The Ittihad Motor Transport, Ltd. v. Karnal Co-operative Transport Society

Mehar Singh, J.

action in favour of permit-holders as in this case, can be spelled out. The Act, in no provision, says that the conditions that are to be imposed in a permit are to be for the benefit of some other permit-holder on a different route. No provision in the Act justifies consideration of any such benefit as is claimed by the plaintiff company in this case. If in actually granting permits the Regional Transport authority takes into consideration such matters and adjusts the grant of permits to different claimants on different routes, then any such benefit arising out of such adjustment is not a benefit accruing in consequence of statutory provisions upon which a right of action can be founded but is, if at all it can be described as a benefit, a benefit allowed as a measure of expediency or convenience by the authority concerned. It is not this type of benefit upon the basis of which the case can be brought under the exception to the general rule that where a statute provides remedy by way of penalty for breach of statutory provisions, then that remedy, and no other, is to be looked to.

In consequence, I would dismiss the appeal with costs.

FALSHAW, J.—I agree.

D. K. M

Falshaw, J.

APPELLATE CIVIL.

Before Chopra and Gosain, JJ.

MST. KESRO, WIDOW OF CHATRU,—*Defendant-Appellant*

versus

MST. PARBATI (DAUGHTER OF PHULGARI),—*Plaintiff-Respondent.*

Regular Second Appeal No. 350 of 1949.

1957

August, 29th

Punjab Custom—Widow—Unchastity—Gaddis of Kangra —Unchastity, whether causes forfeiture—Whether such forfeiture causes extinction of the line of the donee—Gift—Reversion—Rule whether applies to non-ancestral property —Gift made to a stranger, whether reverts.

Held, that among Gaddis of Kangra District there exists a custom by virtue of which a widow on becoming unchaste forfeits her life interest in the property of her husband. However, on the forfeiture of the life estate the line of the donee does not become extinct. The line of the donee only becomes extinct when all the descendants in that line die out. Mere forfeiture of the life interest by reason of unchastity of the widow does not cause extinction of the line of the donee, as she still remains the widow of her husband.

Held further, that non-ancestral property does not revert to the line of the donor on the donees line becoming extinct as the donor had an unresrircted power of alienation with regard to it.

Held, also that according to custom, property gifted to stranger does not revert to the donors line.

Second appeal from the decree of Shri Chakan Lal, District Judge, Hoshiarpur, dated 12th February, 1949, affirming that of Shri Harish Chand, Senior Sub-Judge, Dharamsala, dated 18th March, 1948, awarding the decree for declaration to the plaintiff against the defendant with costs.

D. K. MAHAJAN and D. N. AVASTHY, for Petitioner.

K. C. NAYYER and LABH SINGH, for Respondent.

JUDGMENT.

GOSAIN, J.—This second appeal arises in the following circumstances. One Phulgari, a Rajput Gaddi of Kangra District, made a gift of the suit land, 22 kanals 19 marlas in area, to Chatru and Birbal by means of a mutation, Exhibit D. 1, attested on the 3rd of November, 1935. Phulgari had no male descendant and had only a wife Mst. Bipto who filed the present suit. Chatru had earlier executed an agreement, Exhibit P. 1, in favour of Phulgari by virtue of which he had undertaken to look after Phulgari and his wife Bipto and to perform their funeral ceremonies after their respective deaths. Some time after the gift, Birbal died and his share of the land was mutated in favour of his brother Chatru by mutation, Exhibit D. 2, attested on the 29th of November, 1936. In the beginning of 1937, Chatru also died

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and on the 9th of August, 1937, mutation of the entire land was effected in favour of Mst. Kesro widow of Chatru. It may be mentioned here that Birbal had died without leaving any issue or even a widow. On the 10th of January, 1944, the present suit was brought by Mst. Bipto for a declaration that she was the owner and in possesion of the property in suit and was entitled to hold it as such. Her pleas were that no gift at all had been made by Phulgari and that at any rate he had no power to make a gift. She averred that the gift if at all, was supposed to have been made in return of services, but by the death of Birbal and Chatru very soon after the gift it had become impossible for Chatru and Birbal to render any services to Phulbari and, therefore, the gift had become revocable. She, further, averred that Mst. Kesro had become unchaste and under custom she had forfeited all rights to the property which must in any case revert to the donor's family.

The suit was hotly contested by the defendant who alleged that the gift had been actually made by Phulgari and had been acted upon. The defendant also pleaded that the plaintiff was not in possession of any part of the property and, therefore, the suit for declaration did not lie. As many as five issues were framed by the trial Court who ultimately came to the findings that the plaintiff was in possession of a part of the property in dispute, that the suit could proceed in the present form, that the defendant Mst. Kesro was proved to have become unchaste and that the unchastity, in the circumstances, caused forfeiture of all her rights, that the gift was not a conditional one and could not, therefore, be revoked by the plaintiff. On the above findings the trial Court passed a decree in favour of the plaintiff. The learned District Judge dismissed the appeal on the finding

that the gift was not conditional and was not revocable but that the defendant was proved to be unchaste and that the property, therefore, reverted to the donor's family. A second appeal was filed in this Court against the decree of the learned District Judge and was registered here as Regular Second Appeal No. 809 of 1945. This appeal came up for final disposal before Achhru Ram, J., on the 4th of November, 1946, and he was of the opinion that the case had not had a proper trial and that proper issues had not been framed by the learned trial Judge. The following remarks made by him are pertinent:—

> "In arguing the appeal the learned counsel for the defendant-appellant urged, and rightly, that before the gifted land could revert to the donor's line it must be proved that the donor had not an unrestricted power of disposition over the property gifted by him at the time he made the gift and that the donee was one of the relations contemplated in the Full Bench Judgment *Sita Ram and others* v. *Raja Ram* (1). In answer to this contention of the learned counsel the respondent's counsel pointed out that the question of the revertibility of the gift was never put in issue and he was never called upon to prove that the donor had not an unrestricted power of disposition over the suit property and that the donees were related to him in the manner indicated above. This contention of the counsel is not without force and, as I have pointed out above, the issue as framed is certainly misleading."

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Ultimately Achhru Ram, J., added four new issues as under:—

6. Whether the gift made by the husband of the plaintiff in favour of Chatru and his brother was not followed by delivery of possession ?

7. If so, did it pass any title to Chatru and his brother ?

8. What is the effect of the defendant's unchastity on her rights in the property in dispute ?

9. Does the property in suit revert to the plaintiff in case it is held that by reason of her unchastity the defendant's rights therein have been lost ?

and remanded the case to the trial Court with the direction that fresh evidence may be allowed on the said issues and the case be decided in light of the same. On the 18th of March, 1948, the trial Court again decreed the plaintiff's suit. On the new issues the trial Court recorded the findings that the gift had been followed by possession and that title in property did pass to Chatru and Birbal, that unchastity of Mst. Kesro resulted in the forfeiture of her life estate and that Mst. Bipto was entitled to revoke the gift. It appears that the trial Court misunderstood the scope of issue No. 9 and recorded somewhat dubious sort of finding. An appeal was filed again to the learned District Judge. Findings on issues Nos. 6 and 7 were not agitated before him and the only points raised before him were those covered by issues Nos. 8 and 9. It was argued before him that the unchastity of a widow amongst Rajput Gaddis of Kangra District did not entail forfeiture of her life

estate and that the gifted property could not revert to the line of the donor. Mst. Bipto had died after the order of remand but before the decree passed by the trial Court. Her daughter Mst. Parbati had applied to be brought on record and the trial Court had ordered that she may be impleaded as plaintiff. No objection at that time had been taken by the defendant against this course being adopted. Before the learned District Judge, however, the defendant raised a point that Mst. Parbati was not entitled to continue the suit and should not have been impleaded as a plaintiff. The learned District Judge rightly disallowed that point to be raised at the stage of appeal. Mst. Kesro defendant has now come up to this Court in second appeal.

Mr. Daya Kishan Mahajan on behalf of the appellant raised the following four points before us:—

(1) that by virtue of the custom by which Gaddis of Kangra District are governed, unchastity of a widow does not cause forfeiture of her rights in the husband's property;

(2) that unchastity does not mean the extinction of the line of the donee and that the property does not revert to the line of the donor merely because of unchastity ;

(3) that the property in this case was not proved to be ancestral and, therefore, it was not proved that the donor had not an unrestricted power of alienation *qua* this property ; and

(4) that the donees in the present case were not relations contemplated in the Full

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Bench Judgment, *Sita Ram and others* v. *Raja Ram* (1), but were more or less strangers and, therefore, the question of reversion to the donor's line could not and did not arise.

On the first point our attention was drawn to para 31 of Rattigan's digest of Customary Law and section 43 of Mulla's Hindu Law. In the present case it had not been contested anywhere that the parties were not governed by custom and unless there was a gap in the Customary Law, it is not possible to proceed on the basis of Hindu Law. In para 31 of Rattigan's Digest in Customary Law, it is stated as under:—

> "Amongst Hindus generally, and less frequently amongst Muhammadans, uncondoned adultery in the husband's lifetime deprives a widow of her right to succeed to his estate; and her unchastity as a widow sometimes causes a forfeiture of her life interest in that estate. But the onus is on those who assert the existence of a custom sanctioning forfeiture."

General custom, therefore, is that unchastity of a widow does not necessarily cause a forfeiture of her life interest in the life estate of a widow and the onus is on those who assert the custom sanctioning forfeiture. Our attention has, however, been drawn to question No. 47 and its answer as recorded in Customary law of Kangra District by L. Middleton, Settlement Officer, Kangra District. Question No. 47 is as under:—

> "What is the effect of unchastity upon the rights of a widow to the estate of her husband ? What is the effect of her remarriage ?"

(1) 12 P.R. 1892.

The answer to the above question is as under:—

> "Generally a widow on re-marriage losses her estate; also unchastity, if proved, e.g., by the widow leaving her husband's house or by her having an illegitimate child, involves loss of her husband's estate. The Thakars, Rathis, Jats and Ghirths of Nurpur Tahsil assert that re-marriage involves loss of her estate, but if she has an illegitimate child she cannot be ejected from her husband's estate of which she retains possession provided she lives in his house."

The answer clearly shows that unchastity on the part of a widow, if proved, involves loss of her husband's estate. One main way in which unchastity on the part of a widow could be proved was by her having an illegitimate child. In the present case it is admitted that Mst. Kesro got an illegitimate child several years, after the death of her husband. Several instance are recorded under answer to question No. 47 but regarding Gaddis there is only one instance at page 88 of the book and that is as under:—

> "Mauza Bandla.—Mussammat Lohkari, widow of Bhanga, lost her husband's property by unchastity or re-marriage."

This instance, by itself, does not help us much because of the fact that it does not make it clear whether she lost it by unchastity or by re-marriage. There could be no doubt that by re-marriage a widow under the Customary Law does forfeit her husband's estate. At page 89, however, a note is recorded by the compiler which reads as under:—

> "The principle is now well established that among Rajputs and Brahmans and even

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other tribes also unchastity even though not coupled with abandonment of her husband's house involves the forfeiture of her property as a widow."

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That a custom like this exists in Kangra District is also clear from a judgment of this Court reported in *Mahajan*, v. *Mst. Purbo and others* (1), There are other cases of other districts also on this point but they are not very helpful inasmuch as we are concerned in this case with the custom as prevailing among Gaddis of Kangra District. A presumption of correctness attaches to the *riwaj-i-am* unless it is proved to be not a trustworthy document and I, therefore, feel inclined to hold that amongst Gaddis of Kangra District there exists a custom by virtue of which a widow on becoming unchaste forfeits life interest in the property of her husband. I am not however, willing to hold that on the forfeiture of the life estate the line of the donee becomes extinct. In all the reported cases the line of the donee has been held to become extinct when all the descendants in that line die out. There is not a single reported case in which a line was held to have become extinct by the mere forfeiture of the life interest of the widow. In *Mst. Ram Devi* v. *Mst. Shiv Devi* (2), it is remarked by Robertson, J., as under:—

> "There is no doubt that a distinction must be drawn between the nature of the forfeiture of a widow's estate by a widow who re-marries and by a widow who is proved to be unchaste. In the case of a forfeiture by re-marriage throughout the Province the woman ceases altogether to by the widow of her deceased husband loses all rights and every kind of interest

(1) I.L.R. 11 Lah. 424.
(2) 108 P.R. 1913.

> in his estate, and becomes a member of another family. The case of forfeiture by unchastity, where it is established, is different. The woman does not cease to be the widow of her deceased husband nor does she become a member of another family. By custom she forfeits a special form of maintenance recognised in this Province, i.e., the possession for life of her husband's estate and it is a question, more often answered perhaps in the affirmative than in the negative, whether, she is not even then entitled to maintenance from her husband's relatives."

The above remarks clearly support my view that the forfeiture by re-marriage and forfeiture by unchastity stand on two different footings. In one case the woman ceased to be the widow of her deceased husband and becomes a member of another family, but in the other case she still remains the widow of her husband.

The present case, however, can be decided on the short ground that it is not proved at all that the property in question was ancestral and that the donor had not an unrestricted power of alienation over the same. This point was expressly raised before Achhru Ram J. and the learned counsel appearing for the plaintiff contended that as there was no issue regarding reversion of the gift he could not lead evidence on the two important points on the basis of which reversion could be allowed, namely, (1) that the property in question was one over which the alienor had not an unrestricted power of alienation, and (2) that the gift had been made to a relation of the type contemplated in the Full Bench Judgment, *Sita Ram and others* v. *Raja Ram*, (1). He expressly prayed for a definite issue

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on 'reversion' being framed to enable him to lead evidence on the foresaid two points. Achhru Ram, J., framed issue No. 9 relating to this point and remanded the case for fresh evidence on this issue as also on the three other issues, namely, 6, 7 and 8 which he framed along with issue No. 9. After the remand an attempt was made to prove that the land was ancestral and an excerpt was actually got prepared and produced. All that the excerpt showed was that in 1852 portion of the land in question was held by Jawahar and Phulgari in equal shares. The plaintiff made no attempt whatever to prove that Jawahar and Phulgari were the only two sons of their father. She did not produce any pedigree-table or any other evidence to prove this fact. In absence of the definite evidence with regard to the point that the property in the very first Settlement stood in the names of all the sons of the common ancestor no presumption can be drawn that the property had come to Jawahar and Phulgari from their father. It may be that Jawahar and Phulgari had other brothers and that the property in question was acquired only by Jawahar and Phulgari in equal shares. Some of the property in question was recorded in the name of sand behand which, we are informed, means the proprietary body of the village. Some other property is recorded in the name of Guru son of Pritu. This evidence is hardly sufficient to prove that the property in question is ancestral and unless this fact is proved it cannot be found that the alienor had not an unrestricted power of alienation with regard to the property in question, and this takes away one of the chief basis on which the gifted property can revert to the donor's family.

The gift in this case was made in favour of Chatru and Birbal. There is nothing to show on record how these two people were related to Phulgari. Evidence of P.W. 10 and D.W. 7 and D.W. 8 was read out to

us for the purpose of showing that Chatru and Birbal were collaterals of Phulgari. Evidently the witnesses aforesaid could not possibly have any personal knowledge about the matter and their evidence would be nothing more than hearsay. We reject this evidence altogether and in any case it is entirely insufficient and too vague for basing any finding with regard to Chatru and Birbal not being complete strangers. It is well known that according to custom property gifted to a stranger cannot possibly revert to the donor's line. See in this connection *Dasa* v. *Musammat Hiran.* (1), *Mula Singh* v. *Amin Chand,* (2), and *Thakar Singh* v. *Buta Singh and others,* (3). Even if it was found that Chatru and Birbal were distant collaterals of Phulgari, I do not consider that they are relations of the type contemplated in the Full Bench Judgments reported as Sita *Ram and others* v. *Raja Ram* (4), and *Gainda and another* v. *Mt. Jai Devi and another* (5), It is remarked at page 60 of *Sita Ram and others* v. *Raja Ram* (4), as under:—

> "Other tribes go further, and allow gifts to, or adoption of, certain males closely connected with them in the female line such as daughters' sons or husbands' or even sisters' sons. But I entirely concur with the remarks of Sir Meredyth Plowden, which I have already quoted, that where this is done it is done from a tender feeling to benefit the direct descendants of the old stock, and not in order to benefit the family into which a daughter of the tribe happens to have married."

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(1) 47 P.R. 1919.
(2) I.L. 2 Lah. 284.
(3) I.L.R. 16 Lah. 373.
(4) 12 P.R. 1892.
(5) A.I.R. 1944 Lah. 90.

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The rule of reversion is really limited to gifts made in favour of relations of this type. I know of some cases in which property gifted to a Khanna damad or a resident son-in-law also reverted, but the basis of the said judgements also remains the same as the one of *Sita Ram and others* v. *Raja Ram* (1). For the aforesaid reasons I am of the opinion that the property in the present case does not revert to the donor's line and that the plaintiff has consequently no right to the same. I would, therefore, allow this appeal and dismiss the plaintiff's suit with costs throughout.

I may note that almost at the conclusion of the arguments an application was presented to us purporting to be one under rules 25 and 27 of Order 41, Civil Procedure Code, praying for opportunity for the additional evidence on the point of the nature of property. As I have pointed out above, Achhru Ram, J., gave that opportunity to the parties and if they failed to avail of it, they are no entitled to another opportunity at this stage. The said application is also dismissed.

Chopra, J.

CHOPRA, *J.*—I agree.

D. K. M

CIVIL WRIT

Before Falshaw, J.

SHAMA MAGAZINE, ASAF ALI ROAD, NEW DELHI,—*Petitioner*

versus

THE STATE OF DELHI AND OTHERS,—*Respondent.*

Civil Writ No. 122-D of 1956.

1957

Sept., 3rd

Industrial Disputes Act (XIV of 1947)—Section 11(3) and Rule 21 of the Rules framed under the Act—Effect of—Production of documents—Provisions governing—What documents a party can be ordered to produce—Order for production of Income-tax, assessment returns if can be passed.

(1) 12 P.R. 1892.