

Before J. V. Gupta, J.

JAGIR SINGH and others,—Appellants.

versus

AJMERO and others,—Respondents.

Regular Second Appeal No. 676 of 1978.

May 20, 1987.

Punjab Limitation (Customs) Act (I of 1920)—Section 7, Art. 2—Widow holding limited estate—Alienation of such an estate by way of gift—Limitation for challenging such alienation—Right to challenge—Whether daughters have the right.

Held, that where the alienation is made by a widow having a limited estate then it is the Punjab Limitation (Customs) Act, which will be applicable and not the Limitation Act as such—No suit for declaration was filed by any of the reversioners within the time prescribed under the Punjab Limitation (Customs) Act. The daughters have no right to challenge the alienation of their mother under the custom. The transaction could be avoided by the reversioners who were competent to do so. They having failed to challenge the same within the time prescribed, the daughters were not entitled to challenge the same in a suit for possession filed after the death of their mother. (Paras 6 and 7).

Regular Second Appeal from the decree of the Court of Sardar Mohinder Singh Luma, Additional District Judge, dated the 30th day of March, 1978 modifying that of Shri S. N. Aggarwal, P.C.S., Additional Sub-Judge IInd Class, Patiala, dated the 28th October, 1974 (decreeing the suit of the plaintiffs for joint possession to the extent of 3/4 share of the land in dispute but leaving the parties to bear their own costs) to the extent that the defendants Nos. 1 to 3 left with one fourth share of the disputed land in the trial Court and now they are held entitled to one eighth share because the remaining one eighth share will be given to Shri Gurcharan Singh and Gurmel Kaur, defendants and further leaving the parties to bear their own costs.

Sarjit Singh, Advocate, for the appellants.

Harbhagwan Singh, Advocate, for the respondents.

JUDGMENT

J. V. Gupta, J.

(1) This is defendants' Second Appeal against whom suit for possession has been decreed by both the courts below.

(2) Smt. Pohlan, widow of Gurditta, made a gift of the suit land measuring 46 bighas in favour of Gurbaksh Singh, son of her deceased daughter Mst. Chand Kaur, on 28th January, 1954. At that time, she had the widow's estate in the suit land as she inherited the same from her husband. Later on, the donee Gurbaksh Singh sold the land to Wadhawa Singh, defendant. Wadhawa Singh further sold it to Jagir Singh, defendant, which sale was pre-empted by the defendant-appellants, Jagir Singh and others. Smt. Pohlan died on 3rd February, 1961. Her three daughters filed the present suit on 24th April, 1968 for possession of their $\frac{2}{3}$ share on the death of their mother, alleging that Smt. Pohlan was a limited owner of the suit property and, so the gift made in favour of Gurbaksh Singh was not binding on them. It was also pleaded that the parties were governed by custom and, therefore the widow had no right to alienate the suit property and that was not binding on them. The suit was contested by the defendants-appellants, *inter-alia*, on the plea that Smt. Pohlan was absolute owner of the suit property, and, therefore, she had every right to gift the same in favour of her grandson Gurbaksh Singh. It was also pleaded that the property was ancestral *qua* Gurditta deceased and the nearest reversioners had consented to the gift which means that the alienation made by her could not be challenged now by the plaintiffs. Plea of limitation was also taken. The trial court found that Smt. Pohlan was the limited owner of the suit property, and, therefore, what had been transferred was the widow's estate and not the absolute ownership. The suit was held to be within limitation under Article 141 of the old Limitation Act having been brought within 12 years from the death of Mst. Pohlan. The trial court also found that the parties were governed by custom as regards the succession and alienation at the time of making the gift in the year 1954. With these findings, the suit was decreed. In appeal, the learned Additional District Judge affirmed the said findings of the trial court and, thus, maintained the decree passed in favour of the plaintiffs. He further allowed the defendant his share who did not join with the plaintiffs while filing the suit.

(3) Learned counsel for the defendants/appellant vehemently contended that admittedly, the parties were *Jat* and depended on agriculture, and were, thus, governed by custom for the purposes of alienation and succession in the year 1954 prior to the coming into force of the Hindu Succession Act. According to the learned counsel, the gift was not made in favour of any stranger but rather in favour of her grandson who was the son of her deceased daughter

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Smt. Chand Kaur. Not only that, Daya Singh, the younger brother of the deceased's husband, was consulted and he had given his consent to the gift deed. The learned counsel further argued that the daughters had no right to challenge the alienation and no suit for declaration was ever filed by any of the reversioners and, therefore, no challenge could be made in the present suit to the said alienation at the instance of the daughters. According to the learned counsel, the daughters could succeed to the property only if there was any declaratory decree passed earlier at the instance of any reversioner competent to challenge the same.

(4) After hearing the learned counsel for the parties I am of the considered view that there is merit in the contentions raised on behalf of the defendant-appellants. Admittedly no suit for declaration was filed by any of the reversioners within the time prescribed under the Punjab Limitation (Custom) Act, 1920. It also could not be disputed that the daughters had no right to challenge the alienation of their mother under the custom. They were entitled to succeed to the property in case any declaratory decree was passed challenging the said alienation in view of the Supreme Court judgment in *Giani Ram v. Ramji Lal* (1).

(5) Not only that, during the pendency of this appeal the Punjab Custom (Power to Contest) Act, 1920 was amended,—*vide* Act No. 12 of 1973 by virtue of which no person shall contest any alienation of immovable property, whether ancestral or non-ancestral, on the ground that such alienation is contrary to custom. Thus, even if a suit would have been filed by the reversioners who were competent to challenge the same, if during the pendency of the appeal the said Act had come into force, the suit was liable to be dismissed. Reference may be made in this behalf to *Surjit Kaur v. Zail Singh* (2). It is, therefore, evident that the said alienation could not be challenged under the custom by any person, much less by the daughters who were not competent to challenge it, otherwise, also. In any case the suit having been filed in 1968, i.e., more than 14 years after the alienation made on 28th January, 1954, was clearly barred by time under the Punjab Limitation (Custom) Act, 1920. Article 141 of the old Limitation Act was not at all applicable to the facts of the present case, and the case was governed by the Punjab Limitation (Custom) Act, 1920.

(1) A.I.R. 1969 S.C. 1144.

(2) 1977 P.L.R. 690.

(6) Faced with the above situation, the learned counsel for the plaintiff-respondents submitted that there was no difference under the Hindu Law and the Custom as regards widow's estate. If the widow had no right to make the alienation then whether under the custom or the Hindu Law the position remains the same. Thus, argued the learned counsel, on the death of the widow the suit could be filed within 12 years thereof and was, therefore, within time. Moreover, argued the counsel, there was no necessity of filing the suit for declaration by any reversioners. The daughters being the next heir of the widow, were entitled to sue for possession, and in that suit, could challenge the alienation made by the widow. In support of this contention, he referred to *Tej Singh v. Chaudhari Hannu Prasad* (3), *Obala Kondama Naicker Ayyan v. Kandasamy Goundar* (4) and *Raghabir Singh v. Sobharam Gorain* (5). There is absolutely no force in this contention. Where the alienation is made by a widow having a limited estate and the parties are governed by custom, then it is the Punjab Limitation (Custom) Act, 1920 which will be applicable, and not the Indian Limitation Act, as such. The authorities referred to above have no application at all to the facts of the present case. As observed earlier, it could not be disputed that the parties were governed by custom because there was a specific issue framed by the trial court in this behalf and it was held thereunder that the parties were governed by custom in matters of succession and alienation but according to the trial court it had no effect on the case because the position of a widow under the Punjab Customary Law and the Hindu Law remains the same. This approach, as observed earlier, was wholly wrong, illegal and misconceived. Moreover, the plaintiff, while appearing in the witness-box, has admitted that they are *Jat* by caste and are dependent on agriculture.

(7) It is well settled that the alienation made by the widow is not a nullity but a voidable transaction. As held by this Court in *Barkhurdar Shah v. Mst. Sat Bharai* (6), a widow's transfer of her estate in excess of her powers is voidable, and not void. That being so, the transaction could be avoided by the reversioners who were competent to do so. Having failed to challenge the same within the time prescribed, the daughters were not entitled to challenge

(3) A.I.R. 1940 All. 433.

(4) 79(1924) I.C. 961.

(5) 70(1972) I.C. 290.

(6) A.I.R. 1931 Lah. 677.

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the same in the present suit filed after the death of their mother Smt. Pholan. The approach of the courts below in this behalf was wholly wrong, illegal and misconceived, and the plaintiffs were not entitled to any decree challenging the said alienation made by their mother. Consequently, this appeal succeeds, the judgment and decree of the courts below are set aside and the suit is dismissed with costs.

S.C.K.

Before J. V. Gupta, J.

VASDEV SINGH,—Petitioner.

versus

MISS PARMIN KAUR,—Respondent.

Civil Revision No. 1177 of 1987.

June 2, 1987.

Code of Civil Procedure (V of 1908)—Order 33 Rule 3—Application to sue as indigent person—Such application pending—Application for grant of interim maintenance filed—Maintainability of such application—No such objection regarding maintainability raised during trial—Validity of such objection at revisional stage.

Held, that no such objection was taken before the trial Court that the respondent was not entitled to any interim maintenance during the pendency of the application filed under Order 33, Rule 3 of the Code of Civil Procedure, 1908. That being so, the defendant could not be allowed to take this plea for the first time at this stage of the revision petition. (Para 5).

Petition for revision under Section 115 C.P.C. from the order of the court of Shri G. S. Jhaj, P.C.S., Sub-Judge 1st Class, Chandigarh dated the 23rd March, 1987 allowing Rs. 500 per month to the daughter Parmin Kaur as interim maintenance from that day. However, Gurvin Singh, son of the defendant being major is not entitled to any maintenance.

N. C. Jain, with A. C. Jain, Advocates, for the petitioner.

J. S. Sethi and H. S. Awasthy, Advocates, for the respondents.