

Equivalent Citation: AIR 1922 Lah 215, 69Ind. Cas.177

IN THE HIGH COURT OF LAHORE

Second Appeal No. 1772 of 1917

Decided On: 17.02.1922

Appellants: **Saidan and Ors.**
Vs.
Respondent: **Fazal and Ors.**

Hon'ble

Le Rossignol and Abdul Qadir, JJ.

Judges/Coram:

Counsels:

For Appellant/Petitioner/Plaintiff: Khaliffa Shuj-ud-din

For Respondents/Defendant: Muhammad Iqbal and Gobind Ram

JUDGMENT

Abdul Qadir, J.

1. This is a second appeal arising out of a suit in which the plaintiffs sued for possession of certain land which originally belonged to one Kamira, and is now mutated in the name of Mt. Saidan, daughter of Mt. Bakht Bibi, who was an only daughter of Mamira. The plaintiffs are admittedly the grandsons of Kamira's brothers. The Court of first instance dismissed the suit, but on appeal it was decreed by the learned District Judge, against whose decision this second appeal has been preferred, We have heard Dr. Shuja-ud-din for the appellants and Dr. Muhammad Iqbal for the respondents.

2. The sole question in this case is the construction of a compromise arrived at in 1879 between the predecessors-in-interest of the plaintiffs on the one hand and Sukha, the father of Mt. Saidan on the other.

3. On the death of Kamira his widow executed a sale-deed of the land in dispute in favour of Sukha, her son-in-law. The predecessors of the plaintiffs contested this alienation as collaterals of Kamira, and their suit ended in a compromise in which they recognized the sale in favour of Sukha

as valid, stating that they had no longer any objection to the sale, that Sukha may become owner of the property by virtue of the sale, and that after him his children will be owners.

4. It was agreed, however, that failing any children of Sukha the property would not go to Sukha's collaterals, but would return to the collaterals of Kamira. The words of the compromise in vernacular are quoted in the Judgment of the learned District Judge, and there is no dispute about them, except that there is a difference between the parties as to the interpretation of the following words occurring in the compromise.

5. Us Ki aulad jo hogi woh sab malik hogi." The appellants contend that the word aulad in the above sentence was used in its popular sense as including male and female children, while it is argued on behalf of the respondents that the word meant only male descendants. The counsel for the appellants refers to the case of Mt. Dhan Devi v. Mt. Malan (1) (1900) 114 P.R. 1900 = 143 P.L.R. 900 in which it has been held that the plain meaning of the word aulad comprises both male and female issue. Dr. Muhammad Iqbal, on the other hand, refers to certain observations made in the case of Mt. Rakhi v. Mt. Fatima and others (1892) 89 P.R. 1892 in

which an opinion was expressed that the word aulad where used by itself, denoted males related through males. We think that in the present case, taking into consideration the whole contest of the compromise the word aulad is used in a sense inclusive of male and female children, and therefore, the view taken in Mt. Dkan Devi v. Mt. Malan (1900) 114 P.R. 1900 = 143 P.L.R. 900 offers a better guidance for the interpretation of the term aulad in the present case than that expressed in Mussammat Rakhi v. Mt. Fatima (1892) 89 P.R. 1892. It is true that the word aulad in its original arabic meaning is the plural of the word wald and means sons, but it has acquired a wider connotation in urdu and is often used in the sense of "children". As observed by the learned Judges in Mt. Rakhi v. Mt. Fatima expressions narinu or dulthtari are sometimes coupled with aulad as qualifying adjectives. This itself, we think, indicates, that, where the qualifying adjectives are not added, the word must be taken to have been used in its generic sense including aulad of both kinds. As observed already the context in the present case supports this view and it may be added that the use of the word sab in connection with the word aulad seems also to be indicative of inclusiveness. We think, therefore, that as long as the daughters of Sukha are alive the collaterals of Kamira have no right to get this property. This appeal is, therefore, accepted and the suit of the plaintiffs is dismissed with costs throughout.

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