

PUNAJAB AND HARYANA HIGH COURT

Mukhtiar Kaur

Vs

Kartar Kaur

Second Appeal No. 742 of 1963

(P.C. Pandit, J.)

11.12.1964

JUDGMENT

P.C. Pandit, J.

1. One Bahal Singh was the owner of the property in dispute. On his dying sonless somewhere in 1939, he was succeeded by his widow, Smt. Raj Kaur. On 3-5-1955 by a registered deed, Exhibit D. 1, she gifted the entire property in favor of her daughter Smt. Mukhtiar Kaur wife of Gurdial Singh, defendant No. 1. This gift was challenged by Lal Singh and others, the collaterals of Bahal Singh deceased, by means of a suit for a declaration that the gift would not affect their reversionary rights. It was filed on 3-2-1956. It was originally dismissed by the trial Court on 28-2-1957, but-on appeal it was decreed by the Additional District Judge, Bhatinda, by means of his order dated 14-2-1958 in respect of the ancestral property. It was, however, dismissed regarding the non-ancestral property. Thereafter, on 27-2-1959, Smt. Mukhtiar Kaur sold a part of this property by means of a registered deed in favor of Basant Singh and his brother, Chand Singh, defendants 2 and 3. On 26-6-1961, Smt. Raj Kaur made a registered will regarding the entire property which she had already gifted to her daughter Smt. Mukhtiar Kaur, in favor of Gurcharan Singh, Harcharan Singh and Harbans Singh, sons of Smt. Mukhtiar Kaur. Thereafter, somewhere in July 1961, Smt. Raj Kaur died. On 4-9-1961 Smt. Kartar Kaur, wife of Bachan Singh, Smt. Chetan Kaur, wife of Kheta Singh and Smt. Baldev Kaur, wife of Surjit Singh the other three daughters of Smt. Raj Kaur, brought a suit for joint possession to the extent of -th share of the property left by Smt. Raj Kaur against their sister, Smt. Mukhtiar Kaur and her transferees, defendants 2 and 3. The allegations of the plaintiffs were that the parties were governed by custom in matters of alienation and succession and Smt. Raj Kaur had no right to gift this property in favor of Smt. Mukhtiar Kaur alone and the same was ineffective against their rights and they were entitled to succeed to three-fourth share of the property left by their mother, while Smt. Mukhtiar Kaur to the remaining 1/4th. It was further alleged that the sale made by Smt. Mukhtiar Kaur in favor of defendants 2 and 3 in excess of her share in the-property was not binding on them.

2. The suit was contested by the defendants, who controverted the allegations made by the plaintiffs-and pleaded inter alia that the plaintiffs had no right to contest the gift in dispute, which was a valid one as Smt. Raj Kaur was the full owner of the disputed property. It was also pleaded that Smt. Raj Kaur had made a valid will on 26-6-1961.

3. On the pleadings of the parties, a number of issues were framed.

4. The trial Judge found that the plaintiffs, who were admittedly, the daughters of Smt. Raj Kaur, could challenge the gift made by their mother and they had a cause of action to bring the present suit on her death in 1961. It was held that the plaintiffs were not bound by the judgment in the reversionary suit brought by the collaterals in 1956, because they were neither parties to the same and nor were they claiming under the plaintiffs of the previous suit. It was also held that the plaintiffs got a cause of action for bringing a suit for possession of the property in dispute only on the death of Smt. Raj Kaur in July 1961. It was further held that Smt. Raj Kaur had not made a valid will regarding the property in dispute, on 26-8-1961 as she had already gifted on 3-5-1955 and was not possessed of the same on 26-6-1961 and, as such, the sons of Smt. Mukhtiar Kaur were not necessary parties to the suit. It was found that Smt. Raj Kaur had got this property from her husband Bahal Singh and she was, therefore, a limited owner of the same at the time of the gift in question and the-gift made by her was invalid and could not affect the rights of the plaintiffs, who were entitled to three-fourth share in the property left by their mother, Smt. Raj Kaur. It was further held that the parties were governed by custom in matters of succession and alienation. It was found that Smt. Mukhtiar Kaur could sell 1/4th of the property in dispute, to which she was entitled and since the sale by her in favor of defendants 2 and 3 did not exceed her share the-vendees could retain possession of the sold property. On these findings, the suit of the plaintiffs was decreed.

5. Against this decision, Smt. Mukhtiar Kaur went in appeal before the learned District Judge, Bhatinda, who found that the sons of Smt. Mukhtiar Kaur being not in possession of the land in dispute were not necessary parties to the suit. It was held that Smt. Raj Kaur had no right to gift the property in favor of her daughter, Smt. Mukhtiar Kaur, under custom by which the parties were governed and the plaintiffs were entitled to challenge this gift on the death of their mother, when succession had opened. It was further held that neither Smt. Raj Kaur, who had effected the gift of the property in favor of her daughter Smt. Mukhtiar Kaur, before the coming, into force of the Hindu Succession Act and parted with its possession, could be deemed to have become an absolute owner of the property and nor could Smt. Mukhtiar Kaur be regarded as having become the owner of the same under the provisions of Section 14 of the Act. Both the plaintiffs and defendant No. 1 were entitled to succeed to the estate of their mother, Smt. Raj Kaur, in equal shares and the gift made by her in favor of defendant No. 1 was ineffective and did not in any way affect the rights of the plaintiffs in the property in dispute. It was also held that the sale by Smt. Mukhtiar Kaur of more than her 1/4th share to defendants 2 and 3 was not valid and her vendees could not retain possession of a larger area, in the land. On these findings, the appeal was dismissed and the judgment and decree of the trial Court was affirmed. Against this, the

present second appeal has been filed by Smt. Mukhtiar Kaur.

6. After hearing the counsel for the parties, I am of the view that there is no merit in this appeal. Admittedly Smt. Raj Kaur, who was governed by custom in matters of alienation and succession, had inherited this property from her husband, Bahal Singh. She had, therefore, a limited interest therein, irrespective of the fact whether the property was ancestral or self-acquired (vide *Mst. Ajmero v. Mst. Gurdevi*¹). A widow under the customary Law has no power to make a gift (see in this connection a Division Bench decision of this Court in *Naginder Singh v. Tek Singh*²). Since she has only a life estate in the property, it is only that interest which she can gift and the donee cannot remain in possession of the property after her death on the basis of that gift alone. That means that the gift made by Smt. Raj Kaur on 3-5-1955 in favor of her daughter, Smt. Mukhtiar Kaur, was not a valid one. Since Smt. Raj Kaur had parted with possession of the property in dispute in favor of Smt. Mukhtiar Kaur on the basis of this gift, therefore, she could not be said to be "possessed" of the property within the meaning of this expression occurring in S. 14 of the Hindu Succession Act (Act (30 of 1956), which came into force on 17-6-1956 and thus had not become a full owner of the same.

Learned counsel for the appellant, on the other hand, placed reliance on a Supreme Court decision in *Gummalapura Taggina Matada Kotturuswami v. S. Veeravva*,³ in which it was held :

"The word 'possessed' in S. 14 is used in a broad sense and in the context means the state of owning or having in one's hand or power.

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Thus the opening words 'property possessed by a female Hindu' obviously mean that to come within the purview of the Section, the property must be in possession of the female concerned at the date of the commencement of the Act. That possession might have been either actual or constructive or in any form recognized by law, but unless the female Hindu, whose limited estate in the disputed property is claimed to have been transformed into absolute estate under this particular Section, was at least in such possession, taking the word 'possession' in the widest connotation, when the Act came into force, the Section would not apply.

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A, the last male holder, died in 1920. A had by his will authorised his wife B to adopt a son and in compliance therewith B adopted C in 1942. D, alleging himself to be the nearest reversioner of A, filed a suit for declaration that C's adoption was invalid and not binding on him. The suit was dismissed and the decision was affirmed by the High Court D appealed to the Supreme Court when a preliminary objection was raised under S. 14 of the Hindu Succession Act, 1956, which had come into force.

Held, that if the adoption was invalid, the full owner of A's estate was his widow B

and even if it be assumed that C was in actual possession of the estate his possession was merely permissive and B must be regarded as being in constructive possession of it through G. In this situation, at the time when the Act came into force, the property of A must be regarded in law as being possessed by B and as such B had become full owner of A's estate and D's suit could not succeed."

This decision cannot be of any assistance to the appellant, because it was considered by a Full Bench decision of this Court in *Amar Singh v. Sewa Ram*⁴, wherein it was held that S. 14 of the Hindu Succession Act could have no applicability to a case in which a female Hindu had sold the property and parted with its possession before the Act came into force. It was further observed that the case of a gift by the widow made to the daughter of the last male owner stood at par with the case of a sale. The effect of an invalid gift by her, however, was not the same, as the effect of an invalid adoption. Following this Full Bench decision, hold that Smt. Raj Kaur could not derive any benefit from the provisions of S. 14 of Act 30 of 1956. It is also undisputed that Smt. Raj Kaur could not will away this property on 26-6-1961, because she had already gifted the same and parted with its possession earlier, that is, on 3-5-1955. Now, the point arises as to what should happen to the estate of Smt. Raj Kaur when she died in July 1961. There is no manner of doubt that the plaintiffs and defendant No. 1, who are her daughters, were entitled to the property in dispute in equal shares. A suit for possession of her estate is governed by Art. 141 of the Indian Limitation Act and it had to; be brought within 12 years of her death. That has been done in the present case. Therefore, the plaintiffs were entitled to the possession of 3/4th share in the property in question. The suit had thus been rightly decreed by both the Courts below.

7. The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court.

Appeal dismissed.

Cases Referred.

11958-60 Pun LR 253

21960-62 Pun 1 LR 70

3AIR 1959 SC 577

4AIR 1960 Punj 530