the appellant is not liable to render accounts for the excess receipts.

No other point is raised before us. In the result, the decree of the High Court is set aside and that of the Subordinate Judge is restored. The appellant will have his costs throughout.

Appeal allowed.

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Mahant Ramdhan Puri v. *Bankey Bihari Saran*

Subba Rao J.

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May 23.

MAKTUL

v.

Mst. MANBHARI & OTHERS

(GAJENDRAGADKAR, A. K. SARKAR and SUBBA RAO JJ.)

Customary Law—Inheritence—Hindu in Punjab succeeding to maternal grandfather's estate—Such property, if ancestral qua his sons—Stare decisis—Rule, when inapplicable.

Under the customary law of the Punjab property inherited by a Hindu male from his maternal grandfather is not ancestral property qua his sons.

Narotam Chand v. *Mst. Durga Devi*, I. L. R. (1950) Punj. 1, approved.

Lehna v. *Musammat Thakri*, (1895) 30 P. R. 124 and *Musammat Attar Kaur* v. *Nikkoo*, (1924) I. L. R. 5 Lah. 356, not approved.

The rule of *stare decisis* is not an inflexible rule and is inapplicable where the decision is clearly erroneous and when its reversal does not shake any titles or contracts or alter the general course of dealing.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 150 of 1955.

Appeal from the judgment and decree dated August 20, 1952, of the Punjab High Court in Regular First Appeal No. 107 of 1949 arising out of the judgment

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and decree dated March 22, 1948, of the Court of the Sub-Judge 1st Class, Panipat, in Suit No. 361 of 1947.

Dr. J. N. Banerjee and *K. L. Mehta,* for the appellant.

Gopal Singh, for respondents Nos. 1 to 9.

1958. May 23. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR J.—If a Hindu governed by the customary law prevailing in the Punjab succeeds to his maternal grandfather's estate, is the property in his hands ancestral property qua his own sons ? This is the short and interesting question of law which arises in this appeal. The appellant is the son of Sarup, respondent 10. On the death of his mother Musammat Rajo, respondent 10 inherited the suit properties from his maternal grandfather Moti. On March 22, 1927, he executed a registered mortgage deed in respect of the said properties in favour of Shibba the ancestor of respondents 1 to 9 for Rs. 5,000. Subsequently, on April 12, 1929, he sold the equity of redemption to the said mortgagee Shibba for Rs. 11,000. In Suit No. 145 of 1946 filed by the appellant in the court of the Sub-Judge, Panipat, from which the present appeal arises, the appellant had claimed a declaration that the two transactions of mortgage and sale in question did not bind his own reversionary rights, because the impugned transactions were without consideration and were not supported by any legal necessity. His allegation was that his family was governed by the custom prevailing in the Punjab and, under this custom, the property in suit was ancestral property and he was entitled to challenge its alienation by his father respondent 10. Respondents 1 to 9 disputed the appellant's right to bring the present suit and urged that the alienations by respondent 10 were for consideration and for legal necessity. It was, however, common ground that respondent 10 and the appellant were governed by the custom prevailing in the Punjab. The learned trial judge held that the property in dispute was ancestral qua the appellant

and that the impugned alienations were not effected for consideration or for legal necessity. He, however, held that the appellant was not born at the time when the mortgage deed in question was executed and so he was not entitled to challenge it. In the result the appellant was given a declaration that the sale in dispute did not bind the appellant's reversionary rights in the property after the death of respondent 10. The appellant's claim in regard to the mortgage was dismissed. Respondents 1 to 9 went in appeal against this decree to the District Judge at Karnal and contended that the suit had abated in the trial court as a result of the death of one of the defendants pending the decision of the learned trial judge. The learned District Judge rejected this contention but he set aside the decree and remanded the suit for proceedings for substituting the legal representatives of the deceased defendant Ram Kala. After remand the legal representatives of the deceased Ram Kala were brought on record and ultimately the original decree passed by the trial court was confirmed by the learned trial judge. Respondents 1 to 9 again challenged this decree by preferring an appeal to the District Judge at Karnal. The learned District Judge held that the value of the subject-matter of the suit was more than Rs. 5,000 and so he ordered that the memorandum of appeal should be returned to respondents 1 to 9 to enable them to file an appeal before the High Court. That is how respondents 1 to 9 took their appeal to the High Court of Punjab. The High Court took the view that the appeal had in fact been properly filed in the District Court; but even so it did not ask respondents 1 to 9 to go back to the District Court, but condoned the delay made by the said respondents in the presentation of the appeal before itself and proceeded to deal with the appeal on the merits. The High Court held that the property inherited by respondent 10 was not ancestral property qua the appellant, and so it allowed the appeal preferred by respondents 1 to 9 and dismissed the appellant's suit. In view of the fact that the point of law raised before the High Court was not free from doubt the High

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Court ordered that parties should bear their own costs throughout. The appellant then applied for and obtained a certificate from the High Court under the first part of s. 110 of the Code of Civil Procedure. It is with this certificate that the present appeal has come before this Court and the only point which has been raised for our decision is whether the property in suit can be held to be ancestral property between the appellant and respondent 10.

Under the Hindu law, it is now clear that the only property that can be called ancestral property is property inherited by a person from his father, father's father or father's father's father. It is true that in *Raja Chelikani Venkayyamma Garu* v. *Raja Chelikani Venkataramanayyamma* (1) the Privy Council had held that under Mitakshara law the two sons of a Hindu person's only daughter succeed on their mother's death to his estate jointly with benefit of survivorship as being joint ancestral estate. This decision had given rise to a conflict of judicial opinion in the High Courts of this country. But in *Muhammad Husain Khan* v. *Babu Kishva Nandan Sahai* (2) this conflict was set at rest when the Privy Council held that under Hindu law a son does not acquire by birth an interest jointly with his father in the estate which the latter inherits from his maternal grandfather. The original text of the Mitakshara was considered and it was observed that the ancestral estate in which, under the Hindu law, a son acquires jointly with his father an interest by birth, must be confined to the property descending to the father from his male ancestor in the male line. Sir Shadi Lal, who delivered the judgment of the Board, explained the earlier decision of the Privy Council in *Raja Chelikani Venkayyamma Garu's case* (1) and observed that in the said case " it was unnecessary to express any opinion upon the abstract question whether the property which the daughter's son inherits from his maternal grandfather is ancestral property in the technical sense that his son acquires therein by birth an interest jointly with him." The learned Judge further clarified the position by stating that the

(1) (1902) L.R. 29 I.A. 156. (2) (1937) L.R. 64 I.A. 250.

phrase 'ancestral property' used in the said judgment was used in the ordinary meaning, *viz.*, property which devolves upon a person from his ancestor and not in the restricted sense of the Hindu law which imports the idea of the acquisition of interest on birth by a son jointly with his father. Thus there is no doubt that under the Hindu law property inherited by a person from his maternal grandfather is not ancestral property qua his sons. The question which arises in the present appeal is: what is the true position in regard to such a property under the Customary law prevailing in the Punjab?

This question has been considered by Full Benches of the High Court of Punjab on three occasions. Let us first consider these decisions. In *Lehna* v. *Musammat Thakri* (1), it was held by the Full Bench (Roe S. J. and Rivaz J., Chatterji J. dissenting) that "in the village community where a daughter succeeds, either in preference to, or in default of, heirs male, to property which, if the descent had been through a son, would be ancestral property, she simply acts as a conduit to pass on the property as ancestral property to her sons and their descendants and does not alter the character of the property simply because she happens to be a female". Chatterji J., however, held that the word "ancestral" can only be used in a relative and not in a fixed or absolute sense in customary law, and before this character can be predicated of any property in the hands of a male owner, it must be found that it has descended to him from a male ancestor and in the case of a claim by collaterals, from a male ancestor common to him and the claimants. It is apparent from the majority judgment that the learned judges did not find the alleged custom about the character of the property proved by any evidence. They proceeded to deal with the question rather on *a priori* considerations and the main basis for the decision appears to be that the property cannot lose its character of ancestral property merely because it has come through a female who succeeded her father in default of male heirs. Chatterji J. dissented from this

(1) [1895] 30 P.R. 124.

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approach. He observed that he could not recall any instance in which property derived from or through any female ancestor among Hindus had been decided to fall within the category of ancestral property under the customary law. He also pointed out that the statement of the learned author of the Digest on the Customary Law of the Punjab on this point did not support the majority view. Thus it would not be unreasonable to say that the majority decision in this case is not a decision on the proof of custom as such.

The same point was again raised before a Full Bench of the High Court of Punjab in *Musammat Attar Kaur* v. *Nikkoo* (1). Sir Shadi Lal C. J. who delivered the principal judgment of the Full Bench conceded that there was "a great deal to be said in favour of the proposition that, unless the land came to a person by descent from a lineal male ancestor in the male line, it should not be treated as ancestral." He also conceded that the decision in the earlier Full Bench case of *Lehna* (2) did not rest upon any evidence relating to custom on the subject but was based on what the majority of the judges considered to be the general principles of the customary law, and upon the argument *ab inconvenienti*. The learned Chief Justice then took into account the fact that the question about the character of such property even under the Hindu law was not free from doubt and he referred to the conflict of judicial opinion on the said point. Having regard to this conflict the learned Chief Justice was not inclined to reopen the isuue which had been concluded by the earlier Full Bench decision, and basing himself on the doctrine of *stare decisis* he held that the majority decision in *Lehna's case* (2), should be treated as good law. It would be noticed that the judgment of Sir Shadi Lal C. J. clearly indicates that, on the merits, he did not feel quite happy about the earlier decision in *Lehna's case* (2).

It appears that the same question was again raised before another Full Bench of the High Court of Punjab in *Narotam Chand* v. *Mst. Durga Devi* (3). In this

(1) (1924) I.L.R. 5 Lah. 356. (2) [1895] 30 P.R. 124.
(3) I.L.R. [1950] Pun. 1.

case the main question which arose for decision was under art. 2 of the Punjab Limitation (Custom) Act I of 1920. This article governs suits for possession of ancestral immoveable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom. It provides for two periods of limitation according as a declaratory decree is or is not claimed. In dealing with the point as to whether the suit in question attracted the provisions of art. 2 of Act I of 1920, the Full Bench had to consider whether the property in suit was ancestral property or not; and that raised the same old question whether property from maternal grand-father in the hands of a grandson can be described as ancestral property or that such property in the hands of a daughter can be given that description. The matter appears to have been elaborately argued before the Full Bench. The previous Full Bench decisions were cited and reference was made to two decisions of the Privy Council which we will presently consider. Mahajan J., as he then was, who delivered the main judgment of the Full Bench held that the property inherited by a Hindu from his maternal grandfather is not ancestral qua his descendants under the customary law of the Punjab. The learned judge also held that the two Privy Council decisions cited before the court had in effect overruled the earlier Full Bench decisions of the Punjab High Court. It is this last decision of the Full Bench which has been followed by the High Court in the present proceedings. The appellant contends that the High Court was in error in not following the earlier Full Bench decisions on this point and it is urged on his behalf that the decision of the last Full Bench in *Narotam Chand's case* (1), should not be accepted as correct. We do not think that the appellant's contention is well-founded.

So far as the statement of the customary law itself is concerned, Rattigan's Digest which is regarded as an authority on the subject, does not support the appellant's case. In para. 59 of the Digest of Civil Law for the Punjab chiefly based on the customary law it is

(1) I.L.R. [1950] Pun. 1.

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stated that ancestral immoveable property is ordinarily inalienable (especially amongst Jats, residing in the Central Districts of the Punjab) except for necessity or with the consent of male descendants or, in the case of a sonless proprietor, of his male collaterals. Provided that the proprietor can alienate ancestral immoveable property at pleasure if there is at the date of such alienation neither a male descendant nor a male collateral in existence. Following this statement of the law the learned author proceeds to explain the meaning of ancestral property in these words: "Ancestral property means, as regards sons, property inherited from a direct male lenial ancestor, and as regards collaterals property inherited from a common ancestor". Thus, so far as the customary law in the Punjab can be gathered, the statement of Rattigan is clearly against the appellant.

Then as regards the first Full Bench decision in *Lehna's case* (1), as we have already pointed out, there is no discussion about any evidence of custom and indeed no evidence about the alleged custom appears to have been led before the learned judges. It is, therefore, difficult to accept this decision as embodying the learned judges' considered view on the question of custom as such. That in effect is the criticism made by Chatterji J. in his dissenting judgment and we are inclined to agree with the views expressed by Chatterji J. When this question was raised before the second Full Bench in *Mst. Attar Kaur's case* (2), Sir Shadi Lal C. J. rested his decision on *stare decisis* mainly because the true position on the said question even under the Hindu law was then in doubt. This consideration has now lost all its validity because, as we have already indicated, the true position under the Hindu law about the character of such property has been authoritatively explained by Sir Shadi Lal himself in the Privy Council decision in *Muhammad Husain Khan's case* (3). That is why we think not much useful guidance or help can be derived from this second Full Bench decision. The last Full Bench decision in *Narotam Chand's case* (4), is

(1) [1895] 30 P.R. 124.
(2) (1924) I.L.R. 5 Lah. 356.
(3) (1937) L.R. 64 I.A. 250.
(4) I.L.R. [1950] Pun. 1.

based substantially on the view that, as a result of the Privy Council decision in *Muhammad Husain Khan's case* (1), the two earlier Full Bench decisions must be taken to have been overruled. Besides, the learned judges who constituted this Full Bench have also examined the merits of the two earlier judgments and have given reasons why they should not be taken as correctly deciding the true position under the customary law. In our opinion, the view taken by this Full Bench is on the whole correct and must be confirmed.

It would now be necessary to consider the two Privy Council decisions on which reliance has been placed by Mahajan J., as he then was, in support of his conclusion that they have overruled the earlier Full Bench decisions. In *Attar Singh* v. *Thakar Singh* (2) the Privy Council was dealing with a suit by Hindu minors to set aside their father's deed of sale of the lands in suit to the defendants on the ground that they were ancestral. It was held that, as the plaintiffs claimed through their father as son and heir of Dhanna Singh, the onus was on them to show that the lands were not acquired by Dhanna Singh and, as that onus was not discharged, the lands must be deemed to be acquired properties of Dhanna Singh and that deed could not be set aside. The parties to this litigation were governed by the customary law of the Punjab. In dealing with the character of the property in suit, Lord Collins who delivered the judgment of the Board observed that "it is through father, as heir of the above-named Dhanna Singh, that the plaintiffs claimed, and unless the lands came to Dhanna Singh by descent from a lineal male ancestor in the male line, through whom the plaintiffs also in like manner claimed, they are not deemed ancestral in Hindu law." This statement indicates that, according to the Board, it is only where property descends from the lineal male ancestor in the male line that it partakes of the character of ancestral property. It may be conceded that the question as to whether property inherited from a maternal grandfather is ancestral property or

(1) (1937) L.R. 64 I.A. 250. (2) (1908) L.R. 35 I.A. 206.

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not did not arise for the decision of the Board in this case; but it is significant that the words used by Lord Collins in describing the true position under the Hindu law in regard to the character of ancestral property are emphatic and unambiguous and this statement has been made while dealing with the case governed by the customary law of the Punjab. This statement of the law was cited with approval and as pertinent by Sir Shadi Lal when he delivered the judgment of the Board in *Muhammad Husain Khan's case* (1). The learned judge has then added that "*Attar Singh's case* (2), however, related to the property which came from male collaterals and not from the maternal grandfather and it was governed by the custom of the Punjab; but it was not suggested that the custom differed from the Hindu law on the issue before their Lordships". The effect of these observations would clearly appear to be that the test laid down in *Attar Singh's case* (2) would apply as much to the Hindu law as to the customary law of the Punjab. In our opinion, these observations made by Sir Shadi Lal are entitled to respect and have been rightly relied upon by Mahajan J., as he then was, in the last Full Bench case (*Narotam Chand's case* (3)), to which we have already referred. We may add that it may not be technically correct to say that these observations overrule the earlier Full Bench decision of the Punjab High Court on the point. We entertain no doubt that, if the relevant observations of Lord Collins in *Attar Singh's case* (2) had been considered in the second Full Bench decision, they would have hesitated to rely on the doctrine of *stare decisis* in support of their final decision.

There is one more point which still remains to be considered. Having regard to the principle of *stare decisis*, would it be right to hold that the view expressed by the High Court of Punjab as early as 1895 was erroneous? The principle of *stare decisis* is thus stated in *Halsbury's Laws of England* (4):

(1) (1937) L.R. 64 I.A. 250. (2) (1908) L.R. 35 I.A. 206.
(3) I.L.R. [1950] Pun. 1.
(4) 2nd Edn., Vol. XIX, p. 257, para. 557.

"Apart from any question as to the Courts being of co-ordinate jurisdiction, a decision which has been followed for a long period of time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or in the general conduct of affairs, or in legal procedure or in other ways, will generally be followed by courts of higher authority than the court establishing the rule, even though the court before whom the matter arises afterwards might not have given the same decision had the question come before it originally. But the supreme appellate Court will not shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title and no contract will be shaken, no persons can complain, and no general course of dealing be altered by the remedy of a mistake."

The same doctrine is thus explained in *Corpus Juris Secundum* (1):

"Under the stare decisis rule, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. This rule is based on expediency and public policy, and, although generally it should be strictly adhered to by the courts, it is not universally applicable."

The Corpus Juris Secundum (2), however, adds a rider that "previous decisions should not be followed to the extent that grievous wrong may result; and, accordingly, the courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced is erroneous. The rule of *stare decisis* is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the court, and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result."

In the present case it is difficult to say that the doctrine of *stare decisis* really applies because the

(1) Vol. XXI, p. 302, para. 187. (2) Vol. XXI, p. 322, para. 193.

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correctness of the first Full Bench decision has been challenged in the Punjab High Court from time to time and in fact the said decision has been reversed in 1950. Besides, in 1908, the Privy Council made emphatic observations in *Attar Singh's case* (1) which considerably impaired the validity of the first Full Bench decision; so it would be difficult to say that the decision of the first Full Bench has been consistently followed by the community since 1895. It cannot also be said that reversal of the said decision shakes any title or contract. The only effect of the said decision was to confer upon the son of the person who inherited the property from his maternal grandfather the right to challenge his alienation of the said property. It is doubtful if such a right can be regarded as the right in property. It merely gives the son an option either to accept the transaction or to avoid it. It cannot be said today that any pending actions would be disturbed because this right has already been taken away by the Full Bench in 1950. In this connection, it may also be relevant to consider another aspect of this matter. If it is held that the property inherited from maternal grandfather is not ancestral property, then it would tend to make the titles of the alienees of such property more secure. Besides, we are satisfied that the decision of the first Full Bench is wholly unsustainable as a decision on the point of the relevant custom. We are, therefore, inclined to take the view that the doctrine of *stare decisis* is inapplicable and should present no obstacle in holding that the earlier cases of the Full Bench of the Punjab High Court were not correctly decided.

In the result we confirm the finding of the High Court that the property in suit is not ancestral property and that the appellant has no right to bring the present suit. The appeal accordingly fails and must be dismissed. The appellants will pay the respondent's costs in this Court; and parties will bear their own costs in the courts below.

Appeal dismissed.

(1) (1908) L.R. 35 I.A. 206.