

# PUNJAB AND HARYANA HIGH COURT

Jit Singh

Vs

Karnail Singh

Regular Second Appeal No. 1036 of 1964

(R.S. Narula, C.J.)

27.02.1975

## JUDGMENT

### **R.S. Narula, C.J.**

1. Bachittar Singh and Khazan Singh defendant-respondent Nos. 3 and 4 were real brothers. Certain alienations of ancestral agricultural land by Bachittar Singh made in 1955 were called in question in September, 1962, by Karnail Singh and Jarnail Singh Plaintiff-respondent Nos. 1 and 2 who are the sons of Khazan Singh, on the usual ground that the same were without legal necessity and contrary to the agricultural custom governing the parties. The declaration by suit of Karnail Singh and Jarnail Singh plaintiff-respondents was dismissed by the judgment and decree of the Court of Shri N.S. Swaraj, Sub-ordinate Judges First Class, Muktsar, dated November 20, 1963. The appeal of the plaintiff-respondents against the decree of the trial Court was, however allowed by the Courts of Shri Jaswant Singh, Senior Subordinate Judge, Ferozapore, on May, 1964, and it was declared that the impugned sale dated November 7, 1955, would not affect the reversionary rights of the plaintiffs after the death of Bachittar Singh except to the extent of Rs. 6,050/-. Defendants 7 to 16 to the suit who were the vendees in the impugned sale than filed this second appeal wherein they have prayed for the reversal of the Judgment and decree of the lower Appellate Court and for substituting therefor, the Judgment and decree of the trial Court.

2. In the circumstances hereinafter detailed it is unnecessary to travel into the merits of the issues on which the decisions of the Courts below were based. Section 7 of the Punjab Custom (Power to Contest) Act, 1920 (hereinafter called the principal Act) was enacted with a view to provide restrictions, *inter alia*, on the power of descendants or collaterals to contest alienations of immovable property on the ground that such alienations were contrary to custom. The relevant part of section 7 of the principal Act was in the following terms :-

"Notwithstanding anything to the contrary contained in section 5, Punjab Laws Act, 1872 no person shall contest any alienation of non-ancestral immovable property - on the ground that such alienation..... is contrary to custom."

By section 3 of the Punjab Custom (Power to Contest) Amendment Act (12 of 1973) (hereinafter

referred to as the amending Act), in section 7 of the principal Act for the words "non-ancestral immovable property" have been substituted the words "immovable property, whether ancestral or non-ancestral". The effect of the amendment of section 7 of the principal Act by section 3 of the amending Act is that a suit for contesting alienation of even ancestral agricultural property on the ground of the same being contrary to custom is barred. It is conceded by Mr. K.C. Puri, learned counsel for the plaintiff respondents, that in view of the amendment of section 7 of the principal Act, and the law laid down by a recent Division Bench judgment of this Court in *Charan Singh v. Gehil Singh*<sup>1</sup>, This appeal of the defendant vendees has to be allowed and the suit of the plaintiff-respondents has to be dismissed. As this appeal is a continuation of the suit, any decree passed by this Court dismissing the defendant vendees appeal is expressly barred by the principal Act as subsequently amended. Mr. Puri, however, submits that the amending Act itself is unconstitutional, and, therefore, inoperative and this appeal should not be allowed on that short ground without going into the merits of the controversy. Once again it is the common case of both sides that if the amending Act is unconstitutional and the amendment of section 7 of the repeal of section 6 of the principal Act by the amending Act is held to be inoperative and void, the appeal has to be heard and decided on merits, and there is no bar to the Court dismissing the appeal if it is found to be without merit.

3. After hearing counsel for the parties on the question of the constitutionality of the amending Act, I have not been able to persuade myself to hold in favour of Mr. Puri, and I have, therefore, not considered it necessary to give notice of the issue raised by Mr. Puri to the Advocate General for the State of Punjab under rule 1 of Order 27-A of the Civil Procedure Code. Mr. Puri wants me to hold that the amending Act is *ultra vires*. Article 254 of the Constitution as the principal Act is an "existing law" within the meaning of Article 366(10), and the relevant provisions of the amending Act are repugnant to the relevant provisions of the principal Act with respect to matters of "succession" which are covered by entry 5 in List III of the Seventh Schedule to the Constitution. The relevant part of Article 254 extracted from the main provision would read as follow :-

"(1) If any provision of a law made by the Legislature of a State is repugnant to ----- any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2) ----- the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provisions repugnant to the provisions of ----- an existing law with respect to that matter, then, the law so made by the Legislature of State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that -----"

"Existing law" has been defined in Article 366(10) of the Constitution to mean any law passed or

made before the commencement of the Constitution by any Legislature. There is no doubt that the principal Act is an existing law within the meaning of Article 366(10) of the Constitution. There is also no dispute about the fact that the relevant provisions of the amending Act are repugnant to the corresponding relevant provisions in the said existing law. The only question which calls for decision in these circumstances is whether the matters to which the said provisions in the existing law relate are matters enumerated in the Concurrent List or not, and if so, whether the amending Act was or was not reserved for the consideration of the President, and or has not received his assent. The amending Act does not appear to have been reserved for consideration or to have received the assent of the President of India. Whereas the submission of Mr. Kashmiri Lal Sachdeva is that the principal Act (which is the existing law) as well as the amending Act fall squarely within entry 18 in the State List (List II), the submission of Mr. Puri is that they fall under entry 5 in List III. Entry 18 of List II reads as follows :-

"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; improvement and agricultural loans; colonization."

4. It appears to me that the expression "rights in or over land" is of a very wide amplitude and includes collateral rights over land. It also includes the question of settlement of disputes relating to land and restriction or extinction of existing interest in land including provision for the statutory purchase of the landlord's land by the tenants. The exclusive power of the State Legislature to legislate on subjects relating to the transfer and alienation of land is no doubt confined to agricultural land, but the present suit also relates to such land. I am, therefore, of the opinion that the principal Act as well as the amending Act relate to the matters covered by entry 18 of the State List, and inasmuch as the State Legislature has the exclusive power to legislate on those subjects nothing contained in these Acts touch any matter in the Concurrent List. The only entry in the Concurrent List in which Mr. Puri has tried to fit in the principal Act is entry 5 of that List. It reads :-

"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."

Counsel submits that the principal Act as well as the amending Act deal with "intestacy and succession", and, therefore, fall within entry 5 of List III. It is secondly contended that agricultural custom is as much personal law as Hindu Law or Muslim Law, and, therefore, the enactments in question would in any event be covered by the expression "all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law". Succession is the transmission of the rights and obligations of a deceased to his heirs and may certainly comprehend devolution by survivorship under the Hindu Law. Mr. Puri has invited my attention to section 5 of the Punjab Laws Act, 1872, which states, *inter alia*, that in questions relating to succession, etc., the rule of decision shall be any custom governing the parties. The argument of Mr. Puri is that subject to the

restrictions laid down by the principal Act, the usual declaratory suits were decided according to custom by operation of section 5 of the Punjab Laws Act. Relying on a Full Bench judgment of this Court in *Amar Singh and others v. Baldev Singh*

, counsel contended that as section 14 of the Hindu Succession Act was held to be properly and appropriately covered by entry 5 of List III, surely the provisions of the amending Act should also be held to be covered by that entry. I am unable to agree with counsel in this respect. Section 14 of the Hindu Succession Act relates to succession. The provisions of the principal Act and the amending Act do not deal directly with succession. The second part of entry 5 in List III that is "all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law" relates to the matters covered by the earlier part of the entry. The expression "personal law" used in entry 5 of List III is not synonymous with all kinds of laws including Customary Law. For all these reasons I hold that the amending Act does not deal with any subject in respect of any matter covered by entry 5 of the Concurrent List, and is, therefore, not *ultra vires* Article 254(1) of the Constitution, and did not require to be reserved by the Punjab Legislature for the consideration of the President and is not dependent for its validity on receiving the President's assent within the meaning and purview of clause (2) of Article 254 of the Constitution.

No other point having been argued by the counsel for the parties, this appeal must, for the reasons already recorded, succeed. I accordingly allow it, reverse the decree of the learned Senior Subordinate Judge, Ferozepore, dated May 19, 1964, and substitute for the same the decree of the trial Court, dated November 20, 1963, dismissing the suit of the plaintiff respondents. The parties are, however, left to bear their own costs throughout.

Appeal allowed.

Cases Referred.

11974 Rev. LR. 80  
2AIR 1960 Pun 666