

Munshi Singh

Vs

Smt. Sohan Bai (Dead) by Lrs.

Civil Appeals Nos. 123-124 of 1985

(G. L. Oza, K. N. Saikia JJ)

13.03.1989

JUDGMENT

OZA, J. –

1. These appeals arise out of the judgment of Punjab and Haryana High Court dated September 21, 1984 in Regular Second Appeal Nos. 1716/78 and 1698/78 wherein the learned Judge dismissed the two second appeals and maintained the judgment of the appellate court i.e. Additional District Judge granting a decree for half share of the property each in favour of Smt. Pan Bai and Smt. Sohan Bai, the two daughters of deceased Smt. Mam Kaur.

2. In order to clearly understand the facts the pedigree of the family would be relevant :

Hari Singh-----Sanehi Singh Hazari Singh
Smt. Mam Kaur Jawana Singh ||| Lakhi Singh ----|-----|----- || Smt. Pan Bai Smt.
Sohan Bai Munshi Singh | (plaintiff in (plaintiff in and five othersRanjit Singh suit out of suit out of
(defendantsand 6 other which RSA No. which RSA No. 1 to 6)sons (defendants 1698 of 1978 1716
of 19787 to 13) has arisen) has arisen)-----##

3. Hazari Singh owned agricultural lands, the dimensions and its identity is not in dispute before us and he died in November 1918 leaving behind his widow Smt. Mam Kaur who inherited the property. Hazari Singh had left behind two daughters i.e. Smt. Pan Bai, plaintiff in the suit out of which second appeal before the High Court was No. 1698/78 and Smt. Sohan Bai who was also a plaintiff in suit out of which second appeal before the High Court was No. 1716/78. In 1944 it is alleged that Smt. Mam Kaur adopted Ranjit Singh grandson of Sanehi Singh and son of Lakhi Singh. This Ranjit Singh had six other brothers and it is alleged that in 1945 Smt. Mam Kaur gifted all the lands which she had inherited from her husband by an oral gift to Ranjit Singh. As regards the two events i.e. adoption and gift there is some controversy in respect of the respective dates. It appears and it was contended by the counsel for the appellants that adoption was first and gift was only a consequential act to accelerate the succession whereas learned counsel for the respondents contended that gift was first whereas adoption was subsequent. But it is not disputed that the gift also is nothing more than an oral gift and the same is about adoption.

4. Munshi Singh and his five brothers filed a suit for declaration challenging this gift and adoption made by Smt. Mam Kaur in favour of Ranjit Singh. By judgment and decree dated July 24, 1947 the suit was decreed and it was held that the adoption of Ranjit Singh was invalid and the gift also was held to be invalid and a declaration was granted in respect of the gift so far as it affected the reversionary rights. Against this judgment Ranjit Singh preferred an appeal but this was also

dismissed.

5. On June 4, 1963 Smt. Mam Kaur sold away the entire lands to Ranjit Singh and his brothers for an amount of Rs. 50,000. Thereafter to claim pre-emption a suit was filed by Smt. Pan Bai and the other suit was filed by Munshi Singh and his five brothers on the ground that as reversioners they have a superior right to pre-emption. In these pre-emption matters ultimately the court held that Smt. Pan Bai had a superior right as compared to Munshi Singh and his brothers and therefore an earlier date was given to Smt. Pan Bai to deposit the sale amount and seek pre-emption failing which her suit was to be dismissed and a later date was given to Munshi Singh and his brothers to deposit the sale amount and opt for pre-emption. Similar condition of dismissal of the suit for failure of depositing the amount was imposed. So far as Smt. Pan Bai is concerned she did not deposit the amount and therefore her suit for pre-emption was dismissed whereas Munshi Singh and others deposited the amount and obtained a decree of pre-emption which was executed and they obtained possession and in this manner they stood substituted in the sale.

6. In January 1965 Smt. Mam Kaur died and Smt. Sohan Bai filed a suit bearing No. 403/65 seeking a decree for possession of half of the share on the plea that in view of the declaratory decree dated July 24, 1947 which was confirmed on appeal that on the death of Smt. Mam Kaur succession had to be traced to Hazari Singh i.e. Sohan Bai's father and she being the direct heir of Hazari Singh was entitled to half share in the land. It was also pleaded that Smt. Mam Kaur had already parted with her widow's estate by gift deed made by her in 1945 in favour of Ranjit Singh and therefore she had no subsisting title which she could transfer by way of sale by the sale deed dated September 4, 1963 and thus by this sale deed as she herself had no title she could not convey any title in favour of Ranjit Singh and his brothers. Smt. Sohan Bai's suit was decreed but on appeal it was remanded. In the meantime Smt. Pan Bai also filed a similar suit which was numbered 203/68 to claim possession of the remaining half share on the same ground, as was filed by Smt. Sohan Bai. The two suits were consolidated and the trial court by its judgment dated January 2, 1973 decreed Smt. Sohan Bai's suit but dismissed the suit filed by Smt. Pan Bai on the ground that as Smt. Pan Bai had filed a suit claiming on the basis of pre-emption earlier she was estopped from disputing the validity of sale made by Smt. Mam Kaur. Against this judgment of the trial court losing parties filed their appeals before the Additional District Judge who by his judgment and decree dated September 25, 1978 maintained the decree in the suit of Sohan Bai and reversed the trial court judgment in the suit of Smt. Pan Bai and held that both the daughters were entitled to succeed to half share each in the property. Against this judgment the defendants in Smt. Sohan Bai's case filed a regular second appeal which was No. 1716/78 and defendants in Smt. Pan Bai's case filed regular second appeal which was No. 1698/78 in the Punjab and Haryana High Court. Both these second appeals were disposed of by the impugned judgment of the High Court.

7. Most of the facts are not in dispute. The main controversy raised in these appeals is that in the earlier suit the adoption and gift both were declared as invalid in a suit for declaration filed by the reversioners, what will be its effect? On the one hand counsel for the appellant contended that in fact adoption was followed by gift more or less in the nature of a step to accelerate the succession and when the court declared both to be invalid it clearly meant that the donee who was the adopted son Ranjit Singh was not left with any rights in the properties whereas on behalf of the respondents it was contended that adoption no doubt was invalid but so far as gift was concerned it was declared invalid in a suit for declaration by reversioners to the limited extent that this gift will not affect the rights of the reversioners thereby meaning that so far as the life estate of Smt. Mam Kaur was concerned it was transferred by this gift deed but the right of the reversioners to succeed on the death of Smt. Mam Kaur was protected as it was declared that this gift will not affect the rights of

the reversioners.

8. A controversy was also raised as to which adoption or gift was first in time and what is its effect ?

9. Learned counsel for the appellants contended that as the adoption and gift both were declared invalid although a declaration was granted in a suit by reversioners but it clearly meant that nothing remained with the so-called donee and therefore when Hindu Succession Act came into force because of Section 14 clause (1) Smt. Mam Kaur became the absolute owner and therefore she had a valid right to transfer the property by sale. It was also contended that Ranjit Singh in whose favour the gift was alleged to have been made himself agreed to purchase this property along with his brothers; this indicates that he accepted the position that Smt. Mam Kaur after coming into force of the Hindu Succession Act had acquired the absolute rights and she could convey the property by sale. In any event his accepting to purchase the property from Smt. Mam Kaur, amounts to an admission that there was no right created in his favour by gift which was declared invalid and on this basis learned counsel for the appellants contended that the appellants are entitled to succeed and the High Court was not right in granting the decree on the basis of the claim of the two daughters who claimed to be the heirs of Hazari Singh. Alternatively it was also contended by learned counsel for the appellants that even if the gift in favour of Ranjit Singh is accepted it is clear that Smt. Mam Kaur had succeeded to the property as an heir of her husband and because of Hindu Women's Right to Property Act, 1937 Smt. Mam Kaur had a limited estate. As it is well settled that this limited estate in favour of Smt. Mam Kaur had all the rights which an heir could have in immovable property but in the case of female heirs the only limitation was in respect of alienation and alienation could only be of the rights that she could alienate and that amounts to only life interest. It is also well settled that the alienee in this case Ranjit Singh will get the property till the lifetime of Smt. Mam Kaur and it is also well settled that if during the lifetime of Smt. Mam Kaur Hindu Succession Act came into force, as the property in suit was in the hands of alienee i.e. Ranjit Singh he will not get the benefit of Section 14(1) and will not become the absolute owner but on the death of Smt. Mam Kaur the property will revert back to the heirs of Smt. Mam Kaur's husband. It was also contended that in spite of the fact that a gift creating a life interest in favour of Ranjit Singh was in existence but Smt. Mam Kaur still had the residuary rights of disposing of the property after her death if during her lifetime the Hindu Succession Act came into force. As in the present case it did not come into force, the limited rights which remained with Smt. Mam Kaur became full rights on coming into force of the Hindu Succession Act and therefore if Smt. Mam Kaur transferred by sale the property the sale would convey at least the residuary rights vested in her i.e. the right of absolute ownership at most subject to possession of the alienee during her lifetime and on this basis it was contended that the sale made by Smt. Mam Kaur is valid and therefore the view taken by the High Court is not correct.

10. On the other hand learned counsel for the respondents contended that as the gift was valid the property was transferred in favour of the alienee i.e. Ranjit Singh although it was the life estate but with the Hindu Succession Act coming into force she could not be said to be possessed of the property as there were no rights in the property vested in Smt. Mam Kaur and even if the widest meaning is given to 'possessed of' still it could not be contended that she had any rights left with her. Therefore during her lifetime the alienee alone had the rights in property. The effect if any of the earlier decree was that on her death the property will revert back and in that event it will revert back to the heirs of her husband not to her heirs and in this view it was contended that the judgment passed by the High Court is correct.

11. As regards the effect of Smt. Pan Bai's suit for pre-emption leading to estoppel also contentions

were advanced.

12. Learned counsel for the appellants on the basis of decisions of this Court in *Jagannathan Pillai v. Kunjithapadam Pillai* ((1987) 2 SCC 572) and *Gopal Singh v. Dile Ram* ((1988) 1 SCC 47) contended that as the gift at best could be said to be effective during the lifetime of Smt. Mam Kaur she had a residuary right left in her which she could dispose of. Alternatively it was contended that gift in favour of Ranjit Singh was declared invalid and therefore she could be said to be possessed of the property in view of language of Section 14(1) of the Hindu Succession Act. It was also contended that in the sale deed, Ranjit Singh himself was one of the purchasers and the sale deed indicates that at the time of sale Smt. Mam Kaur delivered possession to the purchasers. On these bases it was contended that it appears that Ranjit Singh had given the possession of the property back to Smt. Mam Kaur before this sale deed was executed.

13. Learned counsel for the respondents on the other hand contended that the decree declaring the gift bad was only a declaratory decree in favour of the reversioners that clearly meant that so far as reversioners' rights on the death of Smt. Mam Kaur are concerned they could not be affected by gift but it did not mean that Smt. Mam Kaur did not transfer her rights by gift in favour of Ranjit Singh. It was therefore contended that in view of decision in *Kuldip Singh v. Surain Singh* (1968 Punj LR 30 : (1968) 2 Andh LT 224 : 1968 SCD 881) which is a judgment of a bench of three Judges of this Court, Smt. Mam Kaur could not be said to be a person possessed of anything and therefore no benefit could be obtained by Section 14(1) so far as Smt. Mam Kaur is concerned and it was therefore contended that the judgment passed by the High Court could not be assailed. It was also contended that so far as the question of re-conveyance by Ranjit Singh in favour of Smt. Mam Kaur is concerned, the question has been examined on the basis of evidence by the two courts below and a positive finding has been arrived at by the courts that the evidence is not sufficient to come to the conclusion that there was transfer of possession from Ranjit Singh to Smt. Mam Kaur before the sale deed was executed. It was also contended that the two decisions on which reliance is placed by the learned counsel are clearly distinguishable on facts as in these two judgments on the date the Hindu Succession Act came into force, the widow was possessed of the property and therefore it was held that she acquired the rights as full owner.

14. So far as the contention of the learned counsel for the appellant about the transfer of possession from Ranjit Singh back to Smt. Mam Kaur is concerned the learned courts below have come to a positive finding of fact that there was no transfer of possession in favour of Smt. Mam Kaur before the sale deed by her was executed and while coming to the conclusion the courts below have considered the effect of the recital in the sale deed executed by Smt. Mam Kaur and the fact that Ranjit Singh is one of the purchasers and having gone through the judgments, in our opinion, the conclusions could not be said to be erroneous and therefore the contentions of the learned counsel for the appellants on that ground could not be accepted.

15. As regards the question about the declaration of the gift to be invalid, the judgment which granted the decree in favour of the reversioners clearly indicated that it was a decree of declaration saying that the gift had no effect on the rights of the reversioners. The words in the operative part of the judgment stated :

For the reasons aforesaid the plaintiffs succeed they are granted a decree for declaration that Mst. Mam Kaur did not validly adopt Ranjeet defendant and that gift in favour of Ranjeet defendant shall not affect the right of the reversioners after the death or termination of the interest in the suit land of Mst. Mam Kaur.

In this view of the matter it is therefore clear that what was held was that the gift will not affect the rights of the reversioners on the death of Smt. Mam Kaur but it could not be disputed that so far as Smt. Mam Kaur during the lifetime is concerned as she had gifted away the property to Ranjit Singh and delivered possession she had no rights left with her.

16. The contentions advanced by learned counsel in respect of residuary rights also is of no consequence as it is apparent that Smt. Mam Kaur who was enjoying the limited estate before the Hindu Succession Act came into force, transferred her rights by gift and if a valid gift is effected it could not be contended that there were any residuary right left with her. In fact what residuary rights could be thought of were not the rights of the widow but the rights of the reversioners to get as heirs of her husband on her death and on that basis it could not be said that she could be said to be possessed of any right in the property which she held as a limited owner on the date the Hindu Succession Act came into force. In Jagannathan Pillai case ((1987) 2 SCC 572) the property was re-conveyed in favour of the widow and this Court therefore observed : (SCC p. 581, para 7)

The case of the widow who had temporarily lost the right in the property by virtue of the transfer in favour of the alienee or the donee cannot be equated with that of a stranger by forgetting the realities of the situation. Surely, the Act was intended to benefit her. And when the widow becomes possessed of the property, having regained precisely that interest which she had temporarily lost during the duration of the eclipse, Section 14(1) would come to her rescue which would not be the matter in the case of a stranger who cannot invoke Section 14(1).

In Gopal Singh case [(1988) 1 SCC 47], this Court while examining the facts, clearly stated as under : (SCC p. 49, para 6)

It is pertinent to note that the compromise decree reads as follows :

I allow the appeal of the appellants and modify the judgment of the trial court to the extent that gift deed in respect of the land measuring 21-15-17 bighas comprising Khata Khatauni No. 3/16 to 27 bighas situated in village Barsu Ballah is hereby rejected and declared ineffective. The aforesaid land along with the other land shall be divided in equal shares after the death of Sheru alias Bhushehari and Dhari shall himself give due share to Hari Ram in accordance with the aforementioned order.

The operative portion of the compromise decree which was quoted by this Court in the judgment clearly indicated that as the gift deed was ineffective in respect of the lands mentioned therein the widow continued to enjoy the rights and benefits till the Hindu Succession Act came in force as it is observed : (SCC p. 49, para 7)

The effect of the aforesaid was that the gift was ineffective and Smt. Bhushehari continued to enjoy the right and benefit she had during her limited ownership until 1956.

17. Under these circumstances therefore these cases do not help the appellant. It is clear that in view of gift made in favour of Ranjit Singh, Smt. Mam Kaur on the date on which Hindu Succession Act came into force, was not possessed of any right in the property and therefore she could not get any advantage from the coming into force of the Hindu Succession Act. This Court in Kuldip Singh case (1968 Punj LR 30 : (1968) 2 Andh LT 224 : 1968 SCD 881) clearly held : (Punj LR pp. 33-34, para 5)

It is clear from the questions reproduced above that, on the principles laid down by this Court in the

case of Mangal Singh (Mangal Singh v. Smt. Rattno, (1967) 3 SCR 454 : AIR 1967 SC 1786 : 69 Punj LR 998) it has to be held in the present case that the property in dispute cannot be held to be possessed by Smt. Mehtab Kaur, because, after gifting the property to Harnam Singh and parting with the possession of the property, she was not left with any rights at all under which she could regain possession in her own lifetime. The gift executed by her was binding on her, even though it may not have been binding on the reversioners. She could not, therefore, avoid the deed of gift and could not claim back possession from Harnam Singh or his successors in interest. Having thus completely parted with her rights, she could not be held to be possessed of the property when the Act came into force and, consequently she could not become full owner of it.

18. It is clear that on the date on which Smt. Mam Kaur executed the sale deed, in fact she had no title to the property nor she was in possession thereof.

19. As regards the contention about Smt. Pan Bai on the basis of estoppel is concerned it is clear from the language of Section 115 of the Evidence Act that doctrine of estoppel cannot be invoked merely because Smt. Pan Bai filed a suit for pre-emption. Section 115 of the Evidence Act reads thus :

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that things.

In view of this learned counsel did not seriously press the contention. Consequently we see no reason to entertain the appeals. The appeals are therefore dismissed and the decree passed by the learned courts below is maintained. In view of the circumstances of the case we pass no orders as to costs.

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