(12) No other point having been argued in this case, the revision petition fails and is dismissed. As, however, the landlord has succeeded on the question of interpretation of the provision of law on which there was a conflict of decisions on account of which this revision petition was admitted to a Division Bench, we leave the parties to bear their own costs of the proceedings in this Court.

SHAMSHER BAHADUR, J.—I agree.

K. S. K.

FULL BENCH

Before Mehar Singh, C. J., D. K. Mahajan and B. R. Tuli, JJ.,

LACHHMAN SINGH,—*Appellant.*

versus

PRITAM CHAND AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 532 of 1968.

December 22, 1969.

Punjab Pre-emption Act (I of 1913), — Section 15(1) (b) Fourthly — "Co-sharers"—Meaning of—Purchaser of specific killa numbers in specified rectangles out of joint land — Whether becomes a co-sharer with the other co-sharer of the land.

Held, that the word 'co-sharers' signifies persons owing a share or shares in the whole of the property or properties of which another share or other shares were the subject of sale. In Section 15(1) (b), Fourthly of Punjab Pre-emption Act, 1913, a co-sharer has a preferential right of pre-emption where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly. A sale, however, by a co-sharer of a specific piece or plot of land or property does not make the purchaser or the vendee a co-sharer with other co-sharers, but where such a purchaser or vendee takes, on sale, a fractional share of a co-sharer in the joint land or property, then he comes to hold the land along with the other co-sharers in the fractional proportion of the whole which he has purchased. Hence the purchaser from a co-sharer of specified killa numbers in specified rectangles only and not in the whole land of the co-sharers, does not become a co-sharer with the other co-sharers and has no preferential right of pre-emption under section 15(1) (b), Fourthly of the Act.

Paras 8 and 9).

Case referred to by the Hon'ble Mr. Justice D. K. Mahajan, on 5th August, 1969. to a Full Bench for decision of an important question of law involved in the case. The Full Bench consiting of Hon'ble the Chief Justice Mr. Mehar

Singh, the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice Bal Raj Tuli, finally decided the case on 22nd December, 1969.

Regular Second Appeal from the decree of the Court of Shri Gurbachan Singh, District Judge, Ludhiana, dated the 18th day of March, 1968, reversing that of Shri Jagdish Rai Gupta, Sub-Judge II Class, Samrala, dated the 27th March, 1967, and granting the plaintiffs a decree for possession of the land in dispute by pre-emption on payment of Rs. 35129.50.

M. L. SETHI, SENIOR ADVOCATE, WITH ICHHPAL SINGH, ADVOCATES, for the Appellant.

JAGAN NATH KAUSHAL, SENIOR ADVOCATE, WITH ASHOK BHAN, AND C. B. KAUSHAK, ADVOCATES, for the Respondents.

JUDGMENT.

MEHAR SINGH, C.J.—This second appeal arises out of a pre-emption suit by Pritam Chand and Wazir Chand, plaintiffs, against Lachman Singh defendant, and concerns land situate within the area of village Khamano in Tehsil Samrala of Ludhiana District.

(2) There is the Jamabandi of 1960-61, copies, Exhibits P. 7 and P. 8, of Khewats Nos. 171 and 172, showing Rajinder Singh and Harinder Singh, real brothers, in possession of half share, and Ajmer Singh in the remaining half share of rectangles 6, 12, 13 and 16, among others, in Khewat No. 171, and of rectangles 13 and 16 in Khewat No. 172. There is the copy of the Jamabandi of 1952-53, Exhibit P. 2, in which those three co-shares are shown owners of Khewat No. 132/146, among others, rectangles 6, 12, 13, and 16. Apparently the Khewat numbers changed in the subsequent Jamabandi, but the rectangle numbers continued to be the same and so also, it follows, the Killa numbers in each rectangle.

(3) On August 20, 1960, by registered sale-deed, Exhibit P. 1, Harinder Singh co-sharer sold 48 Kanals and 2 Marlas of land to the plaintiffs. The description of the land sold by him given in this sale-deed is that he was selling his share of 46 Kanals and 12 Marlas, out of 186 Kanals and 8 Marlas comprising of rectangle 6, Killas Nos. 16 and 25, and rectangle 13, Killas Nos. 1 to 19, and 22 to 26, one-fourth share, and again 1 Kanal and 10 Marlas, out of 7 Kanals and 10 Marlas comprising of rectangle 13, Killa No. 20, one-fifth share. So Harinder Singh co-sharer sold two Killas out of rectangle 6, and 24 Killas out of rectangle 13, in the share as already given. With this sale-deed is attached a copy of the Jamabandi of 1952-53, Exhibit P. 2, which shows that rectangles 6 and 13 are in Khewat No. 132/146. In the Jamabandi of 1960-61, copies Exhibits P. 7 and P. 8, rectangles 6 is in Khewat No. 171, and rectangle in Khewat No. 172.

(4) On February 2, 1965, another co-sharer Ajmer Singh by registered sale-deed, Exhibit D. 1, sold to Lachman Singh defendant 103 Kanals and 8 Marlas of land out of rectangle 16, Khewats Nos. 171 and 172 of the Jamabandi of 1960-61, copies Exhibits P. 7 and P. 8. In that sale-deed Ajmer Singh co-sharer referred to rectangles 12, 13 and 16 and also to the specific Killas from each rectangle of which the total area came to 243 Kanals and 2 Marlas, and of which he sold 103 Kanals and 8 Marlas from rectangle 16, Killas Nos. 6, 7, 8, 13, 14, 15, 17/2, 16, 17/1, 18, 19, 23, 24 and 25. Rectangle 16 appears in Khewats Nos. 171 and 172 according to the Jamabandi of 1960-61. Killas Nos. 6, 7, 8, 13, 14, 15 and 17/2 are in Khatauni No. 251 of Khewat No. 171, and Killas Nos. 16, 17/1, 18, 19, 23, 24 and 25 are in Khatauni No. 258 of Khewat No. 172. So that the land from rectangle 16 sold by Ajmer Singh to the defendant came from Khewats Nos. 171 and 172. In Khewat No. 171 also come, according to the same Jamabandi, rectangles 6, 12, and 16, and in Khewat No. 172 come rectangles 12, 13 and 16.

(5) The plaintiffs sought to pre-empt the sale in favour of Lachman Singh defendant claiming a preferential right of pre-emption as co-sharers according to section 15(1) (b), Fourthly, of the Punjab Pre-emption Act, 1913 (Punjab Act 1 of 1913), on the ground that by the earlier sale in their favour, Exhibit P. 1, by Harinder Singh co-sharer, they had become co-sharers of the land sold by Ajmer Singh co-sharer to the defendant, being co-sharers with him in the same Khewat.

(6) It will be seen that Ajmer Singh, Harinder Singh and Rajindar Singh have been co-sharers of the land of Khewat No. 132/146 of the Jamabandi of 1952-53, equivalent to Khewats Nos. 171 and 172 of the Jamabandi of 1960-61. They were co-sharers of rectangles 6, 12, 13 and 16, apart from other land, and while Harinder Singh co-sharer sold land to the plaintiffs by an earlier sale-deed in their favour out of rectangles 6, and 13, by a subsequent sale Ajmer Singh co-sharer sold land to the defendant out of rectangle 16. So while the plaintiffs purchased the share of land earlier out of rectangles 6 and 13 and no share out of rectangle 16, by the later sale the defendant purchased the whole of the area of Killa numbers of rectangle 16 as given in the sale-deed Exhibit D. 1, and although that sale-deed refers to rectangle 13 and some of its Killas, no part of rectangle 13 was sold by Ajmer Singh co-sharer to the defendant.

(7) The suit of the plaintiffs was dismissed by the learned trial Judge on the ground that they are not co-sharers of joint land with

Ajmer Singh vendor. The learned Judge pointed out that the plaintiffs have not any share in the whole of Khewats Nos. 171 and 172, and all that they have purchased from Harinder Singh co-sharer under an earlier sale has been purchased of specific share out of specific Killa numbers of specific rectangles. The learned Judge further pointed out that the plaintiffs never purchased any part of rectangle 16. In appeal the learned Judge was of the opinion that by reason of the sale in their favour under the earlier sale-deed, Exhibit P. 1, the plaintiffs have become co-sharers in Khewats Nos. 171 and 172, because one-half share of the entire holding of Khewats Nos. 171 and 172 has within it rectangles 12, 13 and 16 in the Jamabandi of 1960-61, copies Exhibits P. 7 and P. 8. The learned Judge in the first appelate Court came to the conclusion that the sale-deed, Exhibit P. 1, shows that it was not the specific Killas that were sold by Harinder Singh co-sharer to the plaintiffs but a share out of the joint Khewat. So the learned Judge was of the opinion that the plaintiffs have become co-sharers of Ajmer Singh, Harinder Singh and Rajinder Singh, co-sharers and they have a preferential right to pre-emption the sale in favour of the defendant. This is the defendant's second appeal from the appellate decree.

(8) The plaintiffs have one-fourth share of Harindar Singh co-sharer in Khewat No. 171, rectangle 6, and Khewat No. 172, rectangle 13, of the Jamabandi of 1960-61, copies Exhibits P. 7 and P. 8. The total holding of the three co-sharers, namely, Ajmer Singh, Harindar Singh, and Rajindar Singh, consists of much more area and has within it rectangle 16 of Khewat Nos. 171 and 172 of the same Jamabandi. So the same plaintiffs have one-fourth share of rectangles 6 and 13 of the joint land of those three co-sharers, but they have not a fractional or a proportional share in the total joint holding of those co-sharers, including rectangle 16 of Khewat Nos. 171 and 172. So the plaintiffs have a fractional share in defined and specific Killas of joint holding of those co-sharers, but not in the total area of their joint land. In section 15(1) (b), Fourthly, of the Act a co-sharer has a preferential right of pre-emption 'where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly'. Here the sale to the plaintiffs was by a co-sharer, Harinder Singh, of a share out of a definel part of the joint land of the three co-sharers but not out of the whole of their joint land. The question then that has arisen in this case is, whether the plaintiffs have become co-sharers in the joint land of those three co-sharers and thus have a preferential right of pre-emption in regard to the sale made by Ajmer Singh co-sharer to Lachman Singh defendant? One more fact may be noted here before proceeding with the consideration of this question and that is

that according to the Jamabandi of 1952-53, Exhibit P. 2, the Killas in rectangles 6, 12, 13 and 16 were all in Khewat No. 132, of which there was only one Khatauni number, which was 146. So Killas of all those rectangles were in one Khewat number which had only one Khatauni number and the description has commonly been given as Khewat No. 132/146. However, in the Jamabandi of 1960-61, copies Exhibits P. 7 and P. 8, under Khewat No. 171, rectangle 6 is shown in Khataunis Nos. 248 and 250, and rectangle 12 in Khatauni No. 249, and some of the Killa numbers of rectangles 16 in Khatauni No. 251, and in Khewat No. 172 Killa numbers of rectangle 13 appear under Khataunis Nos. 252, 253, 254, 258, 263, and 266, and the remaining Killa numbers of rectangle 16 appear under Khatauni No. 258. So some of the Killa numbers of rectangle 13 and some of rectangle 16 are in Khatauni No. 258 of Khewat No. 172.

(9) In *Matu* v. *Hirde* (1), Plowden, S.J., observed that "the purchase by defendant of specific land cannot make him a sharer in the **khata**, and whatever right he may have to the land comprised in the deed if it falls to the share of his vendor, as it probably will, it cannot alter the land from being joint property of the co-sharers in the *khata* into separate property of the purchaser", and the same learned Judge in *Champa Mal* v. *Baisakhi Mal* (2), in which a co-sharer had sold undivided half of his half, or one-fourth of the holding, observed that the land "was joint undivided immovable property in which all the proprietors were co-sharers ..... The land in dispute is a portion of the village which belonged, as an entirety, to the recorded proprietors, as co-owners with a joint title, the recorded shares merely representing the quantity of the interest of each group among them in the whole village in unity." A sale by a co-sharer of a specific piece or plot of land out of joint land or property does not make the purchaser or the vendee a co-sharer with other co-sharers according to the past case, but where such a purchaser or vendee takes, on sale, a fractional share of a co-sharer in the joint land or property, then he comes to hold the land along with the other co-sharers in the fractional proportion of the whole which he has purchased, and this is the second case. The present case is neither the one nor the other. Here the plaintiffs have been purchasers of a fractional share of defined Killas of and in rectangles 6 and 13. but not a fractional share in the whole of the joint land of the three original co-sharers including rectangle 16. It is, however,

(1) 44 P R. 1894.
(2) 87 P.R. 1894.

urged on the side of the plaintiffs that even in the facts of the present case the plaintiffs have become co-sharers of the joint land of the three original co-sharers in both Khewat Nos. 171 and 172, and reliance in this respect is placed by their learned counsel on *Kuljas Rai* v. *Pala Singh* (3), in which the learned Judges held that "when a person sues for land jointly owned by two persons, even if specific plots are sold, in law it is treated as a sale of a share of the joint property. No co-sharer has any right to sell specific plots out of the joint *khata* and, therefore the value of an individual plot comprised in the joint *khata* is wholly immaterial in determining the point of court-fee." It is apparent that the decision was given for purposes of court-fee under the Court Fees Act of 1870 and has nothing to do with a case like the present under Punjab Act 1 of 1913. It is evident that so far as the present matter is concerned, if *Kuljas Rai's case* (3), is to be read in the manner as the learned counsel for the plaintiffs would have it, it runs contrary to the first judgment of Plowden, S.J., but *Rajindra Singh* v. *Umrao Singh* (4), and *Sher Singh* v. *Nand Lal* (5), proceed on a view exactly the same as expressed by Plowden S.J., in the two cases already referred to. In these last-mentioned two cases the learned Judges held that the word 'co-sharers' signifies persons owning a share or shares in the whole of the property or properties of which another share or other shares were the subject of sale. So *Kuljas Rai's case* (3), does not support the contention on the side of the plaintiffs. For Lachhman Singh defendant reliance is placed on cases of *Rajindra Singh* (4), and *Sher Singh* (5), that the plaintiffs have not become co-sharers in the joint land of the original three co-sharers, because they have not puchased undivided share of the whole of that joint land. It may, however, be stated that *khata* is equivalent to Khewat, and it is apparent from the opinion of Plowden, S.J., in the cases already referred to that, in the matter of finding out for the exercise of a preferential right of pre-emption, the status of a party as co-sharer has to be seen in a *khata* or thus a Khewat.

(10) The present is not a case of one or the other class of cases disposed of by the judgments of Plowden, S.J., but it is apparent that the present case, in which the plaintiffs are purchasers of a share of specified Killa numbers in specified rectangles only and not in the whole joint land of the three original co-sharers, is more near the dictum of the learned Judge in *Matu's case* (1), than in *Champa*

(3) A.I.R. 1945 Lah. 15
(4) (1924) 5 Lah. 298.
(5) A.I.R. 1947 Lah. 184.

Mal's case (2). The plaintiffs have purchased specified survey numbers in specified rectangles wiht this differences only from *Matu's case* (1), that in that case the total area of the specified land was purchased, but here a share of that has been purchased. These matters then come for consideration.

(11) In the first place, it is clear that if the plaintiffs were to claim a decree for joint possession of the whole of the joint land of the three original co-sharers, they would not succeed in that, for the smiple reason that they would be held to the terms and conditions the sale in their favour, which limits their right to the share of Harindar Singh co-sharer to the extent of one-fourth in the Killa numbers stated of rectangles 6 and 13. So that the plaintiffs will not succeed in obtaining a decree for joint possession with the other co-sharers of Harindar Singh as to the land other than the Killa numbers of rectangles 6 and 13 sold to them.

(12) Secondly, it is settled that possession of one co-sharer as such is not adverse to his other co-sharer or co-sharers. This is obviously *qua* joint land or property of such co-sharers. If the plaintiffs are in possession of any Killa numbers or any part of Killa numbers, not sold to them in rectangles 6 and 13, they will not hold such possession adversely to the other co-sharers, that is to say Ajmer Singh and Rajindar Singh, but it is not quite clear why they cannot adversely possess that part of the land of the original co-sharers which is not the subject of their sale-deed and which does not come within the ambit and scope of that sale-deed. They have purchased Harindar Singh co-sharer's share in Killa numbers of rectangles 6 and 13, and there is apparently no reason why they should not be able to, should they succeed in this, hold possession of any part of rectangle 16 and that adversely to the other co-sharers Ajmer Singh and Rajindar Singh. The learned Judges in *Sant Ram-Nagina Ram* v. *Daya Ram-Nagina Ram* (6), pointed out that the basis of co-sharers not being able to prescribe by mere possession of joint land against other co-sharers is that every co-sharer has a right to use the joint property to the whole extent. On the side of the plaintiffs the argument of the learned counsel has been that in a case like the present the plaintiffs, if they go into possession of any part or whole of rectangle 16, they by the mere fact of having possession of the same will not be holding it adversely to the other co-sharers. In this respect reliance is placed on *Kanhaya* v. *Trikha* (7), but in that case the

(6) I.L.R. (1962 1 Pb. 101=A.I.R. 1961 Pb. 528.
(7) A.I.R, 1935 Lah. 651.

vendors sold 2 Bighas and 6 Biswas out of a joint Khata of 1800 Bighas. That was not a case of sale of specific plot or field or survey numbers, but was a case of sale of a proportionate area out of the whole. It is the same thing to sell 2 Bighas out of 100 Bighas or one-fiftieth of 100 Bighas, in either case the sale is not of a specific survey number or plot out of the joint land but of a proportionate share of the same. *Kanhaya's case* (7), was of this type and, therefore, does not advance the argument on the side of the plaintiffs. Another case that has been relied upon in this respect by the learned counsel for the plaintiffs has been *Charan Kaur* v. *Hari Singh* (8). But in that case the learned Judge upon the evidence found that adverse possession as claimed had not been proved. In the beginning of the judgment reference is to a gift of half share of the land. but later on the learned Judge has observed that the gift was of specific properties and the donee's possession could not be adverse to the other co-sharers, the learned Judge in this respect following *Mam Raj* v. *Chhotu* (9). In the last-mentioned case what had been sold to the vendee was a share of the joint holding and not a specific part of it. So *Mam Raj's case* is not a satisfactory instance which lends support to the argument on the side of the plaintiffs. In the circumstances of the present case in the terms of the sale-deed in favour of the plaintiffs they will not be able to prescribed by possession against the other co-sharers in the Killa numbers of rectangles 6 and 13 in which they have purchased share of Harindar Singh co-sharer, but, as has already been said, there is no reason whatsoever why they, should they obtain possession, be not able to prescribe so far as the other land of the original three co-sharers is concerned.

(13) Thirdly, if the plaintiffs apply for partition as between themselves and the original three co-sharers, they cannot possibly ask for the division of the whole of the joint land of the three original co-shares. Here again they would be confined to the terms and conditions of the sale-deed in their favour. According to that deed what they have purchased is one-fourth share of certain definite Killa numbers out of rectangles 6 and 13, and they cannot ask that that one-fourth share should be taken in partition in relation to the whole of the joint holding of the original three co-sharers, should the others two co-sharers, than the vendor of these plaintiffs, take exception to that. The reason is obvious. A co-sharer cannot so deal with joint land or property as to prejudice the rights and title of the

(8) A.I.R. 1954 Pb. 124.
(9) A.I.R. 1933 Lah. 763.

other co-sharer or co-sharers in the same, but severance of tenancy-in-common may take place, apart from partition by common consent. If on an application for partition by the plaintiffs, the other two co-sharers, than the plaintiffs vendor, consent to the partition being confined to rectangles 6 and 13, one-fourth share of the Killas of which has been sold to them, then that would amount to the act of the three original co-sharers in first making a division of their joint land into two parts, one that of rectangles 6 and 13, and the other that of the rest of their joint land, and thereafter the partition of the first can take place between the plaintiffs and those co-sharers. The plaintiffs cannot compel the other co-sharers to bring in the rest of their joint land for the matter of partition though those co-sharers may compel the plaintiffs to bring in what has been sold to them in a partition of the whole of the joint holding of the original co-sharers. This obviously proceeds on the basis, as stated, that no co-sharer can do any act prejudicial to the interest of the other co-sharers in the joint land or property. The learned counsel for the plaintiffs refers to *Nihalu and another* v. *Chandar, and others*, (10), to contend that the plaintiffs have the right to insist on partition that the whole of the joint holding of the three original co-sharers should be brought into consideration. In that case the learned Judges observed "that a person whose interest is not co-extensive with the common property may insist that the omitted property be included in the suit or at any rate that such properties should be included in the suit as will result in setting off to him in severally some portion co-extensive with his interest." In a case like the present there can be no two opinions that at the time of partition what should happen should be that the whole of the joint land of the three original co-sharers be partitioned and sale in favour of the plaintiffs be taken into consideration to the extent it goes. This is as much as the learned Judges held in *Nihalu's case*, (10). Apparently the plaintiff's will not be able to insist contrary to the claim of the other co-sharers to bring in property, to which their sale does not relate, for partition, because they must be held to the terms and conditions of the sale in their favour, they being purchasers not of a share of the joint land of the original three co-sharers, but only a share of a defined part of it, that is to say, Killa numbers of rectangles 6 and 13.

(14) And, lastly, the plaintiffs not having purchased a share of the whole of the joint land of the original three co-sharers and having only purchased a share of defined Killa numbers of defined rectangles, that is to say rectangles 6 and 13, they obviously, in the terms of

(10) I.L.R. 1959 Pb. 162=A.S.R. 1956 Pb. 115.

their sale-deed, do not have their rights extending beyond the land of which share has been sold to them. In other words, while they become joint owners or co-sharers of the land of rectangles 6 and 13 with the original co-sharers, they do not become co-sharers with them in the other or the remaining joint land of those three original co-sharers. In *Mahla Singh* v. *Harnam Singh* (11), the learned Judge observed—Mehla Singh has it, is true, purchased some specific fields in Khataunis Nos. 83 and 84 in the Khata which can be described as Hakkiat Mutfarrika. But this would not make Mehla Singh a co-sharer of the vendor in Khata No. 14. The same line of reasoning applies to Khata No. 39 where also the plaintiff and Hira Singh are co-sharers while Mehla Singh has no fractional share in it. He owns certain Khataunis in this Khata, namely, Nos. 419 to 421 but that would not make him a co-sharer in the Khata." In *Mir Alam Khan* v. *Abdul Hamid Khan* (12), the pre-emptor had purchased three specific survey numbers out of a Khata, and the learned Judge held that that did not make him a co-sharer in the Khata. These two cases negative the claim of the present plaintiffs, and on case to the contrary has been cited at the bar. On consideration of these matters' the conclusion is obvious that the plaintiffs have failed to prove that they are co-sharers in or in regard to rectangle 16 sold by Ajmer Singh co-sharer to the defendant.

(15) The learned counsel for the plaintiffs has referred to *Safdar Ali* v. *Dost Muhammad* (13),*Dakhni Din* v. *Rahim-un-Nissa* (14), *Ali Husain Khan* v. *Tasadduq Husain Khan* (15), *Ram Govind Pande* v. *Danna Lal* (16), and *Ramjimal* v. *Riaz-ud-din* (17), for the proposition that a purchaser of a specific field in a village or a Mahal becomes a co-sharer in the same, but all those cases proceeded on the basis of the meaning and scope of the word 'co-sharer' either in the *wajab-ul-araz* of the particular place or a particular statute, which has nothing in common with the provisions of section 15(1) (b), Fourthly, of Punjab Act 1 of 1913. So these cases are not really relevant to the controversy in the present case. Similar is the case with regard to *Karuppan* v. *Ponnarasu Ambalam* (18), as

(11) 1935 P.L.R. 276.
(12) A.I.R. 1944 Peshwar 40.
(13) (1890) 12 All. 426.
(14) (1894) 16 All. 412.
(15) (1906) 28 All. 124.
(16) A.I.R. 1924 All. 305.
(17) A.I.R. 1935 P.C. 169 (All.).
(18) A.I.R. 1965 Mad. 389.

in that case what was the subject of transfer was a share of the property.

(16) In consequence, the plaintiffs fail to prove that they have a preferential right of pre-emption under section 15(1) (b), Fourthly, of Punjab Act 1 of 1913 on the ground that they have been co-sharers with Ajmer Singh vendor in the land of rectangle 1* sold by him to the defendant and thus co-sharers with Ajmer Singh vendor in the joint land. So the appeal of the defendant is accepted and, reversing the decree of the llower appellate Court, the decree of the trial Court is restored, so that the suit of the plaintiffs remains dismissed, with costs throughout.

D. K. MAHAJAN, J.—I agree.

BAL RAJ TULI, J.—So do I.

FULL BENCH

Before Harbans Singh, H. R. Sodhi and S. S. Sandhawalia, JJ.

JAGAT SINGH AND OTHERS,—*Appellants.*

versus

TEJA SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 39 of 1964

January 20, 1970.

Hindu Succession Act, (XXX of 1956) — Section 14 — Widow alienating her limited estate — Re-conveyance of the estate by the alience to the widow — Whether permissible — Reversioners obtaining usual declaratory decree before re-conveyance — Such decree — Whether prevents the alienee to re-convey the estate back to the widow — Re-conveyance to the widow effected after coming into force of the Hindu Succession Act, — Such widow — Whether becomes absolute owner of the estate.

Held, that when an alienee from a widow or other alienor with restricted power comes to know, either because he is threatend with litigation or a suit is actually filed or otherwise, of the defect or the lacuna in the title of his alienor, there is nothing either in the Hindu Law or the Customary Law or any other law which stands in his way of reconveying the property back to the alienor and thus restoring the position of the property as it existed prior to the alienation which is being challenged. After all, the relief that is claimed by a reversioner in the usual declaratory suit is that a declaration may be granted t the effect that the impugned alienation would not affect