

Teg Singh and Others

Vs

Charan Singh and Another

Civil Appeal No. 686 of 1976

(Y. V. Chandrachud, P. K. Goswami, P. N. Shinghal JJ)

23.03.1977

JUDGMENT

CHANDRACHUD, J. –

1. One Mula executed a registered gift-deed in favour of appellant 13, Bhagwati Devi, on December 3, 1964. On April 29, 1965, appellants 1 to 12 claiming to be potential reversioners filed Suit 143 of 1965 against the donor and the donee for a declaration that under the Punjab Customs (Power to Contest) Act, 2 of 1920, the gift-deed was not binding on them. The suit was decreed by the trial Court on May 31, 1966 and that decree was confirmed in appeal on October 16, 1967.

2. In between, on July 10, 1966 Mula adopted the respondent. On March 11, 1970, appellant 13 executed in favour of appellants 1 to 12 a lease in respect of the property which was the subject-matter of the gift. Mula died on August 28, 1971.

3. On December 13, 1971 respondent filed the present suit against the appellants for possession of certain properties including the property which Mula had gifted to appellant 13. The suit was decreed by the trial Court on January 29, 1971 and that decree was confirmed in appeal by the District Court and the High Court.

4. On June 3, 1976 appellants filed a special leave petition in this Court challenging the High Court judgment. They raised, inter alia, a new contention (Ground No. B) that in decreeing the suit, the courts below had overlooked the relevant provisions of the Punjab Customs (Power to Contest), amendment Act of 1973, by virtue of which the legality of the gift made by Mula in favour of Bhagwati Devi could not be contested. On June 11, 1976 this Court granted special leave to the appellants limited to the aforesaid Ground (B) of the special leave petition.

5. We have heard an interesting argument from Mr. Juneja, who appears on behalf of the appellants, as regards the true construction and effect of the Punjab Customs (Power to Contest) Act, 1920, as amended in 1973, but we are of the opinion that the argument lacks basis and cannot, therefore, be accepted. The contention, sought to be raised for the first time by the learned Counsel, is founded on the assumption that by reason of the Amendment Act of 1973, the gift-deed executed by Mula cannot be challenged by the respondent. The assumption on which the argument is founded is fallacious, because the respondent does not seek by his plaint, as indeed he need not have sought to challenge the gift-deed executed by Mula in favour of Bhagwati Devi. That gift was challenged by appellants 1 to 12 in Suit 143 of 1965, and they succeeded in obtaining a declaration in that suit that the gift was not binding on the reversioners. That decree became final, with the result that as on August 28, 1971, when Mula died, the property which he had sought to gift away to Bhagwati Devi,

was free from the encumbrance of the purported gift. By the present suit, the respondent merely asks for possession of the property in respect of which Mula had executed the deed of gift. The basis on which he has asked for that relief is that upon the death of Mula in 1971, the gift ceased to be operative by reason of the decree passed in Suit 143 of 1965. It seems to us plain that he has not and he need not have contested the validity of the gift-deed since that question was decided finally in the aforesaid suit.

6. Section 7 of the Punjab Customs (Power to Contest) Act, 1920 provided initially that no person shall contest any alienation of non-ancestral immovable property on the ground that such alienation is contrary to custom. This section was amended by Section 3 of the Punjab Customs (Power to Contest) Amendment Act, 12 of 1973, as a result of which no challenge could be made to the alienation of any immovable property, whether ancestral or non-ancestral, on the ground that it is contrary to custom. It is, therefore, true that if it became necessary after the Amending Act of 1973 to contest the gift executed by Mula in favour of Bhagwati Devi, Section 7 of the Act of 1920 would operate as a bar to such a contest. However, as we have stated earlier, it was not necessary for the respondent, in view of the decree passed in Suit 143 of 1965, to contest the validity of the gift.

7. The decision of this Court in *Giani Ram v. Ramji Lal* ((1969) 3 SCR 944 : (1969) 1 SCC 813) may, with advantage, be referred to on this point. Under the customary law of the Punjab, the wife and daughters of a holder of ancestral property could not sue to obtain a declaration that the alienation of ancestral property will not bind the reversioners after the death of the alienor. But the reversioner who was entitled to challenge that alienation could obtain a declaratory decree that the alienation will not bind the reversioners after the alienor's death. It was held by this Court that such a declaratory decree had the effect of restoring the property alienated to the estate of the alienor and therefore all persons, including the wife and the daughters of the deceased, were entitled to the benefit of that restoration. Since the property alienated had reverted to the estate of the alienor at the point of his death, the widow and daughters, who also became heirs along with the sons under the Hindu Succession Act, 1956 were held entitled to obtain possession of the ancestral property. Mr. Juneja attempted to get over the effect of this decision by invoking the provisions of Section 8 of the Punjab Limitation (Custom) Act, 1 of 1920, which provides that when a person obtains a decree declaring that an alienation of ancestral immovable property is not binding on him, according to custom, the decree shall enure for the benefit of all persons entitled to impeach the alienation. Counsel argues that since the respondent was not entitled to impeach the gift in favour of Bhagwati Devi, having been adopted after the date of the gift, the decree obtained by appellants 1 to 12 cannot enure for his benefit. The short answer to this contention is that the decree would enure for the benefit of all persons who are entitled to a share in the property of the deceased as it existed at the moment of his death. Since Mula's property stood freed from the encumbrance of the gift at the moment of his death, respondent as the adopted son would be entitled to the possession of the gifted property.

8. Another facet of the same question can be seen in *Chand Singh v. Ind Kaur* ((1974) 1 PLR 226). A learned Single Judge of the Punjab and Haryana High Court held therein that though a suit to contest, under the customary law, an alienation of immovable property may not lie after the coming into force of the Amending Act of 1973, a declaratory decree already obtained by a reversioner would continue to be operative as the Amending Act does not render such a decree a nullity.

9. There is thus no substance in the contention raised by the appellants and their appeal must fall. Appellants 1 to 12 shall pay the respondent's costs of the appeal.

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