punjab Alienation of Land Act the Gardezi Sayyads were declared members of an agricultural tribe and that as such Mt. Mughlani was not legally competent to alienate land to her nephews, who were kanjars and not members of an agricultural tribe and that therefore her gift to them was void. The contention that a woman, who is not a member of an agricultural tribe, becomes a member of or belongs to such a tribe by her marriage

to a man who is such a member, is, so far as we are aware, a novel point, and counsel have been unable to cite any authorities. If by her marriage to a Mahomedan (and it is to be noted that the question is limited to Mahomedans because the case of Hindus and others may be different) who is a member of an agricultural tribe, a woman, not a member of an agricultural tribe, does not become a member of the agricultural tribe, as created by statute, to which her husband belongs, it follows that the husband cannot transfer to her though his own wife, whether by dower or gift, any agricultural land except by the sanction of the Collector. This however may be the policy of the law and the result in no way affects the law if it is clear. In the present case Hamid Shah transferred the property to Mt. Mughlani before the Punjab Alienation of Land Act was enacted and therefore the validity of the transfer to her on the ground that she was not a member of an agricultural tribe cannot be attacked. The transfer to Mt. Mughlani was in any case valid and it follows that if she was not originally a member of an agricultural tribe and did not acquire that status by her marriage, the gift to her nephews was valid. On the other hand, if she was not originally such a member and became such by her marriage and the nephews are not members of an agricultural tribe, it follows that the gift to them is invalid.

For the appellants it is contended that the defendants have not proved that they are Langah Jats, an agricultural tribe, as claimed by them and it is urged that, even if the ancestors of the defendants were originrlly Langhas by caste or tribe, because the family has for four generations adopted the profession of prostitution, it has now merged into the tribe of Kanjars of the Multan tahsil, a tribe relognized as such in the extract from the ciwajiam wherein the special customs rerating to inheritance in the case of the members of the Kanjar tribe who pay land revenue are set forth. It is urged that the Kanjars of Multan, whatever their original tribe may have been, have been recognized as a tribe called Kanjars with customs special to themselves and that in the course of evolution the members of the family of the defendants, including Mt. Mughlani, even if they were criginally Langahs, ceased to belong to that tribe and became members of the tribe of kanjars, which is not an agricultural tribe. The answer to this argument is that the extract is expressly limited to Kanjars paying land revenue and relates only to inheritance, and no authority is quoted for the assertion that, for the purposes of the Punjab Alienation of Land Act, members of an agricultural tribe cease to hold that status if they adopt, or if their ancestors adopted, prostitution as a profession, or vary their custom in respect of inheritance. It is true that the defendants have failed to prove that they are related to the Langahs of Leiah, several of whom have also adopted prostitution as a profession. We cannot attach any importance to a mere assertion of a witness to that effect. But it is proved by a deed of 1878, long before any question arose on the subject, that the caste of the father of Mt. Mughlani was then described as Langah Darkhan Kanjar. The same description is given in many deeds subsequent to 1900, a fact which is attacked on the ground of the passing of the Punjab Alienation of Land Act. There may be some force in this attack, but it cannot apply to the deed of 1878. The appellants also rely on a number of deeds in which the father of Mt. Mughlani is described merely as Darkhan Kanjar. The explanation of this appears to be that the ancestors of the defendants took to the occupation of carpenters before that of prostitution and the fact cannot detract from the importance of the description in the deed of 1878.

Prior to making the gift to her nephews Mt. Mughlani desired to remove any doubt as to its validity, and whilst claiming that her own family were members of the Langah tribe, she referred the matter to the Collector and asked for sanction to the alienation in case it was considered that she was not competent to make the gift without such sanction. The Collector referred the matter to a Revenue Officer for inquiry and, on the latter's report that the family belonged to the agricultural tribe of Langahs, refused the sanction on the ground that sanction was unnecessary. After a consideration of all the facts we are of opinion that the defendants have proved that their ancestors belonged to the agricultural tribe of Langahs and that they themselves have not lost that statutory status by virtue of

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the family having adopted the profession of prostitution for some generations. With regard to our finding that no loss of status has occurred, no authority has been cited to the contrary. On the other hand, we have an instance on p. 255 of the printed record of a landowner described in the revenue records as "Caste Jat Langah known as Kanjar." It is obvious that the adoption of a profession cannot change a man's tribe for the purposes of the Punjab Alienations of Land Act. To hold so would be to defeat the provisions of the Act. No authority has been shown that, because a man's mother or grandmother adopted a profession, the members of which, as a community, have adopted certain special customs of inheritance suggested, or brought about, by that profession itself, he ceases to belong to a tribe created by statute. We are inclined to hold that in the case of a Mahomedan belonging to an agricultural tribe marrying a woman not a member of such a tribe, his wife does not attain the status of belonging to his agricultural tribe, but it is not necessary for the purposes of this appeal to decide the point. For the above reasons we dismiss the appeal with costs.

R.M./R.K. *Appeal dismissed.*

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SCOTT-SMITH, J.

Muhammad Shah and *others*—Defendants—Appellants.

v.

Abdullah Shah — Plaintiff — Respondent.

Second Appeal No. 670 of 1920, Decided on 1st June 1920, from decree of Senior Sub-Judge, Hoshiarpur, D/- 25th November 1919.

Suits Valuation Act (1887), S. 11—Applicability of—S. 11 applies only where valuation depends on discretion of parties or Court—S. 11 does not apply where valuation is fixed by rules.

Section 11 applies only where the valuation of the suit depends on the discretion of the parties or the Court and is not applicable when the valuation is fixed by rules having the force of law: 132 *P. R.* 1894; 35 *P. R.* 1901 and 8 *I. C.* 1013, *Foll.*

Plaintiff sued for possession of a vacant site and for perpetual injunction, to the effect that the defendants should not prevent him from building a house thereon He valued his relief for possession at Rs. 50 and that for injunction at Rs. 10. The Munsif, 2nd Class, having decreed the claim in part, both parties appealed to the Senior Subordinate Judge, who modified the decree without any objection being raised as to jurisdiction. Defendants filed a second appeal to the High Court on the ground of undervaluation of the relief as to injunction and of the want of jurisdiction of the Senior Subordinate Judge.

Held: (1) that S. 11, Suits Valuation Act, did not cure the defect, as the valuation of the suit did not depend entirely on the discretion of the defendants but was fixed by the rules of the Court;

(2) that the order of the lower appellate Court was defective, having been passed without jurisdiction. [P 113 C 1]

Niaz Muhammad—for Appellants.

Fakir Chand—for Respondent.

Judgment.—In the suit out of which the present second appeal arises the plaintiff-respondent sued for possession of a vacant site and for perpetual injunction to the effect that the defendants-appellants should not prevent him from building a house thereon. Those reliefs he valued as follows:

(1) That for possession of site at		Rs. 50, and
(2) that for injunction at	...	Rs. 10.
Total	...	Rs. 60.

The first Court having decreed the claim, both the parties appealed to the Senior Subordinate Judge who decided the appeals without any objection being raised as to jurisdiction. Defendants have filed a second appeal in this Court, and it is urged that the plaintiff undervalued the relief for injunction. It is urged that under the rules framed by this Court a suit in which a right to build, with or without an injunction, is claimed must be valued at such a sum exceeding Rs. 100 and not exceeding Rs. 500 as the plaintiff may state in the plaint. Had the second relief claimed been properly valued the total value of the reliefs claimed would have exceeded Rs. 100 and as the suit was an unclassed one the appeal would have lain to the District Judge and not to the Senior Subordinate Judge. It is clear that the relief was undervalued in the plaint, but Lala Fakir Chand on behalf of the respondent says that the defect is cured by S. 11, Suits Valuation Act, and that no objection having been taken in the Court of first instance or in the lower appellate Court, this Court should not interfere unless it considers that the undervaluation has prejudicially affected the disposal of the appeal on its merits. In *Gunga Sahai* v. *Sheo Lal* (1) it was held that inasmuch as the valuation of a suit for perpetual injunction has, for the purposes of jurisdiction, been fixed by the rules of the Chief Court, sanctioned by Government, at a sum between Rs. 100 and Rs. 500, the 3rd Class Munsif, who

(1) [1894] 132 P. R. 1894.

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