

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

SUKH RAM,—*Plaintiff-Appellant.*

versus

LEKH RAM 3ND OTHERS,—*Defendants-Respondents.*

Letters Patent Appeal No. 106 of 1956.

Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (VIII of 1953)—Occupancy rights held by a widow converted into full proprietary rights under the Act—Widow, whether becomes absolute owner and entitled to alienate.

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Held, that there is no doubt that when the widow entered into enjoyment of the occupancy rights in succession to her deceased husband, she only enjoyed a widow's estate, but the effect of her own conversion of these occupancy rights into a full ownership in accordance with the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 is that she became the absolute owner of the land and was entitled to alienate it in any manner she liked.

Case law discussed.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment and decree of the Hon'ble Mr. Justice Khosla, dated 16th April, 1956 passed in R.S.A. No. 956 of 1954 affirming that of Shri Gobind Ram Budhiraja, Additional District Judge, Ferozepore, dated the 9th July, 1954, who reversed that of Shri Ishar Singh, Sub-Judge, 1st Class, Fazilka, dated the 8th day of January, 1954 and dismissed the plaintiff's suit, but left the parties to bear their own costs throughout. Costs of R.S.A. were allowed to the defendants by Single Bench of this Court.

MANMOHAN SINGH GUJRAL, for Appellant.

F. C. MITTAL, S. S. MAHAJAN and RAJ KUMAR, for Respondents.

JUDGMENT

Falshaw, J.

FALSHAW, J.—The facts in this Letters Patent appeal are that one Mam Raj held occupancy rights in 49 *bighas* of land and on his death the occupancy rights devolved upon his widow Mst. Shangari. By means of a registered sale-deed, dated the 19th of January, 1953, Mst. Shangari sold what purported to be her occupancy rights in the land to six persons who were impleaded in the suit brought by the appellant Sukh Ram as defendants Nos. 1 to 6. The plaintiff's case was that by reason of the coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (Act No. 8 of 1953) the occupancy rights held by Mst. Shangari had been converted into full proprietary rights and in fact she had paid the necessary sum required under the provisions of the Act to the landlords for effecting the change of status, and the alienation was challenged by Sukh Ram as a reversioner of Mam Raj on the usual ground that Mst. Shangari as a widow was not competent to alienate the land under the custom governing the parties.

The trial Court found that Sukh Ram was a reversioner of Mam Raj and that Mst. Shangari had no right to alienate the land without necessity, which was not found to exist. The plaintiff was accordingly granted a decree declaring that the sale would not affect his reversionary rights and the rights of three other reversioners who were impleaded as *pro forma* defendants. In first appeal, however, it was held that Mst. Shangari had in the circumstances absolute rights of ownership in the land and the suit was accordingly dismissed, this finding being upheld in second appeal by G. D. Khosla, J.

In challenging the correctness of this decision the learned counsel for the appellant has relied on

two cases *Mst. Lajwanti and others v. Safa Chand and others* (1), and *Ali Mohammad v. Mst. Mughlani and others* (2). In the first of these cases their Lordships of the Privy Council were dealing with the case of a widow governed by Hindu Law and it was held that where a widow held property claiming as an heir, though she was only entitled to maintenance, her possession was adverse to the last male owner's heirs, i.e., the reversioners whose title was destroyed by section 28 of the Limitation Act, and that she did not acquire the property as *stridhan* but only as an accretion to the husband's property and, therefore, after her death the property would go to her daughter as her husband's heir in preference to the husband's brothers and nephews. In the other case reliance was placed on the observation that a widow under the Hindu Law enjoys a larger power in the matter of enjoyment of the estate than a widow under the Punjab Custom. Under the Hindu Law she is not accountable in respect of the accumulations of the income in her hands while that is not so under Punjab Custom.

It is clear that in neither of these cases was anything like the question involved in the present case under consideration. In this case there is no doubt that when Mst. Shangari entered into enjoyment of the occupancy rights in succession to her deceased husband, she only enjoyed a widow's estate, but the question now is what is the effect of her own conversion of these occupancy rights into a full ownership in accordance with the provisions of the Act which had come into force in 1952. As regards a male occupancy tenant it has already been held by Harnam Singh, J., in *Faqiria and others v. Mst. Rajo and another* (3), that when an occupancy tenant becomes an owner

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(1) A.I.R. 1924 P.C. 121

(2) A.I.R. 1946 Lah. 180 (F.B.)

(3) 58 P.L.R. 194

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under the provisions of this Act the property becomes his self-acquired property and cannot be treated as ancestral in his hands.

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Even before the Act there was a decision by Scott-Smith and Leslie Jones, JJ., in *Lal and others v. Gauhar and others* (1). In that case the grandfather of the plaintiffs had acquired occupancy rights in certain land and his sons on payment converted these occupancy rights into full proprietary rights. They then sold the land and the alienation was challenged by their sons. It was held that as the occupancy rights merged in the proprietary rights and these were acquired by the alienors themselves and were consequently not ancestral *qua* the plaintiffs, the latter had by custom no *locus standi* to challenge the alienation.

There are also analogous cases relating to widows. The first of these is *Sewa Singh v. Mst. Bholi and others* (2). In that case in a colony area one Uttam Singh was granted *abadkar* rights in a square of land and he died in 1898, leaving a widow and a daughter. In 1899, a mutation was effected in favour of the widow and in 1903, she was granted occupancy rights which, by payment of the necessary money to Government, she converted into full proprietary rights in 1912. Afterwards she gifted the land to her daughter. It was held by Scott-Smith and Broadway, JJ., that under the circumstances the land was the self-acquired property of the widow and that the collaterals of the deceased husband had no status to challenge the alienation made by her in favour of her daughter.

In *Narain Singh and others v. Mst. Sada Kaur and others* (3), one Hari Singh was granted *abadkar*

(1) 5 P.R. 1918

(2) 129 P.R. 1916

(3) I.L.R. 6 Lah. 134

rights in certain colony land and after his death these rights were mutated in favour of his widow in 1904, and in 1906, she acquired occupancy rights which she gifted in favour of her three daughters. They in due course became full owners of the land by paying the necessary sums to the Government. The plaintiffs claiming to be the reversioners of Hari Singh brought a suit challenging the alienation by the widow of the occupancy rights and it was held by Broadway and Jai Lal, JJ., that the widow acquired the occupancy rights for herself and not as representative of her deceased husband and her right to dispose of such self-acquired property was unlimited.

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These cases do not in my opinion differ in any way in principle from the present case and with respect I am of the opinion that a correct view was taken therein. I am, therefore, of the opinion that there is no ground for interference and would dismiss the appeal with costs.

BHANDARI, C.J.—I agree.

Bhandari, C. J.

B.R.T.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

SAMPURAN SINGH,—Appellant.

*versus*THE CHIEF SETTLEMENT COMMISSIONER, DELHI
AND ANOTHER,—Respondents.

Letters Patent Appeal No. 129 of 1957.

Displaced Persons Claims (Supplementary) Act (XII of 1954)—Section 5—Opportunity of being heard—Meaning of—Notice to the party—Whether essential—Notice to the party—Purpose of—Notice not duly served—Effect of—Modes of service—Actual or personal and substituted—Substituted service—When to be resorted to and how to be effected—Case transferred from one tribunal to another—Notice to persons concerned—Whether necessary.

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