

## **PUNJAB AND HARYANA HIGH COURT**

Amar Singh

Vs

Baldev Singh

(S Dulat, C.J. M Singh and K Gosain, JJ.)

25.05.1960

### **JUDGMENT**

**Mehar Singh, J.**

(1) In these two cases the question for consideration of the Full Bench on the validity of section 14 of the Hindu Succession Act, (No. 30) of 1956, (hereinafter referred to as the Act), may be formulated thus-

"Has the Parliament in enacting section 14 of the Act legislated to any extent in the exclusive legislative field of a State and, if so, are the provisions of the section, on this account, to that extent invalid?"

The first case is Amar Singh v. Baldev Singh, Second Appeal No. 1074 of 1959. On the death of Balla Singh, his widow Aso defendant came in possession of his land. On 10-3-1958, she made a gift of the same in favour of Baldev Singh, Harnek Singh, Sewa Singh, Ajaib Singh and Sarmukh Singh, defendants. The gift has been impugned by the plaintiff's, collaterals of Palla Singh, on the ground that Aso defendant has a widow's limited estate in the land & under custom she cannot alienate the same to the injury of their reversionary interests in the same, it being claimed that the land is ancestral qua them and Balla Singh. The plaintiff's have stated in paragraph No. 2 of the plaint that the Act does not apply to them. The defendant took a preliminary defence, that taking the allegations of the plaintiff's to be true, Aso defendant under section 14 of the Act had become full owner of the land before the date of the gift, and the plaintiff's must fail because they have no right to control the power of alienation by her over such land. In the Courts below it was argued on behalf of the plaintiff's that section 14 of the Act does not apply to agricultural land for the legislative field of the Parliament under entry 5 of List III in the Seventh Schedule to the Constitution, does not extend to legislative over agricultural land. This was the position under the Government of India Act, 1935, because in the corresponding

entry legislation in regard to agricultural land had been specifically left out, but entry 5 of List III, as not worded, differs from the corresponding entry in that Act in that legislation on agricultural land, on subjects mentioned in the entry, has not been taken out from the ambit and scope of the entry. Similar argument was, on this ground, repelled by the Orissa High Court in *Laxmi Debi v. Surendra Kumar Panda*, AIR 1957 Orissa 1, and the Courts below relying on that case have discarded this argument on behalf of the plaintiff. In this Court in *Sant Ram, Dass v. Gurdev Singh*, second Appeal No. 592 of 1958, D/- 6-10-1959 (Punj), Mahajan J, has taken the same view. This, on this argument, is the correct position and is no longer challenged by the learned counsel for the plaintiffs at this stage. The argument that has now been urged on behalf of the plaintiff's is in the wake of the question as formulated above. The date of the death of Balla Singh, husband of Aso defendant, is not available from the record, but the argument has proceeded on the assumption, for otherwise the argument would entirely have no basis, that Balla Singh died before the coming into force of the Act on 17-6-1956.

(2) The second case has been withdrawn to this Court on an application, Civil Miscellaneous No. 1548 of 1959, under Article 228 of the Constitution, the question as formulated above having been raised, on the facts of the case, in the trial Court. This case concerns of inheritance of one Deva Singh jat, including agricultural land, upon whose before the coming into force of the Act, his widow Sham Kaur succeeded to the same holding a widow's limited estate. On 1-9-1958, Sham Kaur made a will of the land in favour of the defendants She died on 10-4-1958. The will is impugned by the plaintiffs, claiming themselves to be the collaterals of Deva Singh and on the allegation that the land is ancestral qua them, on the ground that Sham Kaur had, under custom, no power by a testamentary disposition to injure their reversionary rights in the land and that that will is not binding upon those rights. The defendants have taken as one of the defences that Sham Kumar, on the date of the will, had become full owner of the land by virtue of section 14 of the Act. The plaintiff's have then questioned the validity of that section in the manner as the question is stated.

(3) The provisions of section 14 of the Act are:

"14. (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

EXPLANATION:--

In this sub-section, 'property' includes "both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or areas of

maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property." It is now settled by the observations of their Lordships of the Supreme Court at page 581 of *Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva*, AIR 1959 SC 577, that section 14 of the Act enlarges Hindu female's limited interest in property inherited or held by her to an absolute owner, provided she is in possession of the property on the date of the enforcement of the Act. The learned counsel for the collaterals in both the cases contend that thus in enacting section 14 of the Act, the Parliament has legislated on "land, that is to say, rights in or over land, " within the strict scope of entry 18 in List II of the Seventh Schedule to the Constitution, which List enumerates the subjects within the exclusive legislative field of a State. There can hardly be difference on this that the operative effect of section 14 of the Act on land is to give enlarged or enhanced rights to a Hindu female in land in her possession on the date of the Act. She held before that date rights as a limited owner in the land and from the date of the Act, provided she is in possession of it, she has come to hold full ownership rights in it. This clearly is legislation on the subject of "rights in or over land", and it right away falls within the scope of entry 18 of List II and thus within the exclusive legislative field of a State. It is then pointed out by the learned counsel that in this manner enlarging or enhancing the rights of a Hindu female in land from those of limited owner to those of a full owner is not a question of succession on the date of the Act, for a Hindu female, who becomes full owner of land on that date, has necessarily already succeeded to the inheritance of her deceased husband sometime before that date. There cannot be a second succession by her. This argument I accepted in *Sucha Singh v. Baggu Singh* Second Appeal No. 552 of 1953, D/- 3-12-1958 (Punj), and it is the correct position that in so far as section 14 of the Act enacts to give enlarged and enhanced estate of full ownership in land from limited ownership to a Hindu female, from its date, it is not an enactment on the subject of succession and on this score it does not fall within the ambit and scope of entry 5 of List III. The soundness of this position in regard to those two entries is not seriously questioned as far as it goes.

(4) In List III entry No. 5 is-

"5. Marriage and divorce; infants and minors'; adoption, wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings

were immediately before the commencement of this Constitution subject to their personal law."

And in List II entry No. 18 is-

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

The learned counsel for the defendants do not now place reliance on the words "intestacy and succession" in entry 5 of List III but on the last part of that entry which is:

"all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law"

and contend that, even though what has been given to a Hindu female under section 14 of the Act is not within the scope of the subject of "intestacy and succession", but it is a legislation on the subject of special property of females, a matter in respect of which the parties to these cases, in judicial proceedings, were immediately before the commencement of the Constitution subject to their personal law, and, therefore, the Parliament in enacting section 14 of the Act legislated within directly comes within the scope and ambit of last part, as cited, of entry 5 of List III.

(5) The subject of special property of females is referred to in section 5 of the Punjab Laws Act, (No. IV) of 1872, which section reads-

"5. In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be-

(a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority;

(b) the Muhammadan law, in cases where the parties are Muhammandans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of--this Act, or has been modified by any such custom as is above referred to".

In interpreting this section of this Act, Plowden J. at page 24, in Gholam Muhammed v. Muhammad Bakhsh, 4 Pun R. 1891, observes:

"since that Act was passed, in certain heads of topics of law, of which succession is one, the first rule of decision is custom, by express enactment; the next rule is the Hindu or Muhammadan Law as modified by custom; and the last, the strict Hindu and Muhammadan Law." In the case of a Hindu or a Muhammadan undoubtedly Hindu Law or Muhammadan Law respectively is the personal law of such a person. In the case of those, in whose case custom, when proved and established, is the first rule of decision by statutory enactment, such custom obviously is their personal law. In section 5 of the Punjab Laws Act, 1872, custom is juxtaposed with Hindu or Muhammadan Law. It is placed statutorily on the same level as Hindu or Muhammadan Law as the personal law of the persons, who succeed in proving that it applies to them. It is, therefore, the personal law of such persons. On another consideration, the conclusion is the same. Their Lordships of the Supreme Court have in *Ujagar Singh v. Mst. Jeo*, AIR 1959 S. C. 1041, again reaffirmed the well settled proposition that when either party to a suit sets up 'custom' as a rule of decision, it lies upon him to prove the custom, which he seeks to apply. If he fails to do so, clause (b) of section 5 of the Punjab Law Act, 1872, applies and the rule of decision must be the personal law of the parties subject to other provisions of the clause. So that if a party to a suit sets up custom as a rule of decision and fails to prove it, the alternative is recourse to the personal law, but when it succeeds in proving it, then obviously the decision is to be according to such custom and then that is the law applying to the parties to the suit in judicial proceedings instead of strict Hindu or Muhammadan Law. This alternative also leaves on doubt that where it is proved to apply between the parties, custom is their personal law. In this view in the case of a party to a litigation when it is proved by it that custom is that first rule of decision on the question of special property of females, then such custom is the personal law of the parties and Parliament having legislated on the subject of such personal law, the legislation comes within the ambit and scope of the words.

"all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law".

of entry 5 in List III. The Parliament has then legislated within its legislative competence in the concurrent field.

(6) It comes to this,--that S. 14 of the Act, in so far as it enlarges or enhances rights in or over land of a Hindu female, is legislation that directly comes within the scope of entry 18 of List II and thus within the exclusive legislative field of a State, and in so far as it enacts law on the matter of special property of females in respect of which parties in judicial proceedings were immediately before the commencement of the Constitution subject to their personal law, the legislation is properly and appropriately within entry 5 of List III and thus within the legislative field of the Parliament. This is a straight case of conflict of legislative powers of the two

legislatures. This conflict is resolved by Art. 246 of the Constitution, which Article says:

"246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List').

(2) Notwithstanding anything in clause (3) Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List').

(3) Subject to clauses (1) and (2), the Legislature of a State has exclusive power to make laws for such State or any part thereof with respect of any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List".

The exclusive legislative field of a State on matters enumerated in List II being subject to legislative powers of the Parliament on matters enumerated in List III (Concurrent List), when Parliament legislates on a matter enumerated in List III, its legislation is valid and constitutional under this Article.

(7) The Parliament has in enacting S. 14 of the Act by enlarging or enhancing the rights in or over land of Hindu females from limited ownership rights to full ownership rights legislated within the ambit and scope of entry 5 in the Concurrent List and thus the legislation is a valid piece of legislation. The answer to the question is that to the extent S. 14 of the Act enacts legislation providing enlarged rights over land to Hindu female it trenches upon entry 18 in List II, the exclusive field of a State, but it still is a valid piece of legislation because it directly comes within the legislative field as spanned in entry 5 of List III, the Concurrent List.

(8) In consequence Regular Second Appeal No. 1074 of 1959 will return for hearing to a Bench of this Court on other matters raised in the grounds of appeal and the case to which Civil Miscellaneous No. 1548 of 1959 concerns will be sent back to the trial Court for disposal according to law. There is no order on costs in proceedings disposed of by this judgment.

S.S. Dulat, J.

(9) I agree that S. 14 of the Hindu Succession Act, 1956, is a valid piece of legislation and wish to add only this that, as I view the matter, this particular provision does not appear to be

'legislation concerning land or rights in and over land' mentioned in item 18 of the State List. It is true that S. 14 affects all property including land, but so do several other provisions of the Hindu Succession Act. The reason is that it is not possible to divide human affairs into watertight compartments, and the division of subject in the Lists contained in the Seventh Schedule to the Constitution is not intended to be watertight. The various items are only pointers to the kind of legislation that can be undertaken. Item 5 of the Concurrent List provides for legislation concerning succession and several matters connected with it, and arise for legislation concerning matters, governed by the personal law of the parties, and S. 14 of the Hindu Succession Act clearly falls under that description. The circumstance that such legislation incidentally affects land, as it affects other kinds of property, is to my mind of no consequence. The essence of this particular legislation and the whole of the Hindu Succession Act is what appears under item 5 of the Concurrent List and not 'land' mentioned in item 18 of the State List. The contention, therefore, that in enacting S. 14 of the Hindu Succession Act Parliament has encroached on the field of legislation reserved for States is not, in my opinion, sound and S. 14 of the Hindu Succession Act cannot be held invalid.

K.L. Gosain, J.

(10) I agree with my learned brothers, Dulat J. and Mehar Singh J., that S. 14 of the Hindu Succession Act is a valid piece of legislation.

(11) Since we are all unanimous in finding that the legislation in question does, at any rate, fall under the second part of Entry No. 5 of List III of the Seventh Schedule to the Constitution of India and the Parliament had the power to enact it, it is, in my opinion, not absolutely necessary to decide whether the said legislation, in so far as it enlarges the estates of female heirs which devolved on them before the commencement of the Act, can also fall under the first part of the aforesaid Entry.

(12) Answer to question formulated in the judgment, which my learned brother Mehar Singh J. proposes to deliver, should, in my opinion, be in the negative.

ORDER OF THE COURT.

(13) Answer to the question formulated is that S. 14 of the Hindu Succession Act is a constitutionally valid piece of legislation. Regular Second Appeal No. 1074 of 1959 will be returned for hearing to the Bench concerned and Civil Miscellaneous No. 1548 of 1959 will be sent back to the trial Court for disposal according to law.

(14) Reference answered accordingly.

