APPELLATE CIVIL

Before Harbans Singh, C.J., and P. C. Jain, J.

CHARAN SINGH,—*Appellant.*

versus

GEHAL SINGH, ETC.,—*Respondents.*

L.P.A. No. 541 of 1973.

December 19, 1973.

Punjab Custom (Power to Contest) Act (Punjab Act 2 of 1920 as amended by Punjab Act 12 of 1973)—Section 7—Whether retrospective and applicable to pending cases even at appellate stage.

Held, that after the amendment of the Punjab Custom (Power to Contest) Act, 1920 by Punjab Custom (Power to Contest) Act, 1973, Section 7 of the Principal Act reads to mean that no person shall contest any alienation of immovable property whether ancestral or non-ancestral or any appointment of an heir to such property on the ground that such alienation or appointment was contrary to custom. The contest does not come to an end immediately a suit is filed challenging the alienation. The contest continues upto the final decision and the right to contest comes to an end only when final decision is given one way or the other putting an end to the litigation between the parties with regard to the alienation. Appeal is continuation of suit and any change in law which takes place between the date of the decree and the decision of the appeal is to be taken into consideration. When a suit filed by a reversioner is dismissed and he files an appeal, then before the appellate Court also he is contesting the alienation. If he does not contest or challenges the alienation he cannot achieve success. The rights of the parties do not stand determined on the date when the suit is filed. The rights are determined only when the case is finally decided. The Legislature has in unequivocal words made its intention clear that no person shall contest any alienation of immovable property whether ancestral or non-ancestral. Prior to the amendments, only alienation with regard to the ancestral immovable property could be contested; but now in respect of both ancestral and non-ancestral properties alienations have been made immune from challenge in a Court of law. From the language employed in Section 7, it is absolutely clear that the Legislature intended to give retrospective effect to the Amending Act, and hence Section 7 applies to pending cases even at the appellate stage.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice C. G. Suri dated 14th May, 1973, whereby his Lordship reversed that of Shri Gurnam Singh, Additional District Judge, Gurdaspur, dated 25th April, 1963 who affirmed with costs that of Shri Balwant Singh Teji, Sub-Judge,

1st Class, dated 28th February, 1962, (granting the plaintiff a decree as prayed for) to the extent that the suit of plaintiff-respondents dismissed and leaving the parties to bear their own costs.

S. L. Puri, Advocate, for the appellant.

H. L. Sarin, M. L. Sarin, and R. N. Aggarwal, Advocates, for the respondents.

JUDGMENT

Judgment of the Court was delivered by—

P. C. JAIN, J.—Charan Singh has filed this appeal under Clause 10 of the Letters Patent against the judgment and decree of a learned Single Judge of this Court, dated 14th May, 1973, by which R.S.A. 1102 of 1963, filed by Gehl Singh respondent was allowed.

(2) The only legal point involved in this case is as to what effect the Punjab Custom (Power of Contest) Amendment Act, 1973 (Punjab Act No. 12 of 1973), (hereinafter referred to as the Act), has on the pending cases wherein the reversioners have challenged alienations under the Punjab Customary Law on the usual grounds that the property alienated was ancestral *qua* them and that the alienation was without consideration and necessity and the same would not affect their reversionary rights after the death of the alienor. The learned Single Judge, in a well-considered judgment, has held that the intention of the Legislature was clearly to give retrospective effect to the amendment made in Section 7 of the Punjab Custom (Power to Contest) Act, 1920 (Punjab Act No. 2 of 1920), (hereinafter referred to as the Principal Act) by section 3 of the Amending Act and these amendments would affect all pending proceedings.

(3) It was contended by Mr. J. N. Kaushal, Senior Advocate, learned counsel for the appellant, whose contention was adopted and also supplemented by the other learned counsel who had intervened during the arguments that section 4 of the Principal Act saves the alienations which were made before the coming into force of the Amendment Act. According to the learned counsel, the Amendment Act would be applicable only to the alienations made after the enforcement of the Amendment Act and not to the alienations which were made earlier and had been challenged or were to be challenged. According to the learned counsel, the

purpose of section 4 had been completely achieved before the enactment of the Amendment Act as by then the longest period of limitation prescribed under the Punjab Limitation (Custom) Act, 1920 (Punjab Act No. 1 of 1920), (hereinafter referred to as the Limitation Custom Act) for challenging the alienations, had practically expired and by retaining the said section even in the Amended Act the Legislature made it amply clear that it had intended to apply the provisions of Amending Act only to the alienations made after the 23rd day of January, 1973. In nut shell, the contention of the learned counsel was that the words 'this Act' in section 4 should be read as 'the Act of 1920 as amended by the Act of 1973.' Reliance in support of his contention was placed on a decision of their Lordships of the Supreme Court in *Shamrao* v. *Parulekar and others* v. *District Magistrate, Thana, Bombay and others* (1) and in particular our attention was drawn to the following observations:—

> "The construction of an Act which has been amended is now governed by technical rules and we must first be clear regarding the proper canons of construction. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. This is the rule in England: see Craies on Statute Law, 5th Edition, page 207; it is the law in America : see Crawford on Statutory Construction, page 110; and it is the law which the Privy Council applied to India in *'Keshoram Poddar* v. *Nundo Lal Mallick* (2). Bearing this in mind, it will be seen that the Act of 1950 remains the Act of 1950 all the way through even with its subsequent amendments. Therefore, the moment the Act of 1952 was passed and section 2 came into operation, the Act of 1950 meant the Act of 1950 as amended by section 2, that is to say, the Act of 1950 now due to expire on the 1st of October, 1952."

(1) A.I.R. 1952 S.C. 324.
(2) 54 I.A. 152 (P.C.)

After giving our thoughtful consideration to the entire matter, we find that the contention of the learned counsel does not at all stand the test of scrutiny and displays its hollowness.

(4) The case of *Sharma* on which reliance has been placed related to the Preventive Detention Act, 1950. That Act, as it originally stood, was due to expire on the 1st of April, 1951, but in that year an Amending Act was passed which, among other things, prolonged its life to the 1st of April, 1952. By still another Act passed in 1952, life of the Preventive Detention Act, 1950 was prolonged for a further period of six months, namely, till the 1st of October, 1952. The contention that was raised before their Lordships of the Supreme Court was that mere prolongation of the life of an Act did not, by reason of that alone, prolong the life of a detention which was due to expire when the Act under which it was made, expired. After setting out section 3 of the Amending Act, which made provision about the validity and duration of detention in certain cases, their Lordships rejected the contention and made the observations reproduced above on which reliance was placed by Mr. Kaushal. By applying the law as enunciated by their Lordships, the result to follow would be that the Principal Act shall have to be read by incorporating therein the amendment made by the Amending Act of 1973. So read, section 6 will be omitted and section 7 would be read by substituting the words "immovable property whether ancestral or non-ancestral" in place of the words "non-ancestral immovable property". No change has been effected in section 4 which saved the alienations made prior to the coming into force of the Principal Act of 1920; rather in the Amending Act no specific provision for saving the pending proceeding has been made. If the Legislature had intended to save the alienations made prior to the date of the enforcement of the Amendment Act, then the provisions of section 4 too would have been suitably amended. In our view, the words "this Act" in section 4, mean the Act of 1920 and not the Amending Act of 1973 or the Act of 1920 as amended by Act of 1973. Moreover, we are holding that the Act is retrospective in operation and for that reason also this contention of the learned counsel becomes untenable.

(5) It was next contended by Mr. Kaushal, learned counsel for the appellant that the Amending Act was prospective in operation and did not affect the pending suits or appeals. According to the learned counsel, there is a presumption against the retrospective operation of a statute and also that a statute will not be construed

to have a greater retrospective operation than its language renders necessary. The learned counsel drew our attention to the provisions of section 4 of the Punjab General Clauses Act, which read as under:—

> "4. Where this Act or any Punjab Act repeals any enactment then, unless a different intention appears, the repeal shall not—
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> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
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> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
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> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
>
> (e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;
>
> and any such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty forfeiture or punishment may be imposed as if the Repealing Act had not been passed."

On the basis of the section reproduced above, it was submitted by the learned counsel that as the Legislature did not intend to give the Amending Act retrospective effect hence any right acquired under the Principal Act would not be affected by the Amending Act and any legal proceedings or remedy could be instituted, continued or enforced as if the Amending Act had not been passed. Reliance in support of his contention was placed on a number of judicial pronouncements and in particular on the decisions of their Lordships of the Supreme Court in *G. Ekambarappa and others* v. *Excess Profits Tax Officer, Bellary* (3) and *Hasan Nurani Malak* v. *S. M. Ismail, Assistant Charity Commissioner, Nagpur and others* (4), of

(3) A.I.R. 1967 S.C. 1541.

(4) A.I.R. 1967 S.C. 1742.

this Court in *Pt. Ram Parkash* v. *Smt. Savitri Devi* (5), and *National Planners Ltd.* v. *Contributories etc.* (6), *Mandir Devi Dwala* v. *The Deputy Custodian General, India, New Delhi and others* (7) *and Ramesh Ch. Bhattacharjee & another* v. *Nagendra N. Mullick* (8).

(6) It was also contended by Mr Kaushal that whatever retrospectivity was intended to be given by the Legislature was given in the instant case, that is, that the Act was enacted on 6th April, 1973 and was made effective from 23rd January, 1973. The contentions of the learned counsel, if judged in abstract, are unimpeachable, but when tested in the light of the amendment made in section 7, then the same completely break down. It is not necessary to advert to the decisions referred to by the learned counsel individually as there is no quarrel with this proposition that unless contrary intention appears, there is a presumption against the retrospective operation of the statute and that a statute will not be construed to have a greater retrospective operation than its language renders necessary.

If, from the bare perusal of section 7, the intention of the Legislature can, without any doubt, be inferred that the Legislature intended to give retrospective effect, then the argument of the learned counsel becomes untenable. At this stage the Statement of Objects and Reasons which led to the introduction of the Punjab Custom (Power to Contest) Amendment Bill, 1973, may be noticed.

> "In matters regarding alienation of immovable property, section 5 of the Punjab Laws Act, 1872, provides that the rule of decision should be the custom applicable to the parties concerned. The custom in Punjab made ancestral immovable property ordinarily inalienable except for legal necessity or with the consent of male descendants or in the case of sonless proprietor of his male collaterals. The male lineal descendants of the person making the alienation had the right to contest such alienation. This right to contest was limited to some extent by section 6 of the Punjab Custom (Power to Contest) Act, 1920.
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> 2. Along with the repeal of the Punjab Pre-emption Act, 1913, it was considered that the right to contest alienation of

(5) A.I.R. 1958 Pb. 87.
(6) A.I.R. 1958 Pb. 230.
(7) 1962 P.L.R. 1024.
(8) A.I.R. 1951 Cal. 435.

immovable property whether ancestral or non-ancestral on the ground that it is contrary to custom, should also be done away with. Hence this Bill."

By the amendment in section 7 the words 'immovable property whether ancestral or non-ancestral' in place of the words 'non-ancestral immovable property' have been substituted. After the amendment, for our purpose, this section can be read to mean that no person shall contest any alienation of immovable property whether ancestral or non-ancestral or any appointment of an heir to such property on the ground that such alienation or appointment was contrary to custom. In order to arrive at a correct conclusion we will have to find out as to what meaning should be attached to the words 'no person shall contest' occurring in section 7 of the Act. Mr. J. N. Kaushal, learned counsel contended that the words 'no person shall contest' will have to be read to mean 'no person shall contest by filing a suit'. According to the learned counsel, the moment a suit is filed challenging the alienation the contest comes to an end. This argument on the face of it appears to be fallacious. The dictionary meaning of the word 'contest' is 'to call in question or make the object of dispute, to strive to gain, to contend, a struggle for victory; competition; strife'. In our view, the contest continues right up to the final decision or, in other words, the right to contest comes to an end only when a final decision is given one way or the other putting an end to the litigation between the parties with regard to the alienation. It is well-settled proposition of law that appeal is a continuation of a suit and any change in law, which has taken place between the date of the decree and the decision of the appeal, has to be taken into consideration. When a suit filed by a reversioner is dismissed and he files an appeal, then before the appellate Court also he is contesting the alienation. If he does not contest or challenge the alienation, then he cannot achieve success. An argument was sought to be advanced by Mr. R. L. Aggarwal, that the right to contest comes to an end when the suit is decided and that in appeal the contest is not against the alienation but is against the decree passed by the trial Court. The argument, though ingenuous, is without any merit and the distinction sought to be drawn is without any difference. Even in appeal the contest between the parties remains with regard to the alienation. What would be argued in appeal on behalf of the reversioner would be that the alienation is bad while on behalf of the vendees the argument would be that it is valid in law. The rights of the parties do not stand determined on the date when the suit is filed. The rights are

determined only when the case is finally decided. The Legislature has in unequivocal words made its intention clear that no person shall contest any alienation of immovable property whether ancestral or non-ancestral. Prior to the amendments, only alienation with regard to the ancestral immovable property could be contested; but now in respect of both ancestral and non-ancestral properties alienations have been made immune from challenge in a Court of law. From the language employed in section 7, we have absolutely no doubt in our mind that the Legislature intended to give retrospective effect to the Amending Act.

(7) It was also sought to be argued that the Punjab Legislature enacted the Punjab Pre-emption (Repeal) Act, 1973 (Punjab Act No. 11 of 1973) on 6th April, 1973 in which it was provided specifically that on and from the date of the commencement of the Punjab Pre-emption (Repeal) Act, 1973, no Court shall pass a decree in any suit for pre-emption. According to the learned counsel, the Amending Act was also passed simultaneously with the Punjab Pre-emption (Repeal) Act, 1973 wherein a specific provision was made preventing a Court to pass a decree in any suit for pre-emption thereby showing its clear intention to give retrospective effect to the Pre-emption Act and making the same applicable to the pending proceedings. In case the Legislature had also intended to give the Amending Act retrospective effect, then a similar provision as enacted in the Punjab Pre-emption (Repeal) Act, 1973, would have been made in the Amending Act. This argument again is without any merit. In the presence of section 7 as it stands after the amendment made by the Amending Act, it was not at all necessary to make a similar provision as was made in the Punjab Pre-emption (Repeal) Act as that would have, on the face of it, been a surplusage. Moreover, from the Statement of Objects and Reasons it is crystal clear that the legislature intended to achieve the same object by amending section 7 as was intended to be achieved by enacting the Punjab Pre-emption (Repeal) Act. It will be doing injustice to the Legislature if the question of retrospective or prospective nature of a provision is decided merely on the basis that different language was employed in the two Amending Acts passed on the same day, especially when the language in the Amending Act leaves no doubt about its retrospective nature. Thus viewed from any angle, the only possible conclusion that can be arrived at is that the Amending Act is retrospective in effect and no decree can be passed by the Court in favour of the reversioners after its enforcement.

(8) No other point was urged.

(9) For the reasons recorded above, this appeal fails and is dismissed, but in the circumstances of the case we make no order as to costs.

K.S.K.

APPELLATE CIVIL

Before Prem Chand Pandit and Pritam Singh Pattar, JJ.

HARNAM SINGH, ETC.,—*Appellants.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

RSA No. 920 of 1961.

January 8, 1974.

Patiala Land Acquisition Act (III of 1995 BK) Section 19—Appeal under—Revenue Commissioner holding the appellant competent to file the appeal—Such order even though erroneous—Whether void—Suit to set aside such order—Article 14 Limitation Act (IX of 1908)—Whether applicable—Erroneous decision of a Tribunal with undoubted jurisdiction regarding its competency to hear a matter—Whether can be void.

Held, that under Section 19 of Patiala Land Acquisition Act, 1959 BK the Revenue Commissioner has jurisdiction to entertain an appeal against the award made by the Collector under Section 11 of the Act. While exercising the powers of an appellate Court, the Revenue Commissioner is also within his rights to decide whether the appellant is competent to file the appeal or not. Where the Revenue Commissioner decides that the appellant has the right to file the appeal, his order even though erroneous, is not void *ab-initio* for want of jurisdiction. It may be a voidable order.

Held, that it is a familiar feature of modern legislation to set up bodies and tribunals, and entrust to them work of a judicial character, but they are not Courts in the accepted sense of that term, though they may possess some of the trappings of a Court. The Revenue Commissioner while deciding an appeal under Section 19 of the Act is a quasi judicial tribunal. His order is not an executive or administrative order, but is a quasi-judicial order. Hence Article 14 of the Limitation Act, 1908 will apply to a suit filed for setting aside this order.