

*Before Vijender Jain, C.J., M. M. Kumar, Jasbir Singh, Rajive  
Bhalla & Rajesh Bindal, JJ.*

**MIHAN AND ANOTHER,—Appellants**

*versus*

**INDER AND ANOTHER,—Respondents**

R.S.A. No. 528 of 1977

27th February, 2008

*Hindu Succession Act, 1956—Ss. 6, 14 & 30—Punjab  
Amendment Act, 1973—Punjab Laws Act, 1872—S.5—Dispute  
regarding validity of transfer of land made in pursuance to consent  
decree by father in favour of his two sons—Challenge by third  
son—Whether father entitled to alienate property in his hands by  
confining it to two sons by way of consent decree—Whether  
property in hands of successor be treated as coparcenary property  
and its alienation is to be governed by provisions of Hindu Law  
or property is only ancestral as known to customary law and  
alienation is not open to challenge—In Punjab property has to be  
treated as coparcenary property and its alienation has to be governed  
by Hindu Law except to the extent it is regulated by Ss. 6 and 30  
of 1956 Act—In Haryana property has to be treated as coparcenary  
as well as ancestral property as known to customary Law and its  
alienation would be open to challenge both under Hindu Law and  
Customary Law.*

*Held*, that there is no conflict between the Full Bench judgments rendered in *Joginder Singh Kundha Singh versus Kehar Singh Dasaundha Singh*, AIR 1965 Punjab 407 and *Pritam Singh versus Assistant Controller of Estate Duty, Patiala*, 1976 PLR 342 because in one case the Court was not required to travel beyond deciding issue of alienation of property and in the other case the issue rested purely on the question of succession. We are conscious of the fact that although the issue of alienation may in a given situation impinge upon the issue of succession yet in the so called conflict situation, there is no conflict

because the issue of alienation did not eventually embraced the point of succession in *Joginder Singh's case*.

(Para 36)

*Further held*, that in respect of State of Punjab it has to be held by virtue of Punjab Amendment Act, 1973 that there is a complete bar to contest any alienation of ancestral or non-ancestral immovable property or appointment of an heir to such property on the ground that such alienation or appointment was contrary to custom. In Punjab, the property in the hands of a successor has to be treated as coparcenary property and its alienation has to be governed by Hindu Law except to the extent it is regulated by Sections 6 and 30 of the Succession Act.

(Para 37)

*Further held*, that in Haryana, the property in the hands of a successor may be held to be coparcenary property as well as ancestral property as known to Customary Law. It is well settled that the parties can fall back upon Hindu Law in case they fail to establish that the rule of decision is custom. Therefore, in Haryana both under Hindu Law and the Customary Law, the alienation would be open to challenge. It is not easy to contemplate all those situation which on the facts of each case would emerge by application of Hindu Law in contra distinction to that of Customary Law with regard to alienation.

(Para 38)

M. L. Sarin, Senior Advocate, with Ms. Alka Sarin, Advocate.

S. D. Sharma, Senior Advocate, with Balbir Singh, Advocate,  
and Anupam Sharma, Advocate.

M. S. Jain, Senior Advocate, with Adarsh Jain, Advocate.

Sanjay Majithia, Advocate.

Ms. Manisha Gandhi, Advocate.

Sachin Sood, Advocate.

Arun Jain, Advocate.

Sukant Gupta, Advocate.

P. N. Aggarwal, Advocate.

H. S. Mattewal, Advocate General, Punjab, with A. G. Masih,  
Sr. DAG, Punjab.

Hawa Singh Hooda, Advocate General, Haryana, with  
Rameshwar Malik, Addl. AG. Haryana.

### JUDGMENT

***M. M. KUMAR, J***

(1) These are five Regular Second Appeals, namely, R.S.A. Nos. 528 of 1977, 2134 of 1982, 540 of 1987, 1656 of 1987 and 411 of 1998, which have been referred to this Five-Judge Bench by noticing a conflict between two earlier 3 Judge Benches in the case of **Joginder Singh Kundha Singh versus Kehar Singh Dasaundha Singh, (1)** and **Pritam Singh versus Assisnat Controller of Estate Duty, Patiala (2)**. The suspected conflict has been pointed out by Hon'ble Mr. Justice S. P. Goyal in the reference order dated 25th April, 1980, passed in R.S.A. No. 105 of 1979.

(2) To begin with, it may first be appropriate to notice the issue on which two Full Benches are stated to have conflict. The aforementioned conflict has been noticed by Hon'ble Mr. Justice S. P. Goyal (as he then was) in his reference order dated 25th April, 1980, which is required to be read in extenso. The reference order was recorded in Regular Second Appeal No. 105 of 1979 (*Mal Singh versus Jassa Singh and others*). Those appeals were eventually withdrawn but the reference has been read in the instant appeals. There the dispute was regarding validity of transfer of land made in pursuance to consent decree by the father in favour of his two sons. The third son had challenged the aforementioned consent decree. The question arose as to whether the father was entitled to alienate the property in his hands by confining it to two sons by way of consent decree. However, the basic dispute noticed by the learned Judge was whether the property in the hands of the father was to be treated as coparcenary property and its alternation was to be governed by the provisions of the Hindu Law as was claimed by the third son or that property was only ancestral property as known to the Customary Law and its alienation, therefore, was not open to challenge. It is in the aforementioned context that the following observations for referring the question to a larger bench

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(1) AIR 1965 Pb. 407

(2) 1976 PLR 342

were made in the reference order dated 25th April, 1980, which reads thus :—

“It is not disputed that the parties are Jats which is predominantly an agricultural tribe and were governed by Customary Law prior to the enforcement of the Hindu Succession Act, 1956.” According to a recent Full Bench of this Court in **Pritam Singh versus The Assistant Collector of Estate Duty Patiala**, 1976 P.L.R. 342, ‘the property in the hands of the Sikh Jats would be coparcenary property after the enforcement of the said Act. The learned counsel for the respondents, however, relied on an earlier Full Bench case in **Joginder Singh Kundha Singh versus Kehar Singh Dasaundha Singh and another**, A.I.R. 1965 Punjab 407 wherein it was held that the rules of custom governing alienation were not affected by the enforcement of the Hindu Succession Act and still continue to govern alienation by the persons governed by custom. This decision though was noticed in the later Full Bench case but was held to be not relevant as it related to the power of alienation of a person governed by custom. The learned counsel urges that the nature and extent of power of alienation has some basic distinctions under the two laws, i.e. the Hindu Law and the Customary Law. If the alienation is to be governed by the rules of custom then the alienation can be challenged by any collateral or person connected with the common ancestor of the vendor within the fifth degree but the alienation would be valid during the lifetime of the vendor. On the other hand if the alienation is to be governed by the Hindu Law, it can be challenged only if the property is coparcenary property that too only by a coparcener and the alienation would be void even *qua* the vendor. The concept of ancestral and coparcenary property is also different under the two schools of law. If it is once held that the rules of custom governing alienation made by an agriculturist are not affected by the enforcement of the Hindu Succession Act, it necessarily means that the alienation can be challenged if the property is ancestral as known to the Customary Law and by a person who is collateral within the fifth degree. For example, a

brother though separate from his other brothers, would be able to challenge the alienation of the property which devolved on the two brothers but had been divided prior to the alienation between them. If that is so then the property in hands of a person governed by customary law cannot be said to be a coparcenary property because in that case the moment the division took place between the two brothers, it ceased to be a coparcenary property and the brother would not be entitled to challenge the alienation made by the other brother of such property.

It was next contended by the learned counsel for the respondent that there is no provision in law in dealing with the nature of property in the hands of a particular person for the time being which means that the property continues to be an ancestral property or coparcenary property as it would have been prior to the enforcement of the Hindu Succession Act. The concept of the coparcenary property which was unknown to the agricultural tribes governed by customary law, therefore, cannot be said to have become applicable by the enforcement of the Hindu Succession Act which only deals with the succession of the property. The Hindu Succession Act regulates only the intestate succession of property of a deceased Hindu. As to what are the rights of the heirs in the property so inherited, this Act has nothing to do so far as male heirs are concerned but in the case of females, they have been made absolute owners of such property. The rights of the male Hindus in the property inherited under the said Act, therefore, continue to be governed by the rules of Hindu Law or Custom as before with only one exception that a male Hindu by virtue of the provisions of section 30 of the Act has been conferred unfettered powers of disposal of his share in the coparcenary property by will, which right he did not have prior to the enforcement of the Act. Again, by virtue of the provisions of section 5 of the Punjab Laws Act, in matters of alienations agriculturalists in Punjab and Haryana are governed by the rules of custom and not of Hindu law. According to the earlier Full Bench case, the rules of custom have not been

abrogated by the Hindu Succession Act except to the extent a provision contrary to the rules of custom has been made in the said Act. The rule of custom relating to the nature of rights in the property inherited by an agriculturalist, therefore, continue to be applicable even after the enforcement of the Hindu Succession Act. There appears some substance in the contention of the learned counsel but in any case there is an apparent conflict between the two Full Bench decisions noticed above because the two propositions of law that a person is governed by customary law in the matters of alienation and that the property inherited by him from his ancestors is coparcenary property cannot possibly be applicable at the same time to a person governed by rules of custom prior to the enforcement of Hindu Succession Act. The record of this case may, therefore, be put up before Hon'ble the Chief Justice for constituting a larger Bench to resolve the dispute between the said two Full Benches."

(3) Accordingly, reference was made to Three-Judge Bench of this Court. When the Full Bench met on 28th August, 1981, it noticed the contention of the counsel who had canvassed for affirmance of the view taken in Pritam Singh's case (*supra*) by a Larger Bench in the interest of judicial propriety. The order passed by the Three-Judge Bench on 28th August, 1981, referring the matter to Five-Judge Bench reads as under :—

**“S. S. Sandhwalia, C.J.**

For this reference to a still Larger Bench, it is unnecessary to either delineate the facts or to elaborate the issue because the earlier reference to the Full Bench must be deemed to be its integral part.

What, however, calls for pointed notice at the outset is the fact that for an issue of considerable significance, rather unususlly, we did not have the advantage of any argument on behalf of the respondents. Mr. S. P. Gupta, their learned counsel had forthwith made a prayer that he wished to withdraw from the case and for the reasons stated at the bar, we allowed him to do so.

In the aforesaid context, it suffices to mention that even Mr. Ashok Bhan, the learned counsel for the appellant was candidly fair in taking the stand that in fact there appeared to be some divergence of opinion in the two Full Bench judgment of this Court reported in **Joginder Singh Kundha Singh versus Kehar Singh Dasaundha Singh and another**, A.I.R. 1965 Punjab 407, and **Pritam Singh versus The Assistant Controller of Estate Duty, Patiala**, 1976 P.L.R. 342. Even when pressed, the learned counsel admitted his inability to meaningfully distinguish the earlier Full Bench from the later one. Though counsel canvassed for the acceptance of the view in **Pritam Singh's case** (*supra*), he was fair enough to state that judicial propriety demanded that the affirmance of that view should be by a Larger Bench because according to him, there were observations to the contrary, both in **Joginder Singh Kundha Singh's case** (*supra*), and in a still earlier Full Bench in **Amar Singh and others versus Sewa Ram and others**, 1960 Punjab 530.

It thus appears inevitable that this matter must now be considered by a Larger Bench. Even otherwise, the issues here are of such significance having larger ramifications so as to merit a very authoritative pronouncement. We accordingly direct that this case be placed before a Bench of five Judges.

(Sd/-) . . . .,

S. S. Sandhawalia,  
Chief Justice.

(Sd/-) . . . .,

Prem Chand Jain,  
Judge.

(Sd/-) . . . .,

S. P. Goyal,  
Judge.

28th August, 1981"

(4) Mr. M. L. Sarin and Mr. S. D. Sharma, learned senior counsel, Mr. Hawa Singh Hooda and Mr. H. S. Mattewal, learned Advocate Generals Haryana and Punjab respectively, and Mr. P. N. Aggarwal, have argued that Hindu Law flows from numerous sources which include Samritis and Dharamshashtras, legislation, custom or usage and even judicial precedents. According to the learned counsel where parties are Hindu, they are governed by Hindu Law or by the Customary Law, provided the custom is proved in accordance with law by its propounders. They have further maintained that Hindu Law has also been affected by codification and to that extent it stands modified by such legislation. The argument appears to be that Hindu Law still continues to apply except in area where the field is occupied by legislation or such Hindu Law has been modified by custom. It is conceded that the Succession Act is to have overriding effect as provided by Section 4 thereof and any text, rule of interpretation of Hindu Law or any custom or usage as party of that law in force immediately before the commencement of that Act should cease to have effect with respect to any matter for which provision is made in that Act. According to learned counsel, Section 4 of the Succession Act has been replicated in all other Hindu Codes codified around those years and in that regard reference has been made to Section 4 of the Hindu Adoptions and Maintenance Act, 1956, Hindu Marriage Act, 1955 as also to Section 5 of Hindu Minorities and Guardianship Act, 1956. Learned counsel have referred and read various paras from the Full Bench of Pritam Singh's case (*supra*) to substantiate the aforementioned proposition.

(5) They have further pointed out that the Succession Act mainly deals with intestate succession amongst Hindus although Section 30 of the Succession Act also provides for testate succession. It has been submitted that the Succession Act does not deal with alienation and, therefore, Hindu Law and Customary Law concerning alienation continue to survive. They have further pointed out that the Succession Act does not abolish reversioner and they continue with their right to challenge any alienation made in respect of property of joint Hindu family. According to the learned counsel the judgment of the Full Bench in Joginder Singh's case (*supra*) deals with alienation and it has approved



the observation made by earlier Division Bench in that regard in the case of Kaur Singh (*supra*). Mr. Sarin has also highlighted that the judgment rendered by the Division Bench in Kaur Singh's case (*supra*) has also been accepted by Hon'ble the Supreme Court in the case of **Darshan Singh versus Ram Pal Singh, (3)**. According to the learned counsel in Darshan Singh's case (*supra*) the Supreme Court dealt with Section 5 of the Punjab Laws Act, 1872, the Punjab Limitation (Custom) Act, 1920, and the Punjab Custom (Power to Contest) Act, 1920 and has concluded that Section 7 of the Punjab Custom (Power to Contest) Amendment Act, 1973, put a complete bar to contest any alienation of ancestral or non-ancestral immovable property or appointment of an heir to such property on the ground that such alienation or appointment was contrary to custom. It has further been held that the language used in the provision is inconsistent with the continued existence of the custom. According to the learned counsel the Supreme Court has taken the use of words "no person shall contest any alienation on the ground that such alienation is contrary to custom". According to Mr. Sarin, the custom has been totally erased and taken away. Therefore, no person has any right to contest any alienation of immovable property whether ancestral or non-ancestral on the ground of being contrary to custom. The provision has been held applicable to all the pending actions whether at the stage of trial or at the stage of appellate court on the rationale that the appeal is continuation of the suit. It has, however, been clarified that the Succession Act has not abrogated any rule or Customary Law in Punjab relating to restriction on alienation by a male proprietor over and above what has been done in Hindu Law. The right of reversioners besides those who could do in Hindu Law to challenge and contest any such alienation continued to exist and it was in these circumstances that it was felt necessary to abolish the right to contest such an alienation and the Act of 1973 has been rightly adopted.

(6) Mr. Hawa Singh Hooda, learned Advocate General, Haryana, however, has pointed out that no steps have been taken in Haryana to abolish the Punjab Custom (Power to Contest) Act, 1920 or the Punjab Limitation (Custom) Act, 1920, as has been done by the State of Punjab. According to learned Advocate General, in the State of Haryana the

situation would continue to be the same and alienation of coparcenary property or Hindu undivided family property could still be challenged by proving custom as per the provisions of both the Acts of 1920. According to learned Advocate General, in Haryana, Hindu Law would continue to govern the rights of the parties who are Hindu except the area occupied by codified law and legislation and custom. Learned Advocate General has maintained that the judgment of Hon'ble the Supreme Court in the case of Darshan Singh (*supra*) would not have any application in the State of Haryana.

(7) All the learned counsel, however, have voiced one argument that there is no conflict in both the Full Benches as both of them operate in different fields. Mr. S.D. Sharma has emphasised that the Full Bench in Pritam Singh's case (*supra*) lays down that after the enactment of the Succession Act no Hindu is governed by rules of Customary Laws in matters of succession to property, as has been provided by Sections 2 and 4. According to the learned counsel, all Hindus who were previously governed by rules of Customary Law in matters of succession like other Hindus are to form joint and undivided Hindu family and the sons, grand-sons and great grand-sons of the holder of joint property would acquire interest therein by birth. Accordingly, all rules of succession applicable till 17th June, 1956, when the Succession Act came into force, by virtue of any text or rule of Hindu stood abrogated in respect of all matters dealt with in the Succession Act. The Succession Act also superseded any other law contained in any Central or State legislation in force immediately before it came into force in so far as such legislation is consistent with the provisions contained in the Succession Act. Mr. Sharma then referred to the ratio of the judgment in Joginder Singh's case (*supra*), which deals with constitutional validity of Section 14 and according to the Full Bench Section 14, which enlarged the estate of widow does not suffer from the vice of discrimination on the ground of sex and is not violative of Article 14 of the Constitution. According to the learned counsel, the judgment does not deal with the principles of succession. It has been maintained that the ratio decidendi of the judgment is that the Succession Act did not abolish revisioners, which is a body of persons who are likely to inherit the property held by a particular person whether male or female.

According to custom only collateral (reversioners) within 5 degrees have been held entitled to challenge or control alienation of a male proprietor and there is nothing in the Succession Act from which it could be inferred that their power to control alienation has ceased to exist. Although the reversioners are not now entitled to challenge any alienation made by a female, which is because the estate held by a female gets enlarged into a absolute estate after the Succession Act came into force. Hence, the power of alienation of a female cannot be controlled. It has been pointed out that the position of female has further been bettered by recognizing her as a coparcener by virtue of recent amendment made in Section 6 of the Succession Act. Therefore, it has been urged that both the Full Benches operate in different areas. The Full Bench in Pritam Singh's case (*supra*) deals with succession, whereas the Full Bench in Joginder Singh's case (*supra*) deals with alienation.

(8) In the light of the two Full Bench judgments, two main issues that have been raised before us are as under :—

- (1) Whether there is any real conflict between the two judgments of this Court rendered in the cases of Joginder Singh (*supra*) and Pritam Singh (*supra*) ?
- (2) Whether the property in the hands of a successor be treated as coparcenary property and its alienation is to be governed by Hindu Law or the property in the hands of a successor is only an ancestral property as known to the Customary Law and its alienation, therefore, is not open to challenge ?

(9) From the aforementioned two orders, which have led to the constitution of Five-Judge Bench, it has emerged that it is first necessary to understand the import of the proposition (s) laid down in the earlier two Three-Judge Benches in Joginder Singh's case (*supra*) and Pritam Singh's case (*supra*).

(10) The aforementioned exercise is required to be undertaken for the reason that it is only ratio decidendi of a judgment which is of binding character and not the obiter dictum. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions

before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has “declared law” it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. Hon’ble the Supreme Court in the case of **Director of Settlements, A.P. versus M.R. Apparao, (4)** has observed that a judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An “obiter dictum” as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such a obiter would not be a binding precedent. Similar observations have been made by Hon’ble the Supreme Court in the cases of **Municipal Corporation of Delhi versus Gurnam Kaur, (5)** and **Hameed Joharan versus Abdul Salam, (6)**. In another recent judgment in the case of **State of Haryana versus Ranbir, (7)** Hon’ble the Supreme Court in para 12 has observed as under :—

“.....A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumbaly unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. See *ADM, Jabalpur versus Shivakant Shukla, (1976) 2 SCC 521*. It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. (See *Divisional Controller, KSRTC versus Mahadeva Shetty, (2003) 7 SCC 197*.)”

In the light of the aforementioned statement of law, we would now proceed to examine the two 3-Judge Benches in Joginder Singh’s case (*supra*) and Pritam Singh’s case (*supra*).

(11) In Joginder Singh’s case (*supra*), the basic controversy was regarding constitutional validity of Section 14 of the Hindu

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(4) (2002) 4 SCC 638

(5) (1989) 1 SCC 101

(6) (2001) 7 SCC 573

(7) (2006) 5 SCC 167

Succession Act, 1956 (for brevity, 'the Succession Act') and as to whether it infringes Article 14 of the Constitution. The aforementioned attack was repelled by the Full Bench. The validity of gift deed made by the male proprietor was the subject matter of challenge at the instance of reversioner by filing a declaratory suit, which eventually led to the filing of an appeal before this Court. The reversioner had alleged in the plaint that the land was ancestral and the parties were governed by custom, whereas in connected appeals, the sale deeds made by the male proprietor were subject matter of challenge. On finding of fact, the Courts have found that the land was ancestral and the sale made by the male proprietor was without any legal necessity. However, the defence taken by the male proprietor in both the cases was that on account of the provisions of the Succession Act, limitation on the power of alienation of a male proprietor had ceased to exist and the reversioners were debarred from challenging such alienation. The trial Court had dismissed both the suits. On appeal, the view taken by the trial Court was reversed holding that there was nothing in the Succession Act, which in any way has enlarged the right of a male proprietor the way it has enlarged the rights of a female by virtue of Section 14 of the Succession Act, who has become absolute owner. Accordingly, it was held that the estate held by the male proprietor and the limitation on his power of alienation were in no way removed and the reversioners were not debarred challenging such alienations. Following the decision of a Division Bench of this Court in the case of **Kaur Singh Gajjan Singh versus Jaggar Singh Kehar Singh**, (8) learned Singh Judge upheld the view taken by the lower Appellate Court, reiterating that there was no provision in the Succession Act enlarging the estate of a male holder and the limitation on his power of disposal of ancestral property continued as such. It was noticed that there might be anomaly, inasmuch as, the power of a female inheritor from such a male should be absolute whereas the power of a male proprietor to alienate the property should be limited. The matter was taken before the Letters Patent Bench to challenge the anomalous situation by urging that such an interpretation was to result in infringement of equality clause made in Article 14 of the Constitution. Accordingly,

it was urged that the Division Bench judgment in Kaur Singh's case (*supra*) required reconsideration. After noticing the provisions of the Punjab Limitation (Custom) Act (No. 1 of 1920) and the Punjab Custom (Power to Contest) Act (No. 2 of 1920), the Full Bench observed that the power of male holder to alienate the property was limited only if there were reversioners in existence in respect of whom the property held by the male holder could be treated as ancestral, which was further controlled by the aforementioned two statutes. If a person had no reversioner living within five degrees then his power of alienation *qua* the ancestral property was co-extensive with that of his self-acquired property.

(12) The Full Bench then referred to the provisions of the Succession Act and observed that it has brought uniform code of succession amongst Hindus irrespective of the fact whether they were previously governed by Hindu Law or Customary Law and to that extent both Hindu Law and Customary Law stood modified or repealed, as has been declared by Section 4 of the Succession Act. It noticed Section 14 of the Succession Act, which enlarged the estate of a female in the property acquired by her or inherited by the either from a male or female proprietor. Accordingly, the Full Bench held that Section 14 of the Succession Act postulates that the estate held by a Hindu female before enforcement of the Succession Act either by inheritance or otherwise, was enlarged and on the date of enforcement of the Succession Act, she become a full owner. Likewise, if she has inherited any estate after the commencement of the Succession Act, she is to be regarded as absolute owner rather than a limited owner. Consequently, the limitations on the power of alienation automatically vanished. This was the necessary result of the provisions made in Section 14 of the Succession Act. The Full Bench further held that in respect of male proprietors, no corresponding provision was made either enlarging their estate in the ancestral property or enlarging their power of alienation over the property inherited by them. However, it noticed Section 30 of the Succession Act and observed that it only deals with the power of his share in the coparcenary property by will, which prior to enforcement of the Succession Act, he had no right to do. The only provision made in respect of male proprietor regarding alienation of property was his

power of alienation by will. Insofar as, the persons governed by custom are concerned, they continued to be governed by the restriction on the power of alienation of a male holder as existed before enforcement of the Succession Act. Likewise, other restriction on alienation other than disposal by will also continued. The Full Bench, thus, recognized the superior right of Hindu females by virtue of Section 14 of the Succession Act and upheld the provision as *intra vires*. The argument that the reversioners have ceased to exist after the enactment of provisions of Section 14 of the Succession Act, was rejected as there was no provision pointed out of that effect. The argument was rejected by referring to the Full Bench judgment of this Court in the case of **Amar Singh versus Sewa Ram, (9)** and the following para with approval was quoted by the Full Bench :—

“There is nothing in the Hindu Succession Act that has directly or indirectly taken away the rights of reversioners as such. The Act in no way abolishes either reversioners of their rights or status. Where there is a restriction and control over the alienation of property, there the position of law before and after the Act continues to be the same and the next reversioner is entitled in law to the protection of his reversion.”

(13) It, further held that no suit by a collateral would be competent for declaration that a gift made by a widow after coming into force of the Succession Act in favour of his husband's daughter is invalid because the collateral had no chance of acquisition whether the property is ancestral or self-acquired. However, it did not mean that collateral for all other purposes had ceased to exist or that they did not have right to challenge an alienation, which right they enjoyed under the Customary Law. The Full Bench further held that by virtue of Section 4 of the Succession Act, the rules of succession as provided in the Succession Act have to take precedent over all other rules or laws governing succession and that the Succession Act supersede custom only to the extent to which provisions have been made in Section 4 of the Succession Act.

(14) The Full Bench also repelled the contention that the custom controlling the power of male proprietors to alienate the ancestral property be declared as unreasonable and the Courts should refuse to enforce the same. The Full Bench referred to the requirement of a valid custom as given in paragraph 1 of Rattigan's Digest of Customary Law and observed as under :—

“Admittedly, the rule of control over alienation has been recognized and enforced by the Courts since the earliest times and has not been held to be contrary to justice, equity and good conscience. The main argument of the learned counsel was that this rule, as a result of the changed circumstances, has become archaic and should be treated as contrary to justice, equity and good conscience. Now, as is mentioned in cl. (d) above, a custom to be valid must be ancient, certain and invariable and, therefore, the rule cannot be held to be invalid simply because it is an old one or archaic. Moreover the rule cannot be held to be contrary to justice, equity and good conscience simply because in view of the Hindu Succession Act larger powers have been conferred on the females than over the males. This distinction is certainly not immoral and cannot be said to be opposed to public policy.”

(15) The various propositions laid down by the Full Bench in Joginder Singh's case (*supra*) may be summed up as under :—

**Position prior to the commencement of Hindu Succession Act, 1956**

- (a) In State of Punjab the right to succession and power of alienation are governed by personal law i.e. in case of Hindus by the Hindu Law of Mitakshara school except to the extent to which it is modified by custom ;
- (b) According to Customary Law as well as Hindu Law, a female inheriting any property has only, what is known as widow's estate, and her right of alienation are limited and she can alienate only for consideration and legal necessity, and it makes no difference whether the



property inherited by her was the self-acquired property of the last male holder or was inherited by him from his ancestor ;

- (c) In case of male inheriting any property, there were similar limitations so far as ancestral property was concerned, provided there were any reversioners living within five degrees who could challenge unwarranted alienation within the period prescribed under the Punjab Limitation (Custom) Act, 1920 and the Punjab Custom (Power to Contest) Act, 1920 ;
- (d) If there are no reversioners within five degrees, the power of alienation even qua ancestral property was coextensive with that over self-acquired property ;
- (e) The power of a person governed by Hindu Law was also restricted *qua* ancestral property, or what is termed as coparcenary property.

**Position after the commencement of the Succession Act —  
Propositions laid down in Joginder Singh's case**

- (a) The Succession Act has brought about a uniform code of succession amongst Hindus irrespective of the fact whether they were previously governed by Hindu Law or custom, and to that extent both Hindu Law and Customary Law stood modified or repealed by virtue of the overriding effect of Section 4 of the Succession Act.
- (b) The estate held by a male proprietor and the limitation on his power of alienation were in no way removed by the Succession Act and the reversioners were not debarred from challenging such alienation. The Full Bench has followed and approved the Division Bench judgment of this Court in **Kaur Singh' case** (*supra*), which in turn has been approved by Hon'ble the Supreme Court in **Darshan Singh's case** (*supra*). It is

further pertinent to notice that Hon'ble the Supreme Court in Darshan Singh's case has overruled the contrary view taken in **Bara Singh versus Kashmiri Singh, (10)**.

- (c) The power of the male holder to alienate the property is limited only if there were reversioners in existence in respect of whom the property held by the male holder could be treated as ancestral, which were further restricted by five degrees by virtue of Punjab Limitation (Custom) Act, 1920 and the Punjab Custom (Power to Contest) Act, 1920. In other words, if a male holder had no reversioner living within five degrees then his power of alienation *qua* ancestral property was co-extensive with that of his self acquired property. The Full Bench further laid down the enlargement of female interests in property - instant conversion of limited estate into absolute ownership under Section 14 of the Succession Act with a consequence of removal of restrictions on her power of alienation but only in relation to property possessed by her at the time of commencement of the Succession Act. It further held that there was no corresponding provision in respect of male proprietors enlarging their estate in respect of the ancestral property or enlarging their power of alienation over the property inherited by them except to the extent provided by Section 30 of the Succession Act. According to Section 30, a male proprietor enjoys the power to deal with the coparcenary property by Will, which prior to the enforcement of the Succession Act he had no right to do.
- (d) The provisions of Section 14 of the Succession Act was held to be intra-vires and the argument to the contrary that it violated Article 14 of the Constitution was repelled.

- (e) The Full Bench repelled the contention that custom controlling the power of male proprietors to alienate the ancestral property be declared as unreasonable and the Courts should refuse to enforce the same.

(16) This judgment, as if anticipation of the problem faced by the Full Bench in Pritam Singh's case rightly holds that the concept of "ancestral property" under customary law is similar to the concept of "coparcenary property" under Hindu Law in the matters of exercise of power of alienation. In para 12 of the judgment it has been held as under :—

“.....The limitation on the powers of a Hindu coparcener to alienate such property during his lifetime continue and in this respect a person governed by Hindu Law and a person governed by custom are at par. Thus so far as the right to alienation inter vivos are concerned. Hindu males even under the Hindus Succession Act do not enjoy any better right than those who are governed by custom and thus there is no question of any discrimination.....”

(17) If the nature and extent of restrictions on the power of alienation are the same or similar both under Customary Law and Hindu Law, and the concepts of 'ancestral property' and 'coparcenary property' are also the same under both the systems, then there hardly remains any conflict envisaged under the present reference.

### **The judgment of Full Bench in Pritam Singh's case**

(18) The other Full Bench judgment in the case of Pritam Singh (*supra*) was the result of a nagging doubt about an earlier Division Bench view taken in the case of **Controller of Estate Duty, Punjab versus Harbans Singh, (11)**.

(19) In order to put the issue in perspective, it would first be necessary to discuss the Division Bench judgment in Harbans Singh's case (*supra*) and the issue raised therein. In that case, the Assistant Controller of Estate Duty, Punjab, framed an assessment in respect of

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(11) (1975) 981 ITR. 331 (Punj)

three sons treating them as accountable persons after the death of their father and his entire property was assessed to the estate duty. On further appeal, the Zonal Appellate Controller also found like the Assessing Officer that the deceased was a member of agricultural tribe and his family was governed by Customary Law of Punjab. As a consequences of the aforementioned finding it was held that the principal value of all his properties had to be taken into account in computing his estate for the levy of estate duty under the Estate Duty Act, 1953 (for brevity, 'the Estate Duty Act'). The Appellate Tribunal on further appeal did not give any finding as to whether the deceased and/or his sons had given up the custom, because the Tribunal came to the conclusion that on the promulgation of the Succession Act, the custom had been abrogated and held that it must be considered to be a case of death of a member of Hindu undivided family. Accordingly, whole estate of the deceased could not be subjected to assessment because it has to proceed on the assumption that it was Hindu undivided family and to the extent of the share of the deceased, the property could have been subjected to assessment under Section 7 read with Section 39 of the Estate Duty Act. The revenue sought a reference to this Court and a Division Bench in the concluding para held that merely because the Succession Act has been enforced, the custom could not be considered to be abrogated and it can still be established as a fact in every individual case. The views of the Division Bench while remanding the case back to the Tribunal are discernible from the penultimate para, which reads as under :—

“After hearing the counsel for the parties, we are of the view that merely on the enforcement of the Hindu Succession Act, it could not be held that custom had been abrogated and all the Jats started being governed by the Mitakshara school of Hindu law and they formed joint Hindu families with their sons and commenced having coparcenary interest in the joint family property, with the result that the assessment in their cases had to be made under section 7 read with section 39 of the Act. All these questions, e.g., whether (a) custom has been abrogated by the person concerned, (b) he is governed by the Mitakshara school of Hindu law, (c) he forms a joint Hindu family with his sons, and (d) his interest in the

property is that of a coparcener, have to be settled in each individual case. The facts found by the Tribunal in the instant case, which have been given above, do not, in my view, lead to that conclusion. The answer to the question of law referred to us, therefore, has to be in the negative, i.e., in favour of the department.”

(20) The aforementioned principle laid down by the Division Bench in Harbans Singh’s case (*supra*) confronted a great deal of difficulty to one Pritam Singh because after Pritam Singh had filed his return for the purposes of estate duty on the rationale that the property left by his father was a coparcenary property and he constituted Hindu undivided family with him and his brother, therefore, 1/3rd share of the estate only was offered for subjecting the same to estate duty. However, on the basis of the Division Bench judgment in **Harbans Singh’s case** (*supra*), the Controller of Estate Duty, issued a notice under Section 59 of the Estate Duty Act asserting that merely because the Succession Act has been enforced, it could not be held that the custom had been abrogated and the agriculturists started being governed by the Mitakshara school of Hindu law. Accordingly Pritam Singh was directed to file all the accounts of the property assessable to estate duty as only 1/3rd share could be subjected to assessment leaving that rest un-assessed. This led to the filing of a writ petition with the prayer for quashing notice issued under Section 59 of the Estate Duty Act. On behalf of Pritam Singh it was argued that the view taken in Harbans Singh’s case (*supra*) was wrong and the judgment in Harbans Singh’s case (*supra*) cannot constitute information for the purposes of issuing notice under Section 59 of the Estate Duty Act. The significant argument raised was that by virtue of Section 4 of the Succession Act, custom has been abrogated and Sikhs for the purposes of the Succession Act are Hindus. Another argument raised was that custom has to be proved by the person who pleads it and, therefore, the Controller of Estate Duty was under an obligation to prove any custom as a fact. The Full Bench overruled the view taken in Harbans Singh’s case (*supra*) on various grounds—(a) the power of the High Court in a reference made under Section 64 of the Estate Duty Act is to answer the substantial question and, therefore, the remand order was not warranted by law; and (b)

it was further held that the direction given in Harbans Singh's case (*supra*) that the assessee must prove that custom has been abrogated by him and he was governed by Mitakshara school of Hindu law and that he formed a joint Hindu family with his sons were held to be against the express provisions of Section 4 of the Succession Act and numerous decisions of Lahore High Court including the judgments in case of **Fatima Bibi versus Shah Niwaz (12)**, **Mohammad Jan versus Rafi ud-Din (13)**, **Baldeo Sahai versus Ram Chander (14)**, and **Daya Ram versus Soheli Singh (15)**. It also pointed out that the case of the assessee that Section 4 of the Succession Act had abrogated the custom in matter of succession and, therefore, they were governed by Hindu Law, which were their personal law. The Full Bench also pointed out that since the case was remanded to the Tribunal according to consent of the parties, therefore, there was no occasion to answer the question of law referred to the High Court. Accordingly, the view taken in Harbans Singh's case (*supra*) was set aside holding that the judgment did not lay down any new principle in the light of the provisions made by the Succession Act, which came into force on 17th June, 1956.

(21) The Full Bench then proceeded to discuss the law or/and custom governing the agricultural tribes in the State of Punjab including Jat Sikhs prior to coming in force of the Succession Act and the position of law after the enforcement of the Succession Act. The first proposition which can be culled out on the basis of Section 5 of the Punjab Laws Act, 1872 was that there was no presumption in favour of existence of a custom to the exclusion of personal law and if any person alleges that he or any other person is governed by custom then he must plead and prove that alleged custom be cogent evidence. In other words, the custom, if proved, was to govern the issue otherwise the Hindu Law was to become rule of decision and it was to apply to Jat Sikhs in the matter of succession. The Full Bench then referred to 4 canons governing succession to estate among the agriculturists in para 18 of its judgment. It then went on to discuss the Mitakshara and Dayabhaga

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(12) AIR 1921 Lahore 180

(13) AIR 1949 P.C. 70

(14) 1931 I.L.R. 13 Lahore 126

(15) 110 Punjab Records 1906 (F.B.)

system, which existed before 17th June, 1956, in para 19; and the right of unchaste widow to inherit the property and the result of change of religion, in para 20; and the concept of joint and undivided Hindu family in paras 21, 22 and 23.

(22) From paras 24 to para 31, it went into all details of radical changes brought about by the Succession Act. In para 32, the whole position prior to the Succession Act and thereafter has been summed up, which is as under :—

“32. The legal position, therefore, that emerges is that prior to the passing of the Hindu Succession Act, 1956, where the parties were Hindus the Hindu law would apply in the first instance in matters regarding succession, and whosoever asserted a custom at variance with Hindu law must prove it and if he failed to do so, then the rule of decision must be personal law of parties. The Hindu Succession Act came into force from June 17, 1956, and its section 4 abrogated any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act with respect to any matters for which provision is made in this Act. By virtue of this section 4 of the Punjab agricultural custom so far it was applicable to Hindus in matters of succession has been completely abrogated and now no Hindu is governed by rules of customary law in matters of succession to property. After the passing of the Hindu Succession Act, all the Hindus, as defined in section 2 of that Act, in matters of succession are governed by Hindu law and the provisions of the Hindu Succession Act, 1956. The Hindu Succession Act has not abolished joint Hindu family and the joint Hindu family property and it does not interfere with the special rights of those who are members of a Mitakshara coparcenary, except in the manner and to the extent mentioned in sections 6 and 30 of the Act. After the coming into force of this Act, all Hindus who were previously governed by rules of customary law in matters of succession, like the other Hindus, form

joint and undivided Hindu families including Mitakshara coparcenary, and the sons, grandsons and great grandsons, of the holder of the joint or coparcenary property for the time being, acquire interest therein by birth.”

(23) The principles of Mitakshara coparcenary are embedded in the Hindu Law jurisprudence and continue to apply after 1956 Act. Hon’ble the Supreme Court has recognized the application of these principles in numerous judgments. In that regard reliance may be placed on two judgements in the cases of **Dharma Shamrao Agalawe versus Pandurang Miragu Agalawe, (16)** and **Sheela Devi versus Lal Chand (17)**. However, more pronounce statement of these principles as recognised by the Full Bench in Pritam Singh’s case (*Supra*) in evident from the judgment of Hon’ble the Supreme Court in the case of **Ass Kaur versus Kartar Singh, (18)**. Hon’ble the Supreme Court reiterated the existence of principles of Mtakshara coparcenary by observing that property inherited from paternal ancestor is, of course ancestral property as regards the male issue of the propositus, but it is his absolute property as regards other relations.’ Their Lordships’ have abstracted the following statement from the well known treatise Mulla’s Principles of Hindu Law (15th Ed. At page 289).

“.....if A inherits property, whether movable or immovable, from his father or father’s father, father’s father’s father, it is ancestral property as regards his male issue. If A has no son, son’s son, or son’s son’s son in existence at the time when he inherits the property, he holds the property as absolute owner thereof and he can deal with it as he pleases.....

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son’s sons and son’s son’s sons, but as regards other relations he holds it, and is entitled to hold it, as his absolute property.”

Again :

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(16) (1988) 2 S.C.C. 126

(17) (2006) 8 S.C.C. 581

(18) (2007) 5 S.C.C. 561



The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male issue. As regards other relations, it is separate property, and if the coparcener dies without leaving male issue, it passes to his heirs by succession.”.

It went on to observe that there is no dispute in regard to the aforementioned propositions of law and also placed reliance on the judgments in the cases of **Dharma Shamrao Agalawe** (*supra*) and **Sheela Devi** (*supra*) [c.f. **Commissioner of Wealth Tax versus Chander Sen**, (19) and **Makhan Singh versus Kulwant Singh**, (20)].

(24) We may sum up the proposition laid down by the Three-Judge Bench in Pritam Singh’s case by observing that the Succession Act has not abolished joint Hindu family with respect to rights of those who are members of a Mitakashara coparcenary, except in the manner and to the extent mentioned in Sections 6 and 30 of the Succession Act. This statement should also imply, though it does not say so expressly, the Succession Act to this extent does not affect the rights of the members governed by Dayabhaga coparcenary.

(25) Once it is established that the Succession Act does not affect the rights of the members of Mitakashara coparcenary (of course prior to the Amending Act of 2005). Since, on facts, there was no female heir or a male heir through a female as envisaged under the proviso to un-amended Section 6 of the principal Act of 1956, the whole property would continue vest in the sons simply by virtue of survivorship. We may also observe that on comparison of Sections 14 and 30 it is possible to argue that the Succession Act did not only enlarge female interests in her property after 7th June, 1956 (prior to the Amended Act of 2005) but it also brought by virtue of Section 30 a male holder on even keel with her in respect of her own share.

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(19) AIR 1986 S.C. 1753

(20) AIR 2007 S.C. 108

(26) Moreover, the concept of coparcenary is not alien to the Jat agriculturists of Punjab because they also spoke of ancestral property (the principal basis of coparcenary—see para 22 at page 356), as distinguished from self-acquired property, and also identified reversioners in terms of five degrees as is done in the Hindu Law, the point of distinction as referred to in the reference disappears.

(27) The Full Bench in Pritam Singh's case expressly noticed the judgment of the earlier Full Bench in Joginder Singh's case but construed the same as irrelevant by observing that it dealt with the power of alienation of a person governed by Customary Law and the constitutional validity of Section 14 of the Succession Act (para 33 at page 360). On our part it is not possible to make a sweeping statement that succession has nothing to do with alienation or *vice-a-versa*. Both concept of succession and alienation cannot be kept in watertight compartment. It has been witnessed that on most of the occasions the issue of alienation is closely interlinked with succession and inheritance for nature of property inherited would affect the consequences of alienation. For example, if alienation of property inherited by Hindu female after enforcement of the Succession Act has been made then different results are to follow than in a case where transfer is effected by a male holder of coparcenary property. In the first case, the reversioner may not be entitled to challenge the alienation before or after death of the female proprietor but in the second case the alienation by reversioner could be challenged after the death of the male proprietor. It appears to us that the Full Bench in Pritam Singh's case skirted the issue of dealing with alienation because in Pritam Singh's case the question of inheritance of property for the purposes of paying estate duty was involved, which resulted into deciding the question as to whether the entire property in the hands of accountable persons after the death of their father was ancestral property governed by the Customary Law or it was coparcenary property governed by the Hindu Law, whereas in Joginder Singh's case, validity of alienation by consent decree made by father in favour of his two sons at the instance of third was challenged. Consequently, it was held in Joginder Singh's case that enforcement of the Succession Act from 17th June, 1956 has not enlarged the estate of a male proprietor the way it has enlarged the

estate of a female proprietor under Section 14 of the Succession Act and that all the limitation on his power concerning alienation were in no way removed by the Succession Act. Various other propositions laid down by the judgment in Joginder Singh's case have already been noticed in preceding para No. 14. Presumably as the issue concerning alienation strictosensu was not before the Full Bench in Pritam Singh's case, it did not prefer to deal with it.

(28) It would be apposite for us to make a reference to the history of legislation concerning alienation, which could be traced to 1872 when the Punjab Laws Act, 1872, was enacted. In an effort to make native law as the rule of decisions, Section 5 of the 1872 Act proclaimed as under :—

**“5. Decisions in certain cases to be according to native law.—**

In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be :

- (a) Any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority ;
- (b) The Mohammedan law, in cases where the parties are Mohammedan and the Hindu law, in cases where the parties are Hindus, except insofar as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.”

(29) A perusal of the aforementioned provision shows that the question regarding various disposition of property in case where the parties were Hindus, Hindu Law was applied except insofar as such law has been altered or abolished by legislative enactment or was opposed to the provisions of the 1872 Act. According to sub-clause

(a), any custom applicable to the parties was to be the rule of decision provided it was not contrary to justice, equity or good conscience and has not been altered or abolished by any legislation or declared to be void by any competent authority. In other words, custom was given precedence over un-codified Hindu Law presumably for the reason that custom has been consistently replacing the Hindu Law. However, it was soon realized that ancestral immovable property, which ordinarily held to be inalienable amongst Jats of Punjab by virtue of custom except for necessity, no limitation was placed on the degrees of collateral, eligible to contest such alienation. It was, therefore, felt necessary to engraft certain restriction on the degrees of collateral eligible to contest an alienation, which under the custom itself was not limited. Accordingly, the Punjab Custom (Power to Contest) Act, 1920 (Act No. 2 of 1920) was enacted. The Succession Act was extended to the State of Punjab. Section 2 define the expression 'alienation' to include any testamentary disposition of property and appointment of an heir was to include any adoption made or purporting to be made according to custom. A further provision was made by Section 3 that the Succession Act was to apply only in respect of alienation of immovable property or appointment of heirs made by persons who in regard to such alienation or appointment were governed by custom, whereas Section 4 declared that the Succession Act was not to affect any right to contest any alienation or appointment of an heir made before the date on which the Succession Act was to come into force. In other words, Act No. 2 of 1920 was not to affect alienation or appointments of heir made before the date on which it came into force. It also preserved the rights of any alienation or appointment of an heir made by a family. It would be apposite to read Sections 6 and 7, enacted by Act No. 2 of 1920, which are as follows :—

**“6. Limitation on the right to contest alienations and appointment of heirs.—**Subject to the provisions contained in Section 4 and notwithstanding anything to the contrary contained in Section 5, Punjab Laws Act, 1872, no person shall contest any alienation of ancestral immovable property or any appointment of an heir to such property on the ground that such alienation or appointment is contrary to custom,

unless such person is descended in male lineal descent from the great-great-grandfather of the person making the alienation or appointment.”

“7. **Alienation of non-ancestral property.**—Notwithstanding anything to the contrary contained in Section 5, Punjab Laws Act, 1872, no person shall contest any alienation of non-ancestral immovable property or any appointment of an heir to such property on the ground that such alienation or appointment is contrary to custom.”

(30) This was the situation prevailing in the then State of Punjab which has been subjected to partition in 1947 by the Indian Act of Independence, 1947 and then Re-organisation Act, 1956 and the Punjab Re-organisation Act, 1966.

(31) A spate of reforms were undertaken by the State of Punjab, which has resulted into amendment of Sections 6 and 7 of Act No. 2 of 1920 besides abolition of the right of pre-emption by the Punjab pre-emption (Repeal) Act, 1973. Accordingly, to begin with, the Punjab Custom (Power to Contest) Amendment (Punjab Ordinance 2 of 1973), was promulgated with effect from 23rd January, 1973, which was later on replaced by the Amendment Act of 1973 as published in the Punjab Government Gazette on 9th April, 1973. The effect of the amendment is that Section 6 of Act No. 2 of 1920 has been omitted and after amendment Section 7, as it now stands, reads thus :—

“7. **Alienation of non-ancestral property.**—Notwithstanding anything to the contrary contained in Section 5, Punjab Laws Act, 1872, no person shall contest any alienation of immovable property whether ancestral or non-ancestral on any appointment of an heir to such property on the ground that such alienation or appointment is contrary to custom.”

(32) The aforementioned position has been noticed by their Lordships’ of the Supreme Court in **Darshan Singh’s case** (*supra*) on which firm reliance has been placed by Mr. M. L. Sarin, learned senior counsel. In Darshan Singh’s case, a suit was filed on 22nd August, 1966, challenging customary adoption of the defendant and the gift deed made in his favour. It was claimed that the plaintiff was entitled to the

property to be mutated in his favour. The suit was decided by the trial Court on 16th October, 1968 and on first appeal, the District Judge remanded the case on 12th January, 1970. The trial Court after remand delivered the judgment on 26th August, 1971. Again an appeal was filed before the District Judge, who disposed of the same on 28th February, 1973. In the meanwhile, the Amendment Act 1973 came into force on 23rd January, 1973. The second appeal was filed on 25th March, 1973 and it was dismissed on 3rd April, 1973. On the question as to whether the Amendment Act of 1973 was to apply or not, their Lordship of the Supreme Court held that no person has any right to contest any alienation of immovable property whether ancestral or non- ancestral on the ground of being contrary to custom after 23rd January, 1973. Section 7 as amended by the Amendment Act, 1973 was to apply to all pending actions whether at the stage of trial or before the Appellate Court. The rationale adopted is that the appeal is a continuation of the suit and if the right to contest an alienation on the ground of being contrary to custom has been taken away then such right to contest cannot be permitted even at the stage of first or second appeal. It has further been held that the Amendment Act, 1973 put a complete bar to contest any alienation of ancestral or non-ancestral immovable property or appointment of an heir to such a property on the ground that such alienation or appointment was contrary to custom. It has further been held that the language used in the amended Section 7 is in consistent with the continued existence of the custom. Their Lordships' emphasised the words used in Section 7 i.e. 'no person shall contest any alienation on the ground that such alienation is contrary to custom' and considered the aforesaid expression very significant. It has been further held that a plain reading of the amended provision would inevitably leads to the result that the right of contest being contrary to custom has been totally effaced and taken away. Therefore, no person has any right to contest any alienation of immovable property whether ancestral or non-ancestral on the ground of being contrary to custom after 23rd January, 1973.

(33) It is significant to notice that in regard to succession, the overriding effect of Section 4 of Hindu Succession Act has been recognized in a series of decisions by this Court holding that Punjab Agricultural Custom insofar as it was applicable to Hindus as defined

in Section 2 was no longer in force, which are governed by the provisions of the Succession Act. In that regard reliance may be placed on **Taro versus Darshan Singh, (21) Hans Raj Basant Ram versus Dhanwant Singh Balwant Singh (22) Banso versus Charan Singh, (23) Kalu versus Nand Singh, (24) and Kaur Singh Gajjan Singh (Supra)**.

(34) In Haryana, the situation as enunciated by Act No. 2 of 1920 continued to prevail in respect of alienation because no reforms parallel to Punjab as brought by the Amendment Act of 1973, has been enacted although right to pre-emption has been substantially abolished in Haryana also. Learned Advocate General, Haryana, has categorically stated that no steps even have been taken in that regard. Therefore, situation in Haryana have to be regarded as it existed under Act No. 2 of 1920.

(35) The question as to whether there is any conflict between the Three-Judge Bench judgments in Joginder Singh's case (*supra*) and Pritam Singh's case (*supra*) has to be answered in the negative, as has been suggested by Mr. M.L. Sarin and Mr. S.D. Sharma, learned senior counsel. A perusal of reference order dated 28th August, 1981 has also noticed the submission made by one of the learned counsel that there is no conflict. On our part we also feel persuaded to conclude that there is no real conflict between the two Full Bench judgments for various reasons :—

- (i) Both the Full Bench judgments have been delivered on the assumption that Joginder Singh's case (*supra*) dealt with the question of alienation whereas Pritam Singh's case (*supra*) had decided the question concerning succession. The aforementioned conclusion is supported by the opinion expressed in Pritam Singh's case (*supra*), when in para 33 their Lordship's has observed as under :—

“.....None of the decisions quoted by him is relevant to the point in issue. The decisions quoted by him Gujar

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(21) AIR 1960 Punj 145

(22) AIR 1961 Punj 510

(23) AIR 1961 Punj 45

(24) AIR 1974 P&H. 50

*versus* Sham Dass (110 P.R. 1887), *Jowala versus* Hira Singh (55 P.R. 1903), *Roda, Hira and others versus* Harnam (18 P.R. 1895), and *Karnail Singh and another versus* Naunihal Singh (AIR 1945 Lahore 188), deal with powers of alienation of property by a sonless proprietor and *Sunder versus* Salig Ram and others (26 P.R. 1911), deals with the powers of alienation of a widow governed by customary law. The decision in *Joginder Singh and another versus* Kehar Singh (AIR 1965 Punjab 407), is also irrelevant as it deals with powers of alienation of a person governed by customary law and section 14 of the Hindu Succession Act. No decision relating to the point in issue was cited by the counsel for the respondent.....”

- (ii) Even on facts we find that in *Joginder Singh’s* case the issue was the validity of alienation by consent decree by a father to his two sons, which was challenged by the third son, whereas in *Pritam Singh’s* case the question of nature of property in the hands of sons on the death of their father had arisen for the purposes of assessment of estate duty. In *Pritam Singh’s* case the property in the hands of the sons was held to be coparcenary property and only 1/3rd of the property belonging to the deceased father was considered eligible for estate duty. Therefore, there was no question of alienation in *Pritam Singh’s* case.
- (iii) The necessity to constitute Full Bench in *Pritam Singh’s* case had arisen because a Division Bench judgment in **Harbans Singh’s case** (*supra*) has taken incorrect view holding that the property in the hands of Jat Sikhs’ after the death of a coparcener was to be considered as ancestral property as the custom continued to govern the Jat Sikhs of Punjab, which is a agricultural predominant community. That view was correctly overruled.

(36) In view of the above on question No. 1 we hold that there is no conflict between the Full Bench judgments rendered in *Joginder*



Singh's case (*supra*) and Pritam Singh's case (*supra*) because in one case the Court was not required to travel beyond deciding issue of alienation of property and in the other case the issue rested purely on the question of succession. We are conscious of the fact that although the issue of alienation may in a given situation impinge upon the issue of succession yet in the so called conflict situation, there is no conflict because the issue of alienation did not eventually embraced the point of succession in Joginder Singh's case (*supra*).

(37) The second question has to be answered in two parts. In respect of State of Punjab it has to be held by virtue of Punjab Amendment Act, 1973 that there is a complete bar to contest any alienation of ancestral or non-ancestral immovable property or appointment or an heir to such property on the ground that such alienation or appointment was contrary to custom. The aforementioned conclusion has to be drawn in view of elaborate discussion made above as well as in view of the judgment of Hon'ble the Supreme Court in the case of **Darshan Singh** (*supra*). However, in Punjab the property in the hands of a successor has to be treated as coparcenary property and its alienation has to be governed by Hindu Law except to the extent it is regulated by Sections 6 and 30 of the Succession Act.

(38) In Haryana, the property in the hands of a successor may be held to be coparcenary property as well as ancestral property as known to Customary Law. It is well settled that the parties can fall back upon Hindu Law in case they fail to establish that the rule of decision in custom. Therefore, in Haryana both under Hindu Law and the Customary Law, the alienation would be open to challenge. It is not easy to contemplate all those situations which on the facts of each case would emerge by application of Hindu Law in contra distinction to that of Customary Law with regard to alienation.

(39) Accordingly, the reference is answered in the above terms. Let all the appeals be now set down for hearing before learned Single Judge for decision in accordance with the principles laid down herein.