

# PUNJAB AND HARYANA HIGH COURT

Banso

Vs

Charan Singh

(T Chand, C.J. P Pandit, J.)

23.08.1960

## JUDGMENT

### **T Chand, C.J.**

1. This is a Regular Second Appeal preferred by the defendants from the judgment and decree of the Additional District Judge, Amritsar, The plaintiffs in this case are filth degree collaterals of one Banta Singh, who died long time ago leaving As Kaur, defendant No. 1, as his widow and defendants Nos. 2 to 4, as his daughters.

2. On 17th April 1954 As Kaur, widow of Banta Singh deceased, executed a registered deed, a gift, in favour of defendants Nos. 2, to 4 of the entire ancestral and non-ancestral property left by her deceased husband. The present suit was brought by the plaintiffs seeking a declaration in respect of the land and houses as detailed in the plaint that the deed of gift executed by defendant No. 1 in favour of the 3 daughters was void and inoperative against the plaintiffs-reversioners' interests after the death or remarriage of As Kaur. It was claimed that the parties were governed by the Customary Law of Punjab and after the death of defendant No. 1, the plaintiffs would be entitled to the possession of the said property. The suit was instituted on 1st February 1955 before the enactment of the Hindu Succession Act No. 30 of 1956, which became the law on 17th June 1956. The suit was contested by defendants Nos. 2 to 4, the donees under the deed of gift. The nature of their pleas appears from the following issues framed by the trial Court :

1. Whether the plaintiffs have locus standi to bring the present suit?
2. Whether defendant No. 1 has made a valid gift of the property in suit in favour of defendants Nos. 2 to 4?
3. Whether property in suit is ancestral qua the plaintiffs and Banta Singh deceased?
4. Whether the defendants Nos. 2 to 4 are the daughters of Banta Singh deceased, husband of defendant No. 1 ?
5. Whether the plaintiffs are the preferential heirs than defendants Nos. 2 to 4 if the property is proved to be non-ancestral ?
6. If issues Nos. 1 and 3 are proved whether the plaintiffs are not preferential heirs to the property

in dispute?

7. Whether the gift in dispute amounts to acceleration of succession as alleged in para 2 of the preliminary objections of the written statement of defendants Nos. 2 to 4. If so to what effect ?

8. Whether the plaintiffs are estopped from denying the factum of defendants Nos. 2 to 4 being daughters of Banta Singh deceased husband of defendant No. 1 on account of the reasons as detailed in para 1 of the preliminary objections of the written statement of defendants Nos. 2 to 4 ?

9. Relief. It was held by the trial Court that the plaintiffs had locus standi to present the suit and the gift was valid in so far as it related to non-ancestral property and not with respect to ancestral property, it was found by the trial Court that the ancestral property was 2/15 share of the entire agricultural land and the entire house property was non-ancestral. The plaintiffs were held to be preferential heirs in respect of ancestral property and the contesting defendants as to non-ancestral property. With respect to non-ancestral property, it was found that the gift in question was in the nature of acceleration of succession. The last issue on estoppel was decided against the defendants. The collaterals went up in appeal and the defendants filed cross-objections. The lower appellate Court partially accepted the plaintiffs' appeal finding 2/3rd share of the landed property was ancestral. On the other issues he agreed with the finding of the trial Court.

3. The appellants' learned counsel before us has addressed the arguments on only one point. He contended that regardless of the question of ancestral or non-ancestral character of the properties the suit of the collaterals deserves to be dismissed on the ground that in view of the coming into force of the Hindu Succession Act the fifth degree collaterals cannot succeed at all and in any case their claim is highly speculative. The new Act has been made applicable to any person who is a Hindu by religion in any of its forms or developments and in particular to any person who is a Buddhist, Jain or Sikh by religion, and to any other person who is not a Muslim, Christian, Parsi or Jew by religion.

4. Mr. Roop Chand does not deny that the parties are Sikhs and, therefore, the Act is applicable to them in view of the provisions of Section 2(1)(b). His contention, however, is that Section 4(1)(a) gives overriding effect only to "any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act". He maintains that agricultural custom of Punjab, by which the parties are governed, is not part of the Hindu Law. According to him, the Customary Law of Punjab is non-Brahmanical and non-sacerdotal and as it has developed through usage common to the Hindu and Mohammedan agriculturists of the Punjab it is indigenous though it may have some features common to the Hindu Law. It cannot, therefore, be said to be derived from it. According to this argument, Section 4(1)(a), when referring to custom or usage as part of text, rule or Interpretation of Hindu Law, does not embrace the customary law prevailing among the Punjab-agriculturists as it has an independent origin and is not a modification of Hindu Law. A Division Bench of this Court in *Mat. Taro v. Darshan Singh*, AIR 1960 Punj 145, repelled the contention that the Hindu Succession Act did not apply to the Jats as they were primarily governed by the agricultural custom in matters of succession.

5. We, however, do not consider it necessary to rest our decision on the question as to whether

the Customary Law of Punjab in its origin and development is or is not a part of the Hindu Law. This necessity is obviated by the succeeding provisions of Section 4(1)(b) of the Hindu Succession Act according to which "any other law in force immediately before the commencement of the Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act". Even if there was any substance in the first argument of the learned counsel for the respondent resting on Section 4(1)(a), the language of Section 4(1)(b) nullifies the rule of customary law as the Hindu Succession Act overrides any other law inconsistent with its provisions.

6. Section 8 of the Hindu Succession Act lays down rules of succession in the case of property left by a male Hindu dying intestate. His property devolves in the first instance upon the heirs as specified in class I of the Schedule, failing them on those mentioned in class II of the Schedule; in case there is no heir from either of the two classes then upon the agnates of the deceased; and lastly, in the absence of agnates upon his cognates. Daughters are specified in class I and the plaintiffs figure in class III as agnates of the deceased.

7. As Kaur defendant No. 1 is a holder of widow's life estate and during her life-time the interest of the reversioners in her estate is contingent and mere spes successions. Succession will open on the death of As Kaur and the property will devolve on the heirs of the last male holder i.e. of Banta Singh. Irrespective of the validity or invalidity of the gift made by the mother in favour of the daughters, the donees incontestably are the next heirs with respect to the entire ancestral and non-ancestral property in view of the provisions of the Hindu Succession Act. Succession in a case like the present cannot be said to have opened out on the death of Banta Singh who died very many years ago.

8. The Hindu widow inherits her husband's estate in the character of being the surviving half of her husband, and this is left in no doubt in the following text from Bribaspati:

(25-46-47) "In the revealed text, in the Smriti, and in popular usage, the wife has been declared by the wise ones to be half the body (of her husband), equal sharer in the fruits of merit and demerit. Of him whose wife is not dead, half his body survives nsgk/kZ rLr thofr( how then could anyone else take his property while half his body lives ?" (Vide Hindu Law in its Sources by Ganganatha Jha, Volume II, p. 481) A lawfully wedded wife, patni, acquires from the moment of her marriage a right to everything, belonging to the husband so as to become co-owner with her husband though her right is not co-equal to that of her husband being of a subordinate character. On the death of the husband the property devolves on his widow or widows and in the latter case, with the right of survivorship inter se. The succession does not open out till the last of the widows is dead. On her demise the next heir of the full owner inherits the property.

During her lifetime the entire estate is vested in her which she represents completely. The inheritance thus devolves on the death of the widow upon the next heir of the last male holder and not upon her heir. That event in this case has not yet taken place. On As Kaur's death the estate of her deceased husband Banta Singh will devolve upon his heirs as specified in Section 8 of the Act read with the Schedule. No doubt before coming into force of the Act, the Customary Law of Punjab governed the rules of succession and if the succession had opened before the enactment of the Hindu Succession Act. the collaterals would have a prior claim to the ancestral property though as to the non-ancestral property the daughters would be considered to be Preferential heirs. But now Section 4 of the Act overrides the rules of succession under the

Punjab Customary Law in cases where succession opens after coming into force of this Act. 8a. The Case of *Duni Chand v. Mt. Anar Kali*<sup>1</sup>, is in point. In that case the last full owner died in 1922 and on his death his mother Chaman Devi succeeded to a widow's estate. She died in 1936 leaving daughters who became heirs to the last male holder as the latter's sisters. The plaintiff as one of the sisters of the deceased claimed partition of her share. The contesting defendants in that case claimed that they had succeeded to the property as heirs to the deceased and their right to succession was governed by the law in force at the time of his death in 1922 and not as in 1936 when his mother had died. In between these two deaths an important change in the law of succession had taken place. The Hindu Law of Inheritance (Amendment) Act, 1929, was passed, and it came into operation in February 1929. This Act had materially altered the order of succession of certain persons mentioned in the Act, namely, son's daughter, daughter's daughter, sister and sister's son and they ranked as heirs next after a father's father and before a father's brother. This Act gave to certain relatives of the deceased a preferential place in the order of succession over other relatives. The question that came up for decision in that case was whether the devolution of the properties on the demise of the widow Chaman Devi in 1936 was governed by rule of succession as specified by Act No. 2 of 1929 or in accordance with the law in force in 1922 when Dharam Das, the last full owner had died. It was held by the Judicial Committee of the Privy Council that :

"during the lifetime of the widow, the reversioners in Hindu Law have no vested interest in the estate but have a mere spes successionis or a chance of succession, which is a purely contingent right which may or may not accrue, that the succession would not open out until the widow died, and that the person who would be the next reversioner at that time would succeed to the estate and the alteration in the rule of the Hindu Law brought about by the Act would then be in full force." 8b. The Privy Council further observed;

"The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon its termination, the property descends to those who would have been the heirs of the, husband if he had lived up to and died at the. moment of her death. There is no vesting as at the date of the husband's death, and it follows that the question of who is the nearest reversionary heir or what is the-class of reversionary heirs, falls to be settled at the date of the expiry of the ownership for life or lives. The death of a Hindu female owner opens the inheritance to the reversioners, and the one most nearly related at the time to the last full owner becomes entitled to possession. In her lifetime, however, the reversionary right is a mere possibility; or spes successionis, but this possibility is common to them all for, it cannot be predicated who would be the nearest reversioner at the time of her death, The Indian Law, however, permits the institution, of suits in the lifetime of the female owner to remove a common apprehended injury to the interests of all the reversioners, presumptive and contingent alike. The reversioner's rights during the lifetime of the female heir are merely of a protective character and nothing more, and whenever action is taken by the presumptive reversioner it is in a representative capacity and on behalf of all the reversioners, and not on the footing that the person taking the action is in fact the next reversioner at the date of the suit".

9. Reference may also be made to a recent Division Bench decision in AIR 1960 Punj 145, where it was held that succession to the estate of the last male-holder opens on the demise of the intervening female heir and not on the death of the last male holder. See also *Gurmit Singh v. Tara Singh*<sup>1</sup>. Our attention has also been drawn to a recent Full Bench decision in *Amar Singh v.*

Sewa Ram, 1960-62 Pun LR 537: (AIR 1960 Punj 530). The Question which had been referred to the Full Bench was in these terms:--Q. Are the collaterals (reversioners) of the last Hindu male-holder, entitled to file, or, if filed already, to continue, a suit, after the enforcement of the Hindu Succession Act, challenging an alienation effected, prior to the enforcement of the Act by an intervening female heir, who at the time of the alienation held only a widow's estate? The question was answered in the affirmative by all the three Hon'ble Judges constituting the Bench. This question arose in two cases which had been referred to the Full Bench. In the second case a widow, inheriting her husband's landed property, had gifted the land to her daughter before the Hindu Succession Act. This gift was challenged in a suit preferred by the fifth degree collateral of the deceased husband of the widow. The point canvassed on behalf of the donee, who was the daughter of the deceased, was that because of the Hindu Succession Act the plaintiffs suit had been rendered pointless. Dulat J. expressed the view that when succession opens the collateral's suit can have no particular meaning as he can have a right of succession only if it be held that succession to this property opened when the last male owner died, that is, before the Hindu Succession Act, and not when the widow happens to die which Dulat J. thought was somewhat far fetched. He expressed the opinion that in the context of the facts involved in that case the collateral's suit for a declaration, that a gift to the daughter was invalid, would be wholly incompetent. Gosain J. expressed the view that the only point referred to the Full Bench for the present was whether the plaintiff was entitled to maintain the suit in spite of the fact that the Hindu Succession Act had come into force. Mehar Singh J. was of the view that the Hindu Succession Act did not abolish either reversioners or their rights or status. The Full Bench decision has thus answered the abstract question of law in the affirmative and the result is that the collaterals of the last male holder are entitled to file, or, if filed already, to continue, a suit, after the enforcement of the Hindu Succession Act.

The question whether in the circumstances of a particular case such a suit is speculative and whether a discretionary relief in the nature of a declaration should be granted or not is still an open question depending upon particular facts and circumstances. Gosain J. sitting singly non-suited the plaintiff-collaterals in a case in which the fifth degree collaterals had sought similar declaration as in the present case and had challenged the validity of a gift in favour of a daughter on the ground that it would not affect their reversionary rights (R. S. A. 530 of 1954). This decision had been given by Gosain J. after the Full Bench case referred to above. He came to the conclusion that the plaintiffs' right was remote and the suit was highly speculative and the declaratory decree which had been granted to the plaintiffs was utterly useless as there was no chance for the plaintiffs to take advantage of the said decree. The appeal was allowed and the plaintiffs' suit was dismissed in entirety.

10. So far as the facts of the instant case are concerned, the donees are three daughters of the deceased Banta Singh and they are all married, The fifth degree collaterals have been relegated by Section 8 of the Hindu Succession Act to a very subordinate position in the line of the heirs. Their chances of succession are extremely remote. Though in theory the institution of the suit by a fifth degree collateral and its continuance after the enforcement of the Hindu Succession Act is competent as held by the recent Full Bench his chance of succeeding in a case like the present is very remote.

11. Applying the law to the facts and circumstances of this case the plaintiffs are not entitled to the declaratory relief sought by them. Moreover, the granting and withholding of relief is within the judicial discretion of this Court and in view of what has been said above, the discretion on

principle should not be exercised in favour of the plaintiffs. We, therefore, allow the appeal and dismiss the plaintiffs' suit, but we leave the parties to bear their own costs throughout.

Cases Referred.

1AIR 1946 P. C. 173

2 AIR 1960 Punj 6