

Hukam Chand *v.* The State
Kapur, J.

a complaint filed particularising the person who has committed the offence and the nature of the article which has been sold. That has not been done in the present case. Thus the prosecution was without jurisdiction and must, therefore, be quashed. I would rely for this purpose on a judgment of this Court in *Dwarka Das v. The Union of India and others* (1), where it was held dealing with section 80 of the Civil Procedure Code that the language is imperative and absolutely debars a Court from entertaining a suit instituted without compliance with its provisions. One has only to substitute section 19 of the Pure Food Act and the result will be that the proceedings against the petitioner were without jurisdiction. I would, therefore, quash the proceedings, allow the petition and make the rule absolute. The fine, if paid, shall be refunded.

APPELLATE CIVIL

Before Bishan Narain and Chopra, JJ.

HARI KISHEN AND OTHERS,—*Defendants-Appellants*

v.

HIRA AND OTHERS,—*Plaintiffs-Respondents*

Regular Second Appeal No. 421 of 1949.

1956

Dec. 12th

Hindu Succession Act (XXX of 1956)—Section 14—Object and scope of—Whether applies where the female Hindu had parted with possession of property before the coming into force of the Act—Section 14 whether retrospective—‘Possessed’ meaning of.

Practice—Alienation by widow—Declaratory decree passed in favour of the nearest reversioners—Order of succession changed during the pendency of Second Appeal—Effect of, on declaratory decree.

Custom—Widow—Alienation—Rs. 3,200 out of the sale consideration of Rs. 5,000 raised for Tirathyatra—Whether Rs. 3,200 can be held to be for necessity.

(1) 1953 P.L.R. 267 at page 275

Held, that section 14 contemplates that if at the time Hindu Succession Act, 1956, came into force a female Hindu was possessed of any property, then she shall hold it in future as full owner. This provision of law will not restore to her any property or any rights in the property which she had parted with before the Act came into force. It is therefore clear that section 14 of the Act can have no applicability to a case where a female Hindu had sold the property before the Act came into force and had parted with its possession. As long as she was in possession of the property, it could be said that she was possessed of it and therefore in future could hold it as full owner, but after its sale it cannot possibly be said that at the time when this statute came into force she was possessed of the property and if that be not so she can obviously not hold it in future either as full owner or as limited owner. The transaction of sale is binding on her during her lifetime and she has no rights left in this property on account of the sale. Neither under custom nor under any provision of law this property which has been sold outright by her can revert to her.

Held further, that section 14(1) of the Hindu Succession Act, is retrospective in effect and a Hindu female in possession of any property becomes a full owner thereof under it.

Held also, that it is true that Courts should in the exercise of their discretion refuse to grant a declaratory decree to the effect that an alienation by a widow shall not effect the reversionary rights after her death if the chances of the collaterals avoiding the transaction are very remote and the Court considers these chances to be merely speculative. The persons who are now likely to succeed under the new Act could not have filed the suit to avoid the alleged alienation at the time that the present suit was filed as they had no right to succeed to the property at that time. The declaration given in this suit will ensure to the benefit of any person succeeding to the property after the death of the vendor and even if the plaintiffs do not succeed to the property it cannot be said that at this stage the suit should be dismissed as speculative.

Held also, that there can be no doubt that the payment of Rs. 3,200 to the vendor for the purposes of going on *tirath yatra* cannot be considered to be for legal necessity.

Regular Second Appeal from the decree of Shri Gurdial Singh, Ex-Officio Additional District Judge, Ambala, dated the 28th February, 1949, affirming that of Shri Tara Chand Aggarwal, Sub-Judge, 1st Class, Ambala, dated the 12th December, 1947, granting the plaintiff's suit.

H. L. SARIN and K. S. THAPAR, for Appellants.

K. L. GOSAIN and RAJ KUMAR, for Respondents.

JUDGMENT

Bishan Narain,
J.

BISHAN NARAIN, J.—Salig Ram was the last male holder of the property in dispute in this litigation. On his death his widow Mst. Puni entered into possession of this property. By sale deed, dated the 7th June, 1946, she sold it to Ram Chand, etc., for Rs. 5,000 and gave possession to the vendees. Sale deed mentions the necessity for this transaction as payment to previous mortgagees and requirement of money for maintenance of the vendor and for her going on *tirath yatra*. According to the documents Rs. 3,200 were paid in cash to the vendor and Rs. 1,800 were left with the vendees for payment to the previous mortgagees. The present suit was filed on the 21st August, 1946, by Hira, etc., for the usual declaration that this sale would not affect their reversionary rights on the ground that it was effected without consideration and legal necessity. The vendees contested the suit on various grounds. The suit, however, was decreed by the trial Court on the findings that parties were governed by custom in matters of inheritance and alienation, that the vendees had not paid Rs. 1,800 to the previous mortgagees and that the payment of Rs. 3,200 to the vendor was not for legal necessity. The trial Court also held that the plaintiffs were the collaterals of the last male holder and were competent to challenge the sale. The vendees appealed to the District Judge, Ambala, but

without success, and they have now filed this second appeal in this Court.

Hari Kishen
and others

v.

Hira
and others

The learned counsel for the appellants half-heartedly urges that the findings given by the lower Courts are erroneous. These are, however, findings of fact and nothing has been urged before us to vitiate these findings. There can be no doubt that the payment of Rs. 3,200 to the vendor for the purposes of going on *tirath yatra* cannot be considered to be for legal necessity. The learned counsel, however, bases his arguments on the enactment of the Hindu Succession Act (No. 30 of 1956).

Bishan Narain,
J.

The learned counsel first urges that since the enactment of the Hindu Succession Act the order of succession has been changed and the plaintiffs have now very remote chance of succeeding to the property and therefore the suit should be dismissed as speculative. It is, however, conceded that at the time the suit was filed, the plaintiffs were the nearest collaterals of the last male holder. It is true that Courts should in the exercise of their discretion refuse to grant a declaration to the effect that an alienation by a widow shall not affect the reversionary rights after her death if the chances of the collaterals avoiding the transaction are very remote and the Court considers these chances to be merely speculative. This principle, however, is not applicable to the present case when it is conceded that the suit when filed could not be considered speculative. The persons who are now likely to succeed under the new Act could not have filed the suit to avoid the alleged alienation at the time that the present suit was filed as they had no right to succeed to the property at that time. The declaration given in this suit will ensure to the benefit of any person succeeding to the property after the death of

Hari Kishen vendor and even if the plaintiffs do not succeed
and others to the property it cannot be said that at this stage
 v. the suit should be dismissed as speculative. I
Hira therefore, reject this contention of the learned
and others counsel.

Bishan Narain,
J.

It is then urged that under section 14(1) of the Hindu Succession Act it should be held that since the passing of this Act Mst. Puni became full owner of the property with retrospective effect and, therefore, the sale by her on the 7th June, 1946, cannot be avoided by the collaterals now. Section 14(1) of the Hindu Succession Act reads—

“14(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner”.

The sub-section thereafter explains the “property” mentioned in this sub-section. Obviously this sub-section is retrospective in effect and if Mst. Puni is in possession of any property of her husband she has become full owner thereof under this provision of law. In the present case, however, Mst. Puni, had sold the property now in dispute long before the Act came into force and had parted with its possession at the time of the sale. The question arises whether she can be said to be in possession of the property so that in future she could hold it as full owner. As long as she was in possession of the property, it could be said that she was possessed of it and, therefore, in future she could hold it as full owner, but after its sale it cannot possibly be said that at the time when this statute came into force she was possessed of the property and if that be not so she can obviously not hold it in future either as full owner or as

limited owner. It is true that the sale has been held to be without necessity in the present case and it has been avoided successfully by the collaterals. This circumstance, however, cannot restore the possession of the property to Mst. Puni on the date that the Act came into force to enable her to hold it in future as full owner. The transaction is binding on her during her lifetime and she has no rights left in this property on account of the sale. Neither under custom nor under any provision of law this property which has been sold outright by her can revert to her. In my opinion section 14 contemplates that if at the time the Hindu Succession Act, 1956, came into force a female Hindu was possessed of any property, then she shall hold it in future as full owner. This provision of law will not restore to her any property or any rights in the property which she had parted with before the Act came into force. It is, therefore, clear that this section can have no applicability to the present case. The contention of the learned counsel for the appellants therefore has no force.

The result is that this appeal fails and is dismissed with costs.

Chopra, J.—I agree.

Chopra, J.

APPELLATE CIVIL

Before Chopra, J.

CHINT RAM,—*Plaintiff-Appellant*

v.

THE SMALL TOWN COMMITTEE, SUJANPUR,—
Defendant-Respondent

Civil Regular Second Appeal No. 553 of 1952.

Punjab Small Towns Act (II of 1922)—Sections 11, 4(2), 51—Small Towns Appointment, Suspension and Dis-

1956

Dec. 13th