

Jagat Singh and others v. Teja Singh and others, (Harbans Singh, J.)

in that case what was the subject of transfer was a share of the property.

(16) In consequence, the plaintiffs fail to prove that they have a preferential right of pre-emption under section 15(1) (b), Fourthly, of Punjab Act 1 of 1913 on the ground that they have been co-sharers with Ajmer Singh vendor in the land of rectangle 1* sold by him to the defendant and thus co-sharers with Ajmer Singh vendor in the joint land. So the appeal of the defendant is accepted and, reversing the decree of the lower appellate Court, the decree of the trial Court is restored, so that the suit of the plaintiffs remains dismissed, with costs throughout.

D. K. MAHAJAN, J.—I agree.

BAL RAJ TULI, J.—So do I.

FULL BENCH

Before Harbans Singh, H. R. Sodhi and S. S. Sandhawalia, JJ.

JAGAT SINGH AND OTHERS,—Appellants.

versus

TEJA SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 39 of 1964

January 20, 1970.

Hindu Succession Act, (XXX of 1956) — Section 14 — Widow alienating her limited estate — Re-conveyance of the estate by the alienee to the widow — Whether permissible — Reversioners obtaining usual declaratory decree before re-conveyance — Such decree — Whether prevents the alienee to re-convey the estate back to the widow — Re-conveyance to the widow effected after coming into force of the Hindu Succession Act, — Such widow — Whether becomes absolute owner of the estate.

Held, that when an alienee from a widow or other alienor with restricted power comes to know, either because he is threatened with litigation or a suit is actually filed or otherwise, of the defect or the lacuna in the title of his alienor, there is nothing either in the Hindu Law or the Customary Law or any other law which stands in his way of reconveying the property back to the alienor and thus restoring the position of the property as it existed prior to the alienation which is being challenged. After all, the relief that is claimed by a reversioner in the usual declaratory suit is that a declaration may be granted to the effect that the impugned alienation would not affect

the reversionary rights. In other words, the alienation should be treated as non-existent so far as the body of the reversioners are concerned. So it is clear that all that the reversioners are interested in is that 'corpus' of the estate may pass unimpaired to those entitled to the reversion. When the alienees from a widow are limited owners and on reconveyance the property comes back to the alienor, the result is that the 'corpus' is given back to the widow or the limited heir and thus what the reversioners desire to achieve by obtaining a declaratory decree actually takes place. In principle, therefore, there is nothing to prohibit the parties to effect alienation by mutual consent or to agree to annul the original conveyance. (Para 6).

Held, that the usual declaratory decree obtained by the reversioners challenging the alienation made by a widow does not create any vested right in the presumptive reversioner or reversioners. The only right that they get is that if and when the succession opens and someone or more of the body of reversioners happen to be the next reversioners at the time, then, they can ignore the alienation which has been challenged and in respect of which the decree has been obtained by anyone or more of the reversioners. The decree obtained ensures for the benefit of the entire body of the reversioners and the actual benefit goes to the next heir at the time the succession opens irrespective of the fact whether he was one of the plaintiffs in the declaratory decree or not. Thus, the declaratory decree can, in no way prevent the alienee, who is the owner and in possession of the property during the period that the interest of the party subsists, to agree with the alienor, widow to annul the original alienation and reconvey the property back to her, the original owner. (Para 8).

Held, that there is nothing in law which prevents the re-conveyance of the property to a widow after the enforcement of the Hindu Succession Act, which was alienated by her before the Act. By this re-conveyance, the widow becomes the owner of the property to the same extent as she originally was before the alienation, and sub-section (1) of section 14 becomes applicable. Her interest, limited as it was before the date of the alienation gets enlarged into absolute state which she is entitled to dispose of as she likes. (Para 9).

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh, and the Hon'ble Mr. Justice H. R. Sodhi on 26th September, 1968, to a larger Bench as an important question of law had arisen in this case. The Full Bench, consisting of the Hon'ble Mr. Justice Harbans Singh, the Hon'ble Mr. Justice H. R. Sodhi and the Hon'ble Mr. Justice S. S. Sandhwalia, finally decided the case on 20th January, 1970.

Letters Patent Appeal from the decree of the Court of the Hon'ble Mr. Justice D. K. Mahajan in R. S. A. No. 875 of 1963, dated the 31st day of October, 1963, accepting the appeal of the defendants Daulat Singh etc., dismissing the plaintiffs suit and setting aside the decree of the District Judge, Hoshiarpur, dated the 16th July, 1963, who affirmed that of the Sub-Judge, 2nd Class, Dasuya, Camp Hoshiarpur, dated the 30th March, 1962.

M. L. SETHI, AND ICHHPAL SINGH, ADVOCATES, for the Appellants.

R. L. AGGIRWAL, AND

G. S. VIRAK, ADVOCATES, for the Respondents.

A. L. BAHL ADVOCATE, for minor respondents.

JUDGMENT OF THE FULL BENCH

HARBANS SINGH, J.—On the death of one Dalipa, his widow Smt. Uttam Devi, inherited her husband's estate in the year 1938. On 18th of February, 1938, she gifted the entire estate to Daulat Singh and Charan Singh in equal shares. This gift was challenged on 29th of June, 1939, by reversioners by means of usual declaratory decree under Customary Law to the effect that the gift aforesaid will not effect their reversionary rights. The suit above-mentioned was decreed on 17th of September, 1939. Some 20 years thereafter, that is, on 3rd of June, 1959, Daulat Singh, one of the donees, made a gift back to the widow Smt. Uttam Devi of one-half share of the property which had originally been gifted to him by her. On 8th of June, 1959, Smt. Uttam Devi sold the property so re-gifted to her to Hazara Singh and Teja Singh (copy exhibit D. 1). On 20th of October, 1959, Smt. Uttam Devi died. On 13th of March, 1961, Jagat Singh and others claiming to be the next reversioners and heirs of Dalipa, filed a suit for possession of the entire land which formed the subject-matter of 1938 gift. The suit was resisted by the vendees *qua* one-half which had been sold to them by Smt. Uttam Devi in 1959. The suit was decreed by the trial Court and this decree was confirmed by the lower appellate Court, but in Regular Second Appeal No. 875 of 1963 filed by vendees, the learned Single Judge reversed the judgment and the decree of the Courts below and held that Smt. Uttam Devi, *qua* the one-half of the property gifted back to her on 3rd of June, 1959, became a full owner by virtue of section 14 of the Hindu Succession Act (hereinafter referred to as the Act) and, therefore, she could convey a good title to the vendees. Jagat Singh, etc., filed this Letters Patent Appeal and the Bench consisting of Mehar Singh, C.J. and H. R. Sodhi J., after hearing the parties referred the matter to be decided by a Full-Bench in view of the important point of law involved and that is how the matter is before us.

(2) There can be no manner of doubt that if Smt. Uttam Devi had not gifted the property now in dispute to Daulat Singh in the year 1938 and she was in possession thereof in her capacity as a widow of her husband Dalipa, then on the enforcement of the Hindu Succession Act by virtue of sub-section (1) of section 14, her interest in the property would have got enlarged into an absolute estate. It is now well-settled and as has been discussed at length by the learned Single Judge, the estate of a widow under the Mitakshara Hindu Law and under the Punjab Agricultural Custom, prior to the enforcement of the Act was not a life estate as it is ordinarily understood. She was a