

TEG SINGH AND OTHERS

v.

CHARAN SINGH AND ANOTHER

March 23, 1977

[Y. V. CHANDRACHUD, P. K. GOSWAMI AND P. N. SHINGHAL JJ.]

(i) *Punjab Customs (Power to contest) Act, 1920 S. 7 as amended by s. 3 of the Punjab Customs (Power to contest) Amendment Act (Act 12) 1973—Construction and effect of—*(ii) *Punjab Limitation (Custom) Act, 1 of 1920, S. 8 scope of.*

S. 7 of the Punjab Customs (Power to Contest) Act, 1920 provided that no person shall contest any alienation of non-ancestral immovable property on the ground that such alienation is contrary to custom. S. 3 of the Amendment Act 12 of 1973 amended s. 7 with the result that no challenge could be made to the alienation of any immovable property, whether ancestral or non-ancestral, on the ground that it is contrary to custom.

A gift-deed was executed by one Mula, in favour of appellant No. 13 Bhagwati Devi, on December 3, 1964. Appellants 1 to 12 claiming to be potential reversioners obtained a decree on May 31, 1966 in a suit filed against the donor and the donee for a declaration that under the Punjab Customs (Power to Contest) Act 2 of 1920 the gift-deed was not binding on them and that decree was confirmed in appeal on October 16, 1967. On July 10, 1966, Mula adopted the respondent. On March 11, 1970 appellant No. 13 executed in favour of appellants 1 to 12, a lease in respect of the property which was the subject matter of the gift. Mula died on August 23, 1971. On December 13, 1971, respondent filed a suit for possession of certain properties including the property which Mula had gifted to appellant No. 13. The suit was decreed on January 20, 1971 and that decree was confirmed in appeal by the District Court and the High Court.

In appeal by special leave, the appellants contended (i) In decreeing the suit the Courts below had over-looked the relevant provisions of the Punjab Customs (Power to Contest) Amendment Act, 1973 by virtue of which the legality of the gift made by Mula to appellant No. 13 could not be contested and (ii) since the respondent was not entitled to impeach the gift in favour of Bhagwati Devi, having been adopted after the date of the gift, the decree obtained by appellants 1 to 12 cannot enure for his benefit, under s. 8 of the Punjab Limitation (Custom) Act, of 1920.

Dismissing the appeal, the Court—

HELD : (1) That a declaratory decree obtained under the Punjab Customs (Power to Contest) Act by a reversioner to the effect that an alienation would not bind them after the alienor's death, had the effect of restoring the property alienated to the estate of the alienor and therefore, all persons who are heirs to the deceased were entitled to obtain possession of the alienated property. [367 E-F]

(ii) The decree obtained by appellants 1 to 12 on May 31, 1966 would enure for the benefit of all persons who are entitled to a share in the property of the deceased as it existed at the moment of his death. Since Mula's property stood freed from the encumbrance of the gift at the moment of his death, respondent as the adopted son would be entitled to the possession of the gifted property. [367 H, 368-A]

Giani Ram v. Ramji Lal (1969) 3 SCR 944, relied on to; *Chand Singh v. Ind Kaur* (1974) 1 PLR 226 approved.

(iii) It is true that, if it became necessary after the amending Act of 1973 to contest the gift executed by Mula in favour of Bhagwati Devi, s. 7 of the Act of 1920 would operate as a bar to such a contest. But in the instant case, the basis on which the respondent has asked for the relief is that upon the death of Mula in 1971, the gift ceased to be operative by reason of the decree passed in suit No. 143/1965. He has not and indeed he need not have contested the validity of the gift-deed since the question was decided finally in the aforesaid suit. [367 B-D]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 686 of 1976.

(Appeal by Special leave from the Judgment and Order dated 13-2-1976 of the Punjab and Haryana High Court in R.S. A. No. 249 of 1976).

P. P. Juneja, for the appellants.

B S. K. Mehta, K. R. Nagaraja and P. N. Puri, for respondent No. 1

The Judgment of the Court was delivered by

C CHANDRACHUD, J. (1) One Mula executed a registered gift deed in favour of appellant No. 13, Bhagwati Devi, on December 3, 1964. On April 29, 1965, appellants 1 to 12 claiming to be potential reversioners filed Suit No. 143 of 1965 against the donor and the donee for a declaration that under the Punjab Custom (Power to Contest) Act, 1920, the gift-deed was not binding on them. The suit was decreed by the trial court on May 31, 1966 and that decree was confirmed in appeal on October 16, 1967.

D (2) In between, on July 10, 1966 Mula adopted the respondent. On March 11, 1970, appellant No. 13 executed in favour of appellants 1 to 12 a lease in respect of the property which was the subject matter of the gift. Mula died on August 28, 1971.

E (3) On December 13, 1971 respondent filed the present suit against the appellants for possession of certain properties including the property which Mula had gifted to appellant No. 13. The suit was decreed by the trial court on January 29, 1971 and the decree was confirmed in appeal by the District Court and the High Court.

F (4) On June 3, 1976 appellants filed a special leave petition in this Court challenging the High Court judgment. They raised, *inter alia*, a new contention (ground No. B) that in decreeing the suit, the courts below had overlooked the relevant provisions of the Punjab Customs (Power to Contest). Amendment Act of 1973, by virtue of which the legality of the gift made by Mula in favour of Bhagwati Devi could not be contested. On June 11, 1976 this Court granted special leave to the appellants limited to the aforesaid Ground (B) of the special leave petition.

G (5) We have heard an interesting argument from Mr. Juneja, who appears on behalf of the appellants, as regards the true construction and effect of the Punjab Customs (Power to Contest) Act, 1920, as amended in 1973, but we are of the opinion that the argument lacks basis and cannot, therefore, be accepted. The contention, sought to be raised for the first time by the learned counsel, is founded on the assumption that by reason of the Amendment Act of 1973, the gift-deed executed by Mula cannot be challenged by the respondent. The assumption on which the argument is founded is fallacious, because the respondent does not seek by his plaint, as indeed he need not have sought, to challenge the gift-deed executed by Mula in favour of Bhagwati Devi. That gift was challenged by appellants 1

H

to 12 in Suit No. 143 of 1965, and they succeeded in obtaining a declaration in that suit that the gift was not binding on the reversioners. That decree became final, with the result that as on August 28, 1971, when Mula died, the property which he had sought to gift away to Bhagwati Devi, was free from the encumbrance of the purported gift. By the present suit, the respondent merely asks for possession of the property in respect of which Mula had executed the deed of gift. The basis on which he has asked for that relief is that upon the death of Mula in 1971, the gift ceased to be operative by reason of the decree passed in Suit No. 143 of 1965. It seems to us plain that he has not and he need not have contested the validity of the gift-deed since that question was decided finally in the aforesaid suit.

(6) Section 7 of the Punjab Custom (Power to Contest) Act, 1920 provided initially that no person shall contest any alienation of non-ancestral immovable property on the ground that such alienation is contrary to custom. This section was amended by s. 3 of the Punjab Custom (Power to Contest) Amendment Act, 12 of 1973, as a result of which no challenge could be made to the alienation of any immovable property, whether ancestral or non-ancestral, on the ground that it is contrary to custom. It is, therefore, true that if it became necessary after the Amending Act of 1973 to contest the gift executed by Mula in favour of Bhagwati Devi, s. 7 of the Act of 1920 would operate as a bar to such a contest. However, as we have stated earlier, it was not necessary for the respondent, in view of the decree passed in suit No. 143 of 1965, to contest the validity of the gift.

(7) The decision of this Court in *Giani Ram v. Ramji Lal*⁽¹⁾ may, with advantage be referred to on this point. Under the customary law of the Punjab, the wife and daughters of a holder of ancestral property could not sue to obtain a declaration that the allegation of ancestral property will not bind the reversioners after the death of the alienor. But the reversioner who was entitled to challenge that alienation could obtain a declaratory decree that the alienation will not bind the reversioners after the alienor's death. It was held by this Court that such a declaratory decree had the effect of restoring the property alienated to the estate of the alienor and therefore all persons, including the wife and the daughters of the deceased, were entitled to the benefit of that restoration. Since the property alienated had reverted to the estate of the alienor at the point of his death, the widow and daughters, who also became heirs along with the sons under the Hindu Succession Act, 1956 were held entitled to obtain possession of the ancestral property. Mr. Juneja attempted to get over the effect of this decision by invoking the provisions of s. 8 of the Punjab Limitation (Custom) Act, 1 of 1920, which provides that when a person obtains a decree declaring that an alienation of ancestral immovable property is not binding on him, according to custom, the decree shall enure for the benefit of all persons entitled to impeach the alienation. Counsel argues that since the respondent was not entitled to impeach the gift in favour of Bhagwati Devi, having been adopted after the date of the gift, the decree obtained by appellants 1 to 12 cannot ensure for his benefit. The short answer

(1) [1969] (3) S.C.R. 944.

A to this contention is that the decree would ensure for the benefit of all persons who are entitled to a share in the property of the deceased as it existed at the moment of his death. Since Mula's property stood freed from the encumbrance of the gift at the moment of his death, respondent as the adopted son would be entitled to the possession of the gifted property.

B (8) Another facet of the same question can be seen in *Chand Singh v. Ind Kaur*.⁽¹⁾ A learned Single Judge of the Punjab and Haryana High Court held therein that though a suit to contest, under the customary law, an alienation of immovable property may not lie after the coming into force of the Amending Act of 1973, a declaratory decree already obtained by a reversioner would continue to be operative as the Amending Act does not render such a decree a nullity.

C (9) There is thus no substance in the contention raised by the appellants and their appeal must fail. Appellants 1 to 12 shall pay the respondent's costs of the appeal.

S.R.

Appeal dismissed.

(1) (1974) 1 P.L.R. 226.