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held disentitled to a decree merely because in order to raise funds for the litigation, he has entered into an agreement with another person as to what he would do with the property when he gets it. Any subsequent transfer by the successful plaintiff-pre-emptor after he has obtained the decree may give rise to a fresh cause of action to other pre-emptors. The Court, it seems to me, is scarcely concerned with the question as to how the plaintiff has raised funds for prosecuting the suit. This principle of law was accepted by the trial Court on the authority of *Mst. Gogi* v. *Chiragh Ali* (8), which has later been approvingly referred in *Mst. Dhapan* v. *Shri Ram* (9). The appellant's learned counsel has not drawn our attention to any binding precedent holding to the contrary or casting doubt on this view. This contention thus also fails and is repelled.

As a result of the foregoing discussion, this appeal fails and is dismissed, but in the circumstances of the case, there would be no order as to costs.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before S. B. Capoor and Inder Dev Dua, JJ.

BABY KARAN AMOL SINGH,—*Appellant*

versus

TIKKA RATTAN AMOL SINGH AND OTHERS,—*Respondents*

Regular First Appeal No. 135 of 1956.

1965

May, 12th

Transfer of Property Act (IV of 1882)—S. 41—Principle underlying— Impartible and inalienable estate—Partition and alienation of, effected before the birth of the next heir—Whether can be challenged by him—Cis-Sutlej States—Buria Estate in Ambala District—Whether governed by rule of primogeniture and is impartible and inalienable.

(8) 1950 P.L.R. 387.
(9) 1959 P.L.R. 774.

Held, that the principle underlying section 41 of the Transfer of Property Act, 1882, is commonly understood to be that when one of two innocent persons must suffer from the fraud of a third, he shall suffer who, by his indiscretion, has enabled such third person to commit the fraud. To put it in wider terms, whenever one of two innocent persons must suffer by the acts of a third, he who has enabled such person to occasion the loss must sustain it. In the present case after considering the evidence it has been held that the alienees were not entitled to the protection under section 41 of the T.P. Act.

Held, that in the case of ordinary ancestral property subject only to the customary restrictions on alienation, the next heir has no *locus standi* to challenge the alienations effected prior to his birth. But where the property is inalienable and impartible and also governed by the rule of primogeniture, the next heir will be entitled to challenge the alienations made prior to his birth.

Held, that Buria Estate in the district of Ambala is both inalienable and impartible and succession to it is governed by the rule of primogeniture. The rule of primogeniture was not intended to confine only to the assignment of land revenue but applied to the property itself which was the subject of grant and which was, therefore, not governed by the normal rule of inheritance. The Government, which created these Jagirs on assuming the administration of the Punjab, attached conditions to the holding of them, which make it clear that the holders of the land forming part of the jagir have only life estate the succession to which is regulated by rules and the permanent alienation of which is forbidden.

First appeal from the decree of the Court of the Senior Sub-Judge, Ambala, dated .the 7th day of April, 1956, dismissing the plaintiff's suit and leaving the parties to bear their own costs.

D. N. AWASTHY AND V. C. MAHAJAN, ADVOCATAES, for the Appellant.

H. L. SIBAL, G. P. JAIN, SATISH SIBAL AND RAMESH SETIA, ADVOCATES, for the Respondents.

JUDGMENT.

Dua, J.

DUA, J.—This is a plaintiff's appeal from the judgment and decree of the learned Senior Subordinate Judge, Ambala, dated 7th April, 1956, dismissing his suit for a declaration to the effect that alienations made by Kanwar Lal Amol Singh, defendant No. 2, in favour of defendants Nos. 3 to 8 and 9 to 41 (listed in Schedule 'A'

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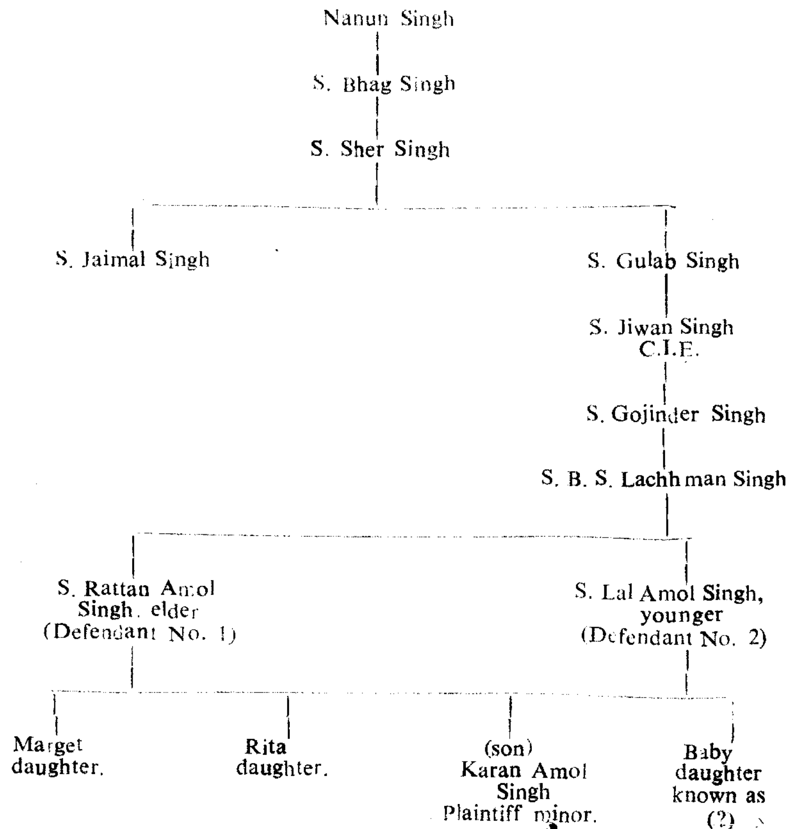
attached to the plaint) are void and ineffective against the plaintiff's rights and interests and shall not be binding on him after the death of defendant No. 1. Capt. Tikka Rattan Amol Singh, or in the alternative for a declaration that the alienations mentioned above being without consideration and legal necessity of the ancestral property are void and ineffective against the plaintiff's reversionary interests on the death of defendant No. 2.

The plaintiff, it may be mentioned is the son of defendant No. 1 and defendant No. 2 is the younger brother of defendant No. 1. It may be helpful at this stage to reproduce the pedigree table of the parties:—



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According to the plaintiff's averments in the plaint, his family is known as *"Bhangi Sikhs"* one of the 12 *Misals* of Sikh Suzerainty and the ancestors of the plaintiff and defendants Nos. 1 and 2 conqurred and seized Buria in the year 1764, annexing the properties in suit. They enjoyed these properties as ruler of the said territory and continued to be the ruling chief of the Buria Estate till the establishment of the British Raj when the Cis-Sutlej Chiefs were reduced to the positions of mediatized rulers or Jagirdars. The Chief of Buria Estate continued to enjoy the land revenue of the said Estate as Jagirdar. The property in suit along with other properties formed a part of Cis-Sutlej Estate, thus forming a part of Cis-Sutlej Jagir, with the result that the family of the plaintiff and of defendants Nos. 1 and 2 is a family of the Sis-Sutlej Jagirdars. The property in suit thus being a Cis-Sutlej Estate, it is Cis-Sutlej Jagir and is impartible and inalienable, with the result that defendant No. 1 on the death of his father held this property on a life tenure only. It is further averred that the rule of primogeniture prevails as a rule of succession in this family and this rule was accepted by the ancestors of the parties as also by the Government,—*vide* Notification Nos. 106 and 107, dated 13th June, 1904, in accordance with an agreement executed by the then encumbant on 4th September, 1861. On the death of S. B. S. Lachhman Singh in 1921, the whole estate in suit along with other properties devolved on defendant No. 1, the eldest son of the deceased on a life tenure only. Defendant No. 1 was minor at the time of his father's death. Under the influence of his mother, Smt. Balwant Kaur, the Buria Estate and defendants Nos. 1 and 2, who were both minors, were placed under the superintendence of the Court of Wards. This superintendence continued till July, 1950. After the release, defendant No. 1, who was still under the influence of his mother, transferred the properties mentioned in paragraph 9 of the plaint to his brother defendant No. 2 and got the mutations of partition entered. This arrangement of partition-mutation virtually amounts to transfer of the property by defendant No. 1 in favour of defendant No, 2. This partition or transfer is, according to the plaintiff, *ultra vires* of the power of defendant No. 1, being in violation of the conditions and terms of the Cis-Sutlej Jagir and is, therefore,

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void. This could neither be officially recorded nor recognised and is accordingly ineffective and inoperative against the plaintiff, who being the eldest son of defendant No. 1, is alone entitled to inherit and succeed in accordance with the rule of succession prevailing in the family. Defendant No. 1 has only life estate and after his death, defendant No. 2 cannot take advantage of this transfer of partition. In order to injure the plaintiff's rights of succession, defendant No. 2 has in conspiracy with and collusion of defendant No. 1 and their mother Smt. Balwant Kaur permanently alienated the lands mentioned in paragraph 11 in favour of defendants Nos. 3 to 13. Having no vaild title of ownership to transfer the property just mentioned, defendant No. 2 was wholly incompetent to alienate the same and it is so even though the earlier partition or transfer be held valid because the Cis-Sutlej Estates and Jagir are impartible and inalienable. These transfers by defendant No. 2 are also described to be invalid, void, ineffective and inoperative beyond the lifetime of defendants Nos. 1 and 2.

In the alternative, it has also been averred that the plaintiff and defendants Nos. 1 and 2 being *Bhangi Jats* and agriculturists, even if they are not found to be governed by the rule of primogeniture in matters of succession, they are certainly governed by the custom of the Zamindars of the Punjab in general and Ambala District in particular in matters of succession by which the last male-holder is not competent to alienate ancestral immovable property without consideration and legal necessity. The alienations mentioned above are described to be without consideration and legal necessity and, therefore, under the Punjab Customary Rules not binding on the plaintiff's reversionary rights after the death of defendants Nos. 1 and 2. Defendant No. 1, so proceeds the averment, having colluded and conspired in getting these alienations effected is not prepared to file a suit for avoiding them. Defendant No. 1 having thus without just cause declined and refrained from challenging these alienations, the plaintiff is competent to file the present suit.

It is broadly on these averments that relief, as noted earlier, is claimed by way of declaration that the alienations mentioned above would not effect the plaintiffs right on the death of defendants Nos. 1 and 2.

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Defendants Nos. 3 to 13, who are alienees from defendant No. 2, have presented a joint written statement raising various pleas including want of *locus standi* of the plaintiff to institute the present suit and also the plea of time-bar. The alienations are asserted to have been effected for consideration and necessity and also as an act of good management. The plea of good management has been sought to be supported by the averment that the new land reform legislation was expected to deprive the alienor of the corpus of the property on payment of a very nominal compensation. The properties were in possession of either occupancy tenants or non-occupancy tenants and some of them could have compulsorily purchased the land in their possession. As defendant No. 2 needed money, he acted wisely in effecting the sales, particularly because this land was not yielding him good return. In this written statement, it has also been denied that the properties in suit were a part of Jagir, in the additional pleas, reliance has been placed on section 41 of the Transfer of Property Act.

Defendant No. 2. has filed a separate written statement in which to begin with, the plaintiff's status as a son of Captain Tikka Rattan Amol Singh and of Smt. Kamaljit Kaur, wife of defendant No. 1, has been denied, assumption of the Estate in question by the Court of Wards has been admitted and allegation of conspiracy and collusion between defendant No. 1 and defendant No. 2 has been denied. It has further been denied that the land in dispute forms part of Cis-Sutlej Jagir, with the result that its inalienability and impartibility has also been denied. The present suit has been described as speculative on the ground that defendant No. 2 has sons who are in existence and after his sons his brother defendant No. 1 would be the next heir. In their presence, the plaintiff, according to the plea, has no chance of succession. It has in addition been pleaded that with the lapse of British paramountcy in the year 1947, the guarantees given by the British Government to the holders of the mediatized estates also lapsed, with the result that from that time onwards the holders of the estates are free to deal with their properties in any manner they like. The rules framed by the British Government governing the Estate of Cis-Sutlej Jagirdars have according to the plea, ceased to be operative after the lapse of British paramountcy. Defendant No. 1, it may be mentioned, did not file any written statement.

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Ignoring the preliminary issues to which no reference has been made at the bar, the following 13 issues were settled on the merits :—

(1) Is the property in suit a part of the Cis-Sutlej Estate and thus forms a part of the Cis-Sutlej Jagir?

(2) If so, is it impartible and inalienable?

(3) Does the rule of primogeniture prevail in the family of the plaintiff and defendants Nos. 1 and 2 under which the eldest son only succeeds to the estate on the death of his father?

(4) If issue No. 2 is found in favour of the plaintiff, was the transfer by defendant No. 1 in favour of defendant No. 2 valid and was any title conferred on defendant No. 2?

(5) Is the land in suit ancestral *qua* the plaintiff?

(6) Were the sales in favour of the defendants Nos. 3 to 8 and the other alienees represented by defendants 9 to 13 effected for valid consideration and necessity?

(7) Were these alienations acts of good management?

(8) Are the plaintiff and defendants Nos. 1 and 2 governed by custom under which the rights of alienation of a proprietor are limited?

(9) Is the Plaintiff a legitimate son of defendant No. 1?

(10) Has defendant No. 1 colluded or estopped himself from challenging the alienation effected by defendant No. 2 in favour of the other defendants?

(11) If issue No. 10 is not proved, has the plaintiff a *locus standi* to sue on the ground that the sales are without consideration and necessity?

(12) Can the plaintiff challenge the alienation made by defendant No. 1 in favour of defendant No. 2 before his birth?

(13) Are the vendees from defendant No. 2 protected under section 41 of the Transfer of Property

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Act or the principles enunciated in that section as purchasers for value and in good faith?

Issues Nos. 1, 4, 5, 8, 9 and 13 were decided in the affirmative and issues Nos. 2, 3, 7, 10, 11 and 12 in the negative. On issue No. 6, out of six alienations, consideration in respect of four was held proved and in respect of the two not proved. Necessity has not been found in respect of any of them. In regard to sales relating to occupancy land by virtue of the Vesting of Proprietary Rights Act (No. 8 of 1953), the occupancy tenants were held to have acquired ownership and the properties covered thereby were held to have ceased to be Jagirs or ancestral property, with the result that the plaintiff could not claim any declaration in regard to them. The suit having been dismissed, the plaintiff has come up on appeal and his learned counsel, has, to begin with, taken us through the record and addressed comprehensive arguments on the question of impartibility and inalienability of the estate and on the applicability of the rule of primogeniture. Uttam Singh Ahlmad Jagir as P.W. 1 has brought to Court the Register General of Jagir of 1887-88 and 1917-18, and produced, *inter alia*, the necessary records relating to Jagir including a copy of order regarding investigation of Buria Jagir. Rattan Chand, Clerk, Deputy Commissioner's office Ludhiana, has produced a correct copy of the circular letter No. 60 dated 26th February, 1857 from the officiating Commander and Superintendent Cis-Sutlej States to the Deputy Commissioner, Ludhiana, attached to file No. 21 XLVIII, Revenue Head marked as Exhibit P.W. 8/1 and Prem Singh, Ahlmad Jagir, Deputy Commissioner's Office Ambala, has produced P. W. 13/1-11 from the register of Jagir. Shri Awasthy has drawn our attention to the Ambala Gazetteer (1923-24 Edition) and has read out various passages tracing the history of Jagir, particularly the Jagir in question, namely Buria, Jagir. Pointed reference has been made to pages 26, 27, 60, 61 and 64 and it is submitted that Buria was a major Jagir. According to his submission, the Court of Wards had started administering the estate during the days of S. Jiwan Singh. Reliance has also been placed by Shri Awasthy on Douie's Land Resettlement Manual from which some passages, *inter alia*, at pp. 39, 45, 48, 50, 63 and 64 have been read. Paragraphs 111 (c), 114, 118, 119 and 145 have been referred to as being directly relevant and helpful. Shri Awasthy has submitted that Buria is a large

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estate and the rule of primogeniture was declared by Shri Jiwan Singh and accepted by the Government as notified in 1904. For proving the declaration by S. Jiwan Singh, we have been referred to a writing dated 3rd July, 1861 executed by him, Exhibit P. 13/8, the relevant part of which declares, *inter alia* :—

> "In the matter of Tabligh (sic) Warasat (succession) by my descendants I have proposed the following method, for future.
>
> The eldest son shall get the Riyasat (state) and the younger son the maintenance. Hence in the presence of the Court and by execution of the agreement I agree that I accept it, in every way that in future the rule (of succession) by my descendants for ever, shall be that the eldest son shall get the Riyasat (state) and the younger son maintenance. The amount of maintenance of younger sons shall be one-eighth of the income from the Riyasat (state) for their lifetime. The commutation fee regarding the entire Ilaqa (state) shall be the responsibility of the Rais. If any other amount be assessed on the Jagir income as due to the Government, then the Rais of the time shall not be competent to get the same from the person getting maintenance. After the death of the person getting the maintenance, the Rais shall be competent to devise the maintenance for his descendants. In case the Rais dies sonless, the brother next to him shall be the Rais in accordance with the rules of the Government. There shall be no deviation from this. The Government may also approve of this device."

A copy of this writing described as an application from the records of the Collector, Ambala, is marked as Exhibit P. 26. With this, the counsel has read Exhibit D. 15 which is the Government Notification Nos. 106 and 107 dated 13th June, 1904 which is in the following terms :—

> "No. 106-Notification:—Whereas, by a written instrument, duly executed and dated July 3rd, 1861, the late Sardar Jiwan Singh, son of Sardar Gulab Singh of Buriya in the Ambala District,

signified on behalf of himself and his family acceptance of the rule of primogeniture in respect of the succession to the assignment of land revenue enjoyed by him and referred to in the said written instrument.

And whereas the said rule of descent involves the devolution of the said assignment of land revenue to a single person as impartible property.

And whereas, in the only succession to the said assignment which has taken place since such acceptance, the said assignment has in fact not devolved otherwise than it would have devolved had the said rule of descent been in force:

The Lieutenant-Governor of the Punjab, in exercise of the powers conferred by section 8 of the Punjab Laws Act, 1872, as amended by Punjab Act No. IV of 1909, is pleased to declare that the said rule of descent shall prevail in the family of the said late Sardar Jiwan Singh in respect of the succession to the said assignment of land revenue.

No. 107:—Notification: In exercise of the powers conferred on him by section 8-A of the Punjab Laws Act, 1872, as amended by Punjab Act No. IV of 1900, the Lieutenant Governor of the Punjab hereby directs that the rule of descent declared by Punjab Government Notification No. 106 dated 13th June, 1904, to prevail in the family of the late Sardar Jiwan Singh of Buriya in the Ambala District shall be subject to the conditions (a) and (b) specified in the said section and to the provisos thereof."

Our attention has next been drawn to Exhibit P.W. 13/1 dated 14th March, 1889 and P.W. 13/9 for the history of Buria Jagir. They are both parts of the report regarding enquiry relating to this Jagir and the latter is the report of the Settlement Commissioner, Karnal, dated 4th April, 1889 from the file regarding enquiry relating to 1887-88 and after referring to the conditions mentioned in the last paragraph dated 26th March, 1889, reliance has been placed

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on paragraph 3, dated 4th April, 1889, at page 158 of the printed paper-book, Vol. I, which according to the counsel unequivocally established the agreement. The appellant's counsel has also referred us to P. W. 13/5, a copy of S. Jiwan Singh's agreement dated 26th October, 1888, which also contains facts and history of Buria estate. Exhibit P.W. 13/7, a statement of the Mukhtiar of Buria dated 12th December, 1888, is referred to for the Jagir being liable to forfeiture. Our attention has been invited to Exhibit P. 23, a Bench decision of the Lahore High Court in *Shiv Ditta Mal* v. *Rajinder Singh, etc.,* R.S.A. 1934 of 1939 which was followed by M. C. Mahajan, J. (as he then was) on 30th May, 1945, in *Daya Ram* v. *Shubh Indraj Singh,* R.S.A. No. 394 of 1944, in which observations from the former decision have been reproduced. After referring to paragraphs 102 and 111 of Douie's Land Administration Manual and to circular No. 60 dated 26th February, 1857, the said observation concludes by saying that the holders of land forming part of the Jagir have only a life estate, succession to which is regulated by rules and the permanent alienation of which is forbidden. M. C. Mahajan, J. on the authority of the above observation concluded that the Jagirdars had no power of allienation beyond their lifetime. These two decisions of the Lahore High Court were followed by a Subordinate Judge, Ambala, is suit No. 140 of 1944-46 decided on 13th February, 1947 (Exhibit P. 25). Exhibit P. 22 is a judgment by my learned brother S. B. Capoor, J. when he was the District Judge at Ludhiana, an appeal from which was decided per Exhibit P. 23. Exhibit Exhibit P. 24 is also a judgment by the District Judge, Ludhiana, dated 24th November, 1945 following the above two judgments of the Lahore High Court. Shri Awasthy has argued that the material on the record fully bears out the applicability of the rule of primogeniture to the case and impartibility as well as inalienability of the estate in question. According to the counsel, there is no distinction between Ludhiana and Ambala so far as the characteristics of Jagirs are concerned and the Court below is wrong in drawing any distinction on this score: the counsel has referred us to the Ambala District Gazetteer by Kensington at pp. 22, 25 and 48. Reference has further been made to section 8, Punjab Laws Act and sections 6 and 7 of the Punjab Jagirs Act, 1941. The Resumption of Jagirs Act 1957, it is argued, only applies to money decrees etc: section 2(1); and independence of our country from the British

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rule is, according to the counsel inconsequential so far as the rule of primogeniture as in vogue in this estate or its impartibility or inalienability is concerned. Reference has for this purpose been made to Article 372 of the Constitution. The Court below, submits Shri Awasthy, is also wrong in considering that the aforesaid circular No. 60 constitutes only executive instructions: it is emphasised that it was not so treated in the decisions mentioned above.

Shri Sibal has controverted the appellant's submission by urging that the notification mentioned above only related to an assignment of land revenue to which alone the rule of primogeniture was intended to apply under S. Jiwan Singh's agreement. Rule of primogeniture as such was never enforced and the Government could, according to the counsel, disapprove the succession whenever it wanted. This circular having been issued before the enforcement of the Punjab Laws Act was, according to the submission, only an executive direction. The distinction drawn by the Lahore High Court in *Sardar Dhanwant Singh* v. *Sant Lal* (1) between the present circular letter dealing with the Cis-Sutlej Jagirs and conquest Jagirs is only a passing observation and, therefore, obiter, says Shri Sibal. The counsel has expressly conceded that the property is inalienable and the Jagir cannot be touched, but the property, he asserts, is certainly partible. Referring to P.W. 13/5, he has emphasised, that the applicability of the rule of pagwand is destructive of the existence of the rule of primogeniture. In support of the property being partible, aid is sought from the judgment, Exhibit P. 23. Douie's Manual has also been extensively referred to by the counsel who has taken us, *inter alia*, through paragraphs 79, 81, 87, 100, 102, 103, 112, 118 to 123, 141, 144, 145 and 149 to 151. The counsel has after reading Jiwan Singh's statement submitted that there is no decision in regard to Buria estate. In P.W.-13/8, Jiwan Singh has only sought Government's approval and Exhibit P. 27 only pertains to Jagir. Emphasis has been laid on the contention that in Exhibit P.W. 13/9, there is only a report and no order of the Government, and indeed the counsel has strongly urged that the Government had never accepted the agreement. Finally, he has concentrated on the submission that the plaint should be strictly construed and if the

(1) A.I.R. 1940 Lah. 492.

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notification in question does not prove the plaintiff's case, the suit must be thrown out. The defendants, according to the counsel, would be prejudiced if the plaintiff is allowed to travel outside the plaint.

After considering the material on the record in the light of the extensive arguments addressed at the bar, I am of the view that the Jagir property in question is both inalienalbe and impartible and succession to it is governed by the rule of primogeniture. That the property is inalienable is expressly conceded by the respondents' learned counsel. Reading together Exhibit P.-13/8, the writing by S. Jiwan Singh, and Exhibit D.-15 the notifications Nos. 106 and 107, the rule of primogeniture must be held to govern the property in question. The submission that the rule of primogeniture was intended to be confined only to the assignment of land revenue and the property itself which was the subject of grant was open to the normal rule of inheritance, is not easy to sustain. If this submission is not to prevail, then there can be no foundation for the estate or the property being partible because in the absence of joint title of S. Rattan Amol Singh and S. Lal Amol Singh, the so-called partition can be nothing else than alienation which is admittedly prohibited. The decisions of the Lahore High Court mentioned above have also consistently laid down that the Government, which created these Jagirs when they assumed the administration of the Punjab, attached conditions to the holding of them, which make it clear that the holders of the land forming part of the Jagir had only a life estate succession to which is regulated by rules and the permanent alienation of which is forbidden. No cogent reason has been shown for not following these decisions and indeed if succession to the land held in Jagir according to the normal rule is forbidden and it is conceded that the property is inalienable, then I am unable to find any cogent reason for holding it to be governed by the ordinary rule of succession and to be partible. In *Shiv Ditta Mal's case*, the Division Bench expressly observed that the holders of the land forming part of the Jagir had only a life estate, the succession to which is regulated by rules and the permanent alienation of which is forbidden. This decision was followed by M. C. Mahajan, J. (as he then was) in *Daya Ram's case*. The alleged partition, therefore, must be held to be ineffective as against the plaintiff-appellant.

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The argument that after independence the conditions on which the holders of Jagir-land held it, must be deemed no longer to be operative, has merely to be stated to be rejected. It is not as if on India becoming independent, a fresh sovereignty has come into power by conquest and all the previous rights and obligations are obliterated: grant of independence by means of parliamentary statute has not brought about the drastic change which the counsel suggests in the form of doing away with the restrictions imposed on the holders of Jagir-land in the Cis-Sutlej States. The respondents' contention that the holder of Jagir-land has automatically become an absolute owner on the wake of independence is, therefore, also without merit and is repelled.

This brings me to the question of want of necessity and consideration of the alienations. In view of the conclusion that the Jagir property is inalienable and impartible and is governed in matters of succession by the rule of primogeniture, the question of necessity and consideration loses much of its importance; the plea on this score, it may be remembered, was only taken in the alternative, but since the matter has been argued at the bar, it had better be discussed. Necessity has been negatived by the Court below and has not been attempted to be established on behalf of the respondents before us in this Court. Effort has only been made to make out a case of good management on the ground that legislation on land reforms was expected and in order to save the property from being taken away in pursuance of the expected legislation, it was an act of foresight and wisdom to sell away a part of the property. Reference has also been made to Exhibit D. 2, a sale-deed dated 27th December, 1951 in which it is stated that Lal Amol Singh was deriving no particular gain from the land and was not receiving full produce. It is also added that the tenants could not be ejected and there was great hardship and difficulty in realising produce from them. I am unable on the basis of these recitals alone to find that the sales in question were an act of good management. It is significant that no evidence has been pointed out on the record to substantiate these recitals or otherwise to establish that it was prudent in the larger interests of the Jagir property to enter into the transactions of sales in question. Even Rattan Amol Singh and Lal Amol Singh have not told the Court on oath as to how the sales

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in question can be considered to be acts of good management dictated by prudence. The short span of time within which such large property has been alienated for consideration running in to lakhs would seem to demand an explanation on oath by Lal Amol Singh as to what had impelled him to sell the property and when and how the price realised was spent or utilised. The Court is deprived of this information and is left merely to guess. The Court below thus appears to be right in holding the sales not to constitute an act of good management.

In so far as consideration of the sales is concerned, Shri Awasthy has submitted that even as regards the sales for which consideration has been *upheld by the Court below. the evidence on the record does not prove receipt of full consideration except what has been paid before the Sub-Registrar registering the sale-deeds. According to the counsel, the sales in question are an act of reckless extravagance and suggest that Lal Amol Singh is a spend-thrift and has deprived the reversioners of the ancestral property without just cause. The submission does seem to require consideration but since no necessity has been established, it is unnecessary to express any considered opinion on this precise point.

As regards the applicability of section 41, Transfer of Property Act, Shri Awasthy has urged that the appellant has done nothing so as to estop him from claiming relief and the conduct of his father Rattan Amol Singh cannot in law bind him. He has also challenged good faith and reasonable care on the part of the alienees. According to him, it is a matter of common knowledge that Buria estate is an inalienable Jagir and on the facts and circumstances of this case, section 41, T. P. Act cannot be pressed into service by the alienees. He has relied on the *ratio decidendi* of *Jit Singh* v. *Kalapati* (2). He has further submitted that this section is inapplicable to a contingent right-holder. Shri Sibal has on the other hand submitted that if Rattan Amol Singh was estopped under section 41, T.P. Act, then his son must be held bound by his father's estoppel. He has relied on *Gurbinder Singh and others* v. *Lal Singh and others* (3) *and Shamsher Chand* v. *Bakhshi Mehr Chand*, (4).

(2) A.I.R. 1962 Punj. 46.
(3) I.L.R. 1958 Punj. 2258=A.I.R. 1959 Punj. 123.
(4) A.I.R. 1947 Lah. 147 (F.B.).

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I find it somewhat difficult to hold that section 41, T.P. Act, can on the facts and circumstances of this case operate to the prejudice of the plaintiff. Our attention has not been drawn to any evidence on the record on which to found good faith and reasonable care on the part of the alienees. The principle underlying this section is commonly understood to be that when one of two innocent persons must suffer from the fraud of a third, he shall suffer who, by his indiscretion, has enabled such third person to commit the fraud. To put it in wider terms, whenever one of two innocent persons must suffer by the acts of a third, he who has enabled such person to occasion the loss must sustain it. It is not suggested that the plaintiff did anything to facilitate the sales in question. If Rattan Amol Singh himself did not possess the right to transfer the property, it is not explained on behalf of the respondents, how he could by his consent, express or implied, confer a better title than he himself possessed on Lal Amol Singh. To prejudice the plaintiff's right as a result of Rattan Amol Singh's conduct means going a step still further. And then nothing cogent and convincing has been urged to persuade me to hold that all the alienees acted with reasonable care and in good faith. The sales in respect of which consideration is not proved, section 41, T.P. Act would clearly be inapplicable even on its plain language. In regard to the other sales also, our attention has not been drawn to any evidence which would absolve alienees as ordinary men of business from enquiring into the title of their alienors. That the property in question is Jagir property can scarcely be concealed from the alienees or be unknown to them. It would in the circumstances be for them to explain as to how and why they thought the property to be alienable, no explanation, however, has been pointed out to us on their behalf. Section 41, T.P. Act, is accordingly inapplicable to the present case and the conclusion of the Court below applying it must be reversed.

This brings me to the question of the plaintiff's *locus standi* to challenge the partition and the sales in question. It has been argued on behalf of the respondents that on S. Lachhman Singh's death, entry of succession was made in 1921 by which the property was mutated half and half in favour of Rattan Amol Singh and Lal Amol Singh who were minors represented by their mother. The property

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was in the circumstances managed by the Court of Wards. This mutation, which is not challenged in this suit, is according to the respondents not an alienation. In 1940, partition was effected between the two brothers and on the basis of the entries in the revenue papers this partition too would not amount to an alienation. In any event, so argues the counsel, the plaintiff having not been born at the time of the original mutation of succession or at the time of the partition, he has no *locus standi* to challenge the partition. Reference has in this connection been made to *Kunwar Dharu Indar Pal Singh*, v. *Firm Badri Das Sohan Lal* (5) and *Firm Chuni Lal Rali Ram* v. *Altaf-ul-Rahman* (6). It may at this stage be pointed out that the respondents' learned counsel has very fairly conceded that in case the property in dispute is held to be inalienable and impartible, then the plaintiff would have *locus standi* to claim relief sought in the present suit. It appears to me that if the property in question were to be treated as ordinary ancestral property subject only to the customary restrictions on alienation, then the plaintiff would not have *locus standi* to challenge the alienations prior to his birth, but in the present case, as we have held the property to be inalienable and impartible and also governed by the rule of primogeniture, this finding would not affect the plaintiff's right to claim the relief sought on that basis.

The respondents' counsel has also raised the question of limitation and adverse possession. The plea of limitation was raised by the alienees and the plea of adverse possession was raised by Lal Amol Singh. The latter alleged adverse possession against Rattan Amol Singh and pleaded that Rattan Amol Singh's son was incompetent to challenge the alienations. It is, however, significant that no specific issue was claimed on these pleas and naturally, therefore, nothing has been said by the Court below on these pleas. On behalf of the appellant reliance has been placed in this Court on *Raja Rameshwar Rao* v. *Raja Govind Rao* (7), for the submission that in the case of a Jagir when a grant is continued from generation to generation and each grantee holds it for his life, the limitation

(5) A.I.R. 1943 Lah. 281.

(6) A.I.R. 1939 Lah. 290.

(7) A.I.R. 1961 S.C. 1442.

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against any grantee starts to run from the date his title arises. The plaintiff's right accordingly cannot be jeopardised by anything that Rattan Amol Singh may have done. This decision does seem to negative the respondents' contention on whose behalf nothing convincing has been urged as to how on the present record they can at this stage ask this Court to hold the suit to be barred by time or that the defendents have matured their proprietary title by adverse possession.

In the result, this appeal succeeds and allowing the same, we reverse the judgment and decree of the Court below and hold that the property in question is inalienable and impartible and the succession to it is governed by the rule of primogeniture. The partition and the alienations impugned in this suit would accordingly not effect the plaintiff's right as the eldest son of Rattan Amol Singh. In the peculiar circumstances, we leave the parties to their own costs in this Court.

Capoor, J.

S. B. CAPOOR, J.—I agree.

B.R.T.

FULL BENCH

Before S. S. Dulat, A. N. Grover and Prem Chand Pandit, JJ.

LIFE INSURANCE CORPORATION OF INDIA,—*Appellant*

versus

FIRM TIRATH RAM & SONS AND ANOTHER,—*Respondents*

Letters Patent Appeal No. 274 of 1960.

1965

May, 28th.

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—*Ss.* 17 *and* 18—*Displaced person obtaining loan from a Bank in Pakistan before* 15*th August,* 1947, *by pledge of his goods—Goods insured against riot and civil commotion for the amount of the loan taken—Goods lost as a result of riots in Pakistan—Insurer—Whether liable to pay the amount of the policy—Displaced person—Whether can make application under S.* 18—*Creditors of the displaced person—Whether necessary to be joined as parties—Contract of insurance against fire or riot—Obligation of the insurer under, stated.*