

Dalip Singh v. Mst. Kishno, etc. (Tek Chand, J.)

- (vi) though a winding up petition is a perfectly proper remedy for enforcing the payment of a just debt as held by the Supreme Court in the case of *Harinagar Sugar Mills Co., Ltd.* (supra), the remedy is an equitable one and the passing of a winding up order under section 433 of the Act is itself in the sound judicial discretion of the Court. An order under the provision cannot be claimed *ex debito justitiae* or as of right;
- (vii) in a statutory appeal against a discretionary order such as the one declining to wind up a company under section 433 of the Act, interference is not normally justified unless the appellate Court is satisfied that the Court below has not exercised its discretion according to sound judicial principles; and
- (viii) on the facts of this case the debt is *bona fide* disputed.

No other point was argued before us in this case. The appeal accordingly fails and is dismissed though without any order as to costs.

MEHAR SINGH, C. J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Tek Chand, J.

DALIP SINGH,—*Appellant*

versus

MST. KISHNO AND OTHERS,—*Respondents*

Regular Second Appeal No. 734 of 1965

November 29, 1967

Custom—Widow's estate—Surrender of—Principles governing the same stated—Widow retaining right of taking back land surrendered in case the reversioner fails to deliver stipulated quantity of grain for her maintenance—Whether amounts to surrender—Words and phrases—Surrender, Abandonment and Merger—Meaning of as distinguished from each other.

Held, that the governing principles as to surrender of estate by a widow are that the surrender must be of whole estate and in favour of the nearest reversioner, if there be only one, or, of the whole body of reversioners, if there be more than one. The estate vests in the reversioner by virtue of operation of law. A valid surrender cannot be made in favour of anybody except the nearest reversioner or reversioners. Essentially, surrender is a yielding up of an estate for life to a person who has an immediate estate in the reversion. The technical and appropriate words like 'surrender', 'yielding up', or 'resignation', may not be used so long as the intention of the party is sufficiently manifested to be of surrender. The term 'surrender' is not to be understood to suggest a transaction in the nature of an alienation, sale, gift or delivery. The dominant idea is of giving up of the existing right in favour of the next reversioner.

Held, that where the widow made a stipulation with the next reversioner, with whose land she allowed her land to be consolidated, that if he failed to give her ten maunds of grain every year, she would have the right to get back her land from whichever side she might decide, the transaction did not amount to surrender. The insertion of this condition militates against the abandonment being in the nature of a surrender or relinquishment in favour of the reversioners. It is a misnomer to call such a transaction as surrender, as it is not irrevocable.

Held, that 'Surrender' is to be distinguished from 'abandonment', the former is indicative of consent to resign in favour of the reversioner, or giving up a right or a thing to another by free will. But 'abandonment' imports the idea, that the thing or the right given up is not deemed to be of any value, and it is not giving up to any particular person. Another term usually applied is of 'merger' which is a wider term than surrender. A merger takes place when two estates are united in the hands of one, e.g., reversioner. But surrender is the resignation of a particular estate for life to one in the immediate reversion.

Second Appeal from the decree of the Court of the District Judge, Patiala, dated the 4th day of May, 1965 affirming with costs that of the Sub-Judge 1st Class, Nabha, dated the 27th October, 1964, dismissing the plaintiff's suit.

B. R. AGGARWAL, ADVOCATE, for the Appellant.

PURAN CHAND, ADVOCATE, for the Respondents.

JUDGMENT

TEK CHAND, J.—This is regular second appeal of plaintiff from the judgment and decree of the District Judge, Patiala, affirming the judgment and decree of the trial court dismissing plaintiff's suit

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for a declaration that he was the owner of the property in dispute and the gift made by defendant No. 1 in favour of the donees was void. The parties are descended from a common ancestor and the last male holder was Kishni's husband Bishen Singh. There were three other branches of the common ancestor and the plaintiff represents one branch and the donees other two branches. The parties are jats governed by agricultural custom. On the death of Bishen Singh, the last male holder, his widow Kishni succeeded to his property. Mutation was entered in her name in 1931. In 1950, consolidation proceedings were going on in the village. It is claimed on behalf of the plaintiff that Mst. Kishni surrendered her estate in favour of the three branches who were the nearest reversioners of her deceased husband. In support of surrender, reliance has been placed upon Exhibit P/1 which is a copy of an extract from the register of the decisions recording the statements of the right-holders before the Consolidation Panchayat and the decision of the Consolidation Officer. The document is in the nature of a resolution incorporating the decision and is also a record of the statement of the party concerned. In Exhibit P/1, the statement of plaintiff Dalip Singh was recorded wherein he stated that apart from his own land, one-third land of Mst. Kishni be joined with his land. It was said that she was willing that one-third share should be consolidated with the lands of the respective reversioners. The words which call for comments are (1) *raqba Dalip Singh ke sath laga dia jawe* and (2) *meri tamam arrazi in har seh haqdaran ke sath bahi-ssa barabar shamil kar di jawe*. One of the conditions was that she was to receive from Dalip Singh ten maunds of grain every year and in case Dalip Singh would not give her the grain, then she was at liberty to take her land back from whichever side she liked.

The plaintiff's contention in this case was that Exhibit P/1 was a deed of relinquishment by which Mst. Kishni had completely effected herself and had surrendered all her rights. This contention of the plaintiff was contested by the respondents in this Court. This was also the principal point at issue between the parties before the lower courts. On parties' pleadings, the following issues were framed:—

- (1) Whether Mst. Kishni surrendered her rights in the land in suit in favour of the parties in equal shares and also delivered possession as alleged in para 4 of the plaint ?

- (2) If issue No. 1 is proved, was Mst. Kishni, competent to make a gift of the same property in favour of the defendants ?
- (3) Whether the parties are governed by custom in matters of alienation and succession and what is that custom?
- (4) Is the property ancestral qua the plaintiff and the husband of Mst. Kishni ?
- (5) Whether the plaintiffs are collaterals within fifth degree? If so, its effect ?
- (6) Has the plaintiff become owner by acceleration of succession and adverse possession ?
- (7) Are the defendants in possession ? If so, is the suit competent ?
- (8) Relief.

Out of these, the parties are at present concerned with issues 1, 2 and 6. The view of the trial court which found favour with the lower appellate court was that Mst. Kishni never surrendered her rights in the land in dispute in favour of the plaintiff. The main arguments have centred on the interpretation of Exhibit P/1, copy of proceedings held on 11th Vaisakha, 2006 Bk. under which the land of Mst. Kishni was consolidated along with the lands of the collaterals of her husband. The law as to surrender of estate by a widow is well-settled but the difficulty arises only in its application to the particular facts of a case. The governing principles are that the surrender must be of whole estate and in favour of the nearest reversioner, if there be only one, or, of the whole body of reversioners, if there be more than one. The estate vests in the reversioner by virtue of operation of law. A valid surrender cannot be made in favour of anybody except the nearest reversioner or reversioners. Essentially, surrender is a yielding up of an estate for life to a person who has an immediate estate in the reversion. The technical and appropriate words like surrender, 'yielding up', or 'resignation', may not be used so long as the intention of the party is sufficiently manifested to be of surrender. The term 'surrender' is not to be understood to suggest a transaction in the nature of an alienation, sale, gift or delivery. The dominant idea is of giving up of the existing right in favour of the next reversioner.

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'Surrender' is to be distinguished from 'abandonment', the former is indicative of consent to resign, in favour of the reversioner, or giving up a right or a thing to another by free will. But 'abandonment' imports the idea, that the thing or the right given up is not deemed to be of any value, and it is not giving up to any particular person. Another term usually applied is of 'merger' which is a wider term than surrender. A merger takes place when two estates are united in the hands of one e.g., reversioner. But surrender is the resignation of a particular estate for life to one in the immediate reversion.

Learned counsel for the appellant cited a decision of the Supreme Court in *Natvarlal Punjabhai and another v. Dadubhai Manubhai and others* (1). In that case, Mukherjee, J., observed that the whole doctrine of surrender was based upon the legal fiction of the widow's death. It was open to the widow by a voluntary act of her own to remove the obstruction impeding the course of succession in favour of the heirs of her husband by effacing herself from the estate altogether. If she does that, the consequence is the same as if she died a natural death and the next heirs of her husband, then living, step in at once under the ordinary law of inheritance. This fundamental basis of the doctrine of surrender can be said to be established beyond doubt. What forms the basis of surrender is the self-effacing by the widow and not the *ex-facie* transfer by which such effacement was brought about. It was also remarked that surrender is not alienation of an interest of the widow in favour of the reversioner, and no acceptance by the reversioner is necessary as a condition precedent to the vesting of the estate in him. The estate vests in the reversioner by operation of law, without any act on his part. It was also said:

"It is true that the widow at the time of surrendering her husband's estate can, if she likes, stipulate for a right to be maintained out of the properties for her life time; but reservation of such a small benefit absolutely necessary for her maintenance does not invalidate a surrender."

The question in this case is whether the above observations can be deemed applicable to the facts of the instant case. The distinguishing feature of the instant case is, that there is a stipulation here

(1) A.I.R. 1954 S.C. 61.

which was wanting in the case before the Supreme Court, that if ten maunds of grain per annum are not given to her by Dalip Singh, the plaintiff, then she has the right to get back her land from whichever side she may decide. This condition was deliberately put because after consolidation proceedings, the original land got mixed up with other lands. The insertion of this condition militates against the abandonment being in the nature of a surrender or relinquishment, in favour of the reversioners. It is a misnomer to call such a transaction as surrender, as it is not irrevocable. Before the Consolidation, Panchayat and the Consolidation Officer, Mst. Kishni was asserting a right to get back her land if she was not being given the promised quantity of grain. The other decision relied upon by the learned counsel for the plaintiff appellant is *Nallaya Gounder (died) and others v. Angaiyammal and others* (2). That case is also distinguishable on facts. In that case, the widow was to be provided for her maintenance by the surrenderee during her life time, a sum of Rs. 500 per year before the specified date, and that in default of such payment, she was to have the right to collect the same from and out of the properties surrendered with interest. It was found, that a charge was created over the entirety of the husband's property for securing the payment of the maintenance and this did not make any difference to surrender being complete and entire. The point of distinction of that case is that in the event of default, the widow was entitled to secure the amount of maintenance out of the properties surrendered. There was no condition stipulated, as in the instant case of getting her land back. Another decision cited at the bar was *Vadlamani Kondamma and another v. Vadlamani Seshamma* (3). A full bench of three Judges held, that if there is an agreement between the widow who surrenders the estate of her deceased husband and the next reversioner who takes the estate on such surrender, that the widow should be provided maintenance out of the estate, either by the allotment of a specific part of the property or by payment of a specific sum, or otherwise, the widow would be entitled to maintenance in accordance with such agreement. She cannot get enhanced maintenance in excess of the amount stipulated if the reversioner objects. If, however, the widow surrenders the estate in favour of the next reversioners without any stipulation for her maintenance, she is not, thereafter,

(2) A.I.R. 1964 Mad. 260.

(3) A.I.R. 1957 A.P. 156.

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entitled to be maintained out of the estate in the hands of the reversioners and the latter cannot be compelled to pay her maintenance. The proposition laid down by the full bench decision cannot be applied to the facts of the instant case. Reference was next made to a Single Bench decision of Lahore High Court in *Amar Singh v. Inda and others* (4). The facts of that case were, that two sets of reversioners offered to pay Rs. 120 per annum as maintenance to the widow and she made over possession of two-thirds of the estate to them. The third set of reversioners did not make any such offer and she continued to be in possession of one-third of the estate. It was held, that the relinquishment of a part of the estate in favour of the reversioners for a consideration was not invalid under the customary law of Punjab. The important point for consideration is that in this case, the widow had parted with the entire land to which two sets of reversioners could succeed and, therefore, it was deemed to be a total surrender in favour of the two reversioners.

The four decisions referred to above cannot be availed of for holding that Mst. Kishni had surrendered her life estate in so far as the land was still within her reach on the failure of delivery of the stipulated quantity of grain. The language employed in Exhibit P/1 is not clear as to justify conclusion in favour of a surrender by Mst. Kishni to the plaintiff. It is important to remember that she made the statement during consolidation proceedings, and what she wanted was that her one-third land should be joined or tagged on to the land of the plaintiff, *raqba Dalip Singh ke sath laga dia jawe*. This is understandable because Dalip Singh, the ultimate reversioner, would get on her death this land consolidated with his own land. What Mst. Kishni wanted was that the land should not be in different fragments. That is why she insisted upon her land being consolidated along with the other lands of her three reversioners. Desire to have her land consolidated in that manner with the land of the reversioners cannot be construed to be an act of immediate surrender. As a matter of fact, it was done taking into view the reversion following on her demise. These words more appropriately can be construed as a convenient arrangement rather than as an act of yielding up her rights as a whole of widow's life estate.

(4) A.I.R. 1934 Lahore 988.

Support is lent to this conclusion by the fact that in the consolidation *khataunis* and other consolidation records prepared afterwards, she was throughout shown as the owner. These entries have been repeated in all subsequent jamabandis from 1955 onwards,—*vide* Exhibits P/9, P/10 and P/12. Exhibit P/20 in *khasra girdawari* (crop inspection report) of 1963-64 which also shows her as owner.

Reference may also be made to the statement of P.W. 2, Chhajju Ram, Quanungo who appeared as plaintiff's witness and stated that the arrangement was that the ownership of Kishni was to continue. A similar statement was made by P.W./9, Magh Singh.

From what has been stated above, I feel satisfied that surrender of her life estate on the part of Mst. Kishni has not been proved. The lower courts arrived at a correct conclusion. The appeal fails and is dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

LACHHMAN SINGH, —*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER, —*Respondents*

Civil Writ No. 1709 of 1967

November 29, 1967

Motor Vehicles Act (IV of 1939)—S. 60—Power to cancel or suspend permit—When to be exercised—Transport Authority—Whether bound to compound offences if permit-holder willing to pay composition fee according to scale prescribed—Compounding of penalties—Whether proper.

Held, that under section 60, sub-section (1) of the Motor Vehicles Act, 1939, the Transport Authority which granted a permit has the power to cancel the permit, or to suspend it, for such period as it thinks fit, on the breach of conditions indicated in the section. *Sub-section (3) of this section is an enabling provision*