DOCUMENT FIFTY-SIX

AGREEMENT CONCERNING PARTITION OF TRIBAL LAND FOR THE PURPOSE OF LAND SETTLEMENT (1954)

Introduction

In the case under review, the mukhtārs and notables (a’yān) of the ’ashīras of al-Hajāḥija, al-ʿUbayyāt, al-Muḥāriba and al-Saʿāda, and belonging, all of us, to ʿArab al-Taʿāmira and ʿArab al-ʿUbaydiyya, assemble in order to sign an agreement concerning the partition of the land of al-Fashkha “jointly owned and disposed of by us since ancient times.” Each ’ashira is entitled to receive one out of four unspecified portions. Each undertakes to pay all the fees and expenses proportionally falling on its respective portion, so as to protect its rights of ownership and disposition in the land of al-Fashkha before the land-settlement judge and all the civil judicial authorities in their respective grades and competence; they also undertake to submit the evidence required for registration of the land in the names of the ’ashīras in accordance with the apportionment.

The instrument of agreement is made out in order to be able to act upon it when necessary, that is, in the event that their land rights are challenged by a third party at the stage of land settlement and before any instance of the civil judiciaries.1

The partition of tribal land between the ’ashīras indicates that Bedouin are at an advanced stage of sedentarization and disintegration of the tribes as political and economic units, although at this stage they expect the land to be registered on the names of the respective ’ashīras rather than private tribesmen. This process brings them within the orbit of the civil judiciary. The legal terminology used in the document indicates that a civil lawyer was involved in phrasing the agreement. The parties seem to rely fully on the civil judiciary to materialize their land rights. No sureties are appointed to ensure the implementation of the agreement. The shari’a court does not play any role in this process, since it has no jurisdiction in matters pertaining to land.

1 Cf. doc. 55 above; Stewart, Bedouin Boundaries, 6–9.
We the undersigned, the mukhtārs and notables (a’yān) of the ‘ashīras of al-Ḥajāḥija, al-ʿUbayyāt, al-Muhāriba and al-SA’āda, all of us belonging to the ‘Arab al-Ta’āmira in the Qadā’ of Bethlehem and to the ‘Arab al-ʿUbaydiyya in the Qadā’ of Bethlehem, declare, confirm (nuqīrīj) and acknowledge (nā’tarīf) that we hereby agree (qad ittafaqnā), willingly (taw’ī) and by our own choice (ikhtiyār), upon the partition (tāqīmīn) of the land of al-Fashkha, which belongs to us (khāṣṣatunā) and the boundaries of which are Wādī al-Qumrān in the north, Ra’s al-Naqb and the Dead Sea in the south, the Dead Sea in the east and the obstruction of the mountain (al-sadd al-jabalī) in the west, and which has been jointly (bi’l-ishtirāk) owned (namlīkuḥā) and disposed of (nataṣṣāraf) by us since ancient times.6

The partition is to be as follows:

{5}One of the four portions to ‘Ashirat a-Ḥajāḥija, ‘Arab al-Ta’āmira
One of the four portions to ‘Ashirat al-‘Ubayyāt wa’l-Muhāriba, ‘Arab al-Ta’āmira
One of the four portions to ‘Ashirat al-SA’āda, ‘Arab al-Ta’āmira
One of the four portions to ‘Ashirat al-‘Ubaydiyya
{10}The total portions are four out of four.

We undertake to pay all the necessary fees (rusūm) and expenses (maṣārīf) proportionally falling on our aforesaid portions, so as to protect (murāfā’a, mudāfā’a) our rights of ownership (tamallūk) and disposition (tasarruf) in the above-mentioned lands of al-Fashkha before the land-settlement judge (qādī al-taswiya) and all the statutory civil (nizāmīyya) judicial authorities in their respective grades, spheres of competence and jurisdiction: first instance (bidāya), appeals (isti’nāf), cassations (tamyīz), and the High [Court] of Justice (’adr ʿulāy). We undertake to make a concerted effort and join forces to submit the evidence (bayyīna) required for registration of the land in the names of the aforesaid ‘ashīras in accordance with the above apportionment. We also {15}undertake not to go back (rujū) on this agreement for any reason whatsoever.8 If one of the ‘ashīras or one of their members infringes (khālaṣa) all or some of the conditions of this agreement, the infringing ‘ashīra shall thereby lose (qad asqat) the ownership (milkiyya) of the land and shall have no right to file any other claim in the matter of such ownership.9

This instrument (sanad) of agreement is made out in four copies,10 one for each ‘ashīra, in order that it might be possible to act upon it when necessary.11

Drawn up in Bethlehem on November 12, 1954.

{20}Signatures and rubber stamps: The mukhtārs and notables (a’yān) of the ‘ashīras of ‘Arab al-Ta’āmira: Muḥammad Sālim al-Dhwayb, Muḥammad Aḥmad al-Dīk, Muḥammad Aḥmad ʿIwād[?], Abū ʿAmirīyya [and one illegible rubber stamp]
Signatures and rubber stamps: The mukhtārs and notables of ‘Arab al-ʿUbaydiyya: Ali Ḥasan, Mūsā Muḥammad ʿUthmān[?], Yūsuf ʿAṭiyya [and one illegible rubber stamp].

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2 The ‘ashīras al-Ḥajāḥija and al-SA’āda are thulūths within al-Ta’āmira tribes; al-ʿUbayyāt and al-Muhāriba are half-thulūths within the al-Kasaba, the third thulūth of al-Ta’āmira tribes; see Shmueli, Judean Desert, 33, diagram 14.
3 See Shmueli, Judean Desert, 38, diagram 19.
4 The division of lands is between the ‘ashīras as territorial units, not between individuals within each of the ‘ashīras.
5 That is, the entire tribes of al-Ta’āmira and al-ʿUbaydiyya, respectively.
6 Written documents, such as deeds of sale, and oral testimonies of witnesses regarding cultivation of the lands. Cf. al-ʿAṭirīf, 236, art. 18.
7 Each of the ‘ashīras gets one-quarter of the land. The territorial boundaries of each of the quarters for the purpose of the land settlement and registration of land rights in the land register (tābū) seem to have been specified prior to the signing of this agreement.
8 This is, of course, a very serious sanction, though no mention is made as to its implementation. No sureties are appointed to ensure that all the ‘ashīras adhere to the agreement.
9 The agreement was typed out for this purpose.
10 The reference seems to be to registration of title in a land settlement or to disputes brought before civil courts.