

PUNJAB AND HARYANA HIGH COURT

Taro

Vs

Darshan Singh

(K Gosain, C.J. H Singh, J.)

23.07.1959

JUDGMENT

K Gosain, J.

(1) Ganga Singh, the last male-holder of the property in dispute, died in 1941 leaving behind him his widow Mst. Achhari and daughters including Mst. Taro. By his will dated 12-1-1941, he had bequeathed the landed property now in dispute to Mst. Taro and by virtue of the aforesaid will, a mutation of the land was sanctioned in her favour on 11-7-1941. The suit, out of which the present appeal has arisen, was filed on 29-4-1948, by the reversioners seeking the usual declaration that after the demise of Mst. Achhari widow of Ganga Singh, the alienation made by the aforesaid will would not affect their reversionary rights. It was claimed by them that the entire property was ancestral and that neither Ganga Singh nor Mst. Achhari was competent to alienate the property. The suit was defended by Mst. Taro who challenged the ancestral nature of the property and urged that Ganga Singh had full power to alienate the property in any manner he liked. The trial Court came to the conclusion that some of the disputed property was ancestral qua the plaintiffs while the remaining property was non-ancestral and that Ganga Singh was competent to make the will with regard to the non-ancestral property but not with regard to the ancestral property and the plaintiffs were granted the decree prayed for in respect of the property found to be ancestral qua them. Both parties went in appeal but the decree in main was confirmed by the learned lower appellate Court except for the fact that some parcels of the land which had been found to be ancestral by the trial Court were held to be non-ancestral and the suit of the plaintiffs qua these khasra numbers was dismissed. Mst. Taro has filed this second appeal.

(2) In view of the provisions of the Hindu Succession Act and the further fact that both Mst. Achhari and Mst. Taro are alive, the reversioners have no locus standi to bring the present suit because, whether there be a will or not Mst. Taro is the next heir after the demise of Mst. Achhari and the reversioners do not come in till the entire line of Mst. Taro become extinct. On behalf of the plaintiffs-respondents it was urged in the first instance that the Hindu Succession Act (hereinafter referred to as the Act) does not apply to the Jats who are primarily governed by the

Punjab Agricultural custom in matters of succession. Section 2 of the Act makes the Act applicable to all persons who are not Muslims, Christians, Parsis or Jews by religion, and, in particular, sub-clause (b) of sub-s. (1) of S. 2 specifically provides that the Act is applicable to Sikhs and it was not denied that the parties either belong to this religion or are otherwise Hindus and "are not Muslims, Christians, Parsis or Jews." Section 4 of the Act makes the provisions of this Act applicable to all persons governed by the Act to the exclusion of "any other law in force immediately before the commencement of this Act." According to sub-clause (a) of sub-s (1) of S. 4, inter alia, "any custom or usage as part of Hindu law in force immediately before the commencement of this Act" ceases to have effect with respect to any matter for which provision is made in this Act. Prior to the coming into force of the Act, every person was governed by his personal law, which, in the case of Hindus and Sikhs, was the Hindu law as modified by custom. Thus, custom including agricultural custom modified the Hindu law so far as the Hindu Jats were concerned to the extent to which it went counter to the provisions of strict Hindu law. Thus, Punjab agricultural custom must be treated to be part of Hindu law as it was in force in this State. From the date of the enforcement of the Hindu Succession Act, Hindu law, as modified by custom, is no longer applicable, qua matters relating to succession. Sub-clause (b) of sub-s. (1) of S. 4 further makes it clear by providing that "any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act." Agricultural custom is certainly "a law" governing succession amongst Jats. Thus, we have no doubt that by virtue of Ss. 2 and 4 of the Hindu Succession Act, Punjab Agricultural custom, so far as it was applicable to Hindus, is no longer in force so far as the matters of succession etc. are concerned which are now governed by the provisions of the Hindu Succession Act.

(3) The other question raised by the learned counsel for the respondents was that after the demise of Mst. Achhari, the next heir of the last male holder should be determined according to the law that was in force at the time of the demise of the last male-holder because the succession opened out at that time, and that at the time of the demise of Ganga Singh in the year 1941, the Hindu Succession Act was not in force and, according to the law by which the parties were governed, reversioners were preferential heir qua the ancestral property as against the daughter. We, however cannot agree with this argument. Succession really opens on the demise of the intervening female heir and it is wrong to say that the succession opens out on the death of the last male-holder. As is stated in paragraph 176 of Mulla's Hindu Law "a widow or other limited heir * * * is owner of the property inherited by her subject to certain restrictions on alienation, and subject to its devolving upon the next heir of the last full owner upon her death. The whole estate is for the time vested in her and she represents it completely". It is only on the demise of the widow that we have to look for the next heir and not prior to that. The only difference is that on the demise of the widow, the property is to devolve upon the next heir of the last full owner and not on the next heir of the widow. It is, however, obvious that the next heir of the last male-holder is to be determined at the time of the demise of the widow because till then she fully represents the estate of the last male-holder. It is the case of the reversioners themselves that if

there had been no will the property would have been inherited by the widow Mst. Achhari, who is still alive, and leaving out the effect of S. 14 of the Hindu Succession Act as regards the enlargement of her estate to an absolute estate, the next heir to her husband is to be determined in accordance with the law prevailing on the date of the death of the widow and not in accordance with the law prevailing at the time of the death of her husband. It was not denied that if this be so, the daughter, according to the Hindu Succession Act, is a preferential heir. Even if Mst. Achhari had inherited the property in the absence of any will, Mst. Taro would be the next heir both to her husband Ganga Singh as well as to the widow herself.

(4) For the reasons given above therefore, the reversioners have no locus standi to challenge the will made by Ganga Singh irrespective of the fact whether the property is ancestral or otherwise and we consequently accept this appeal, set aside the decree of the Courts below and dismiss the suit of the plaintiffs. In view, however, of the fact that change in law had taken place during the pendency of this appeal, we leave the parties to bear their own costs throughout. Cross-objections by the plaintiffs ipso facto fail and are dismissed.

(5) Appeal allowed;

(6) Cross-objections dismissed.