

## APPELLATE CIVIL

Before G. D. Khosla, C.J., and S. S. Dulat, J.

JAI RAM,—Appellant,

*versus*

TOTA RAM AND OTHERS,—Respondents.

Letter Patent Appeal No. 55 of 1959.

*Hindu Succession Act (XXV of 1956)—Section 14—Female in possession of land mortgaging it before the enactment of the Act and reversioners filing a suit for declaration that the mortgage was without necessity—Suit decreed—Mortgagee filing appeal and during the pendency of the appeal Hindu Succession Act coming into force—Suit—Whether can be decreed.*

*Held*, that Mehr Devi, the mortgagor, became the full owner of the suit land when the Hindu Succession Act came into force and thereafter there could be no question of any one trying to protect his reversionary interest in such property as it is only the case of a limited owner that any question of reversionary interest arises. When the said Act came into force Mehr Devi was the owner of the property in spite of the mortgage and her limited ownership, as it previously was, became full ownership on the enactment of the Act and reversionary rights in the property, therefore, ceased to exist and there is no point in the suit of the reversioner seeking to protect his reversionary right in such property.

*Appeal under clause 10 of the Letter Patent from the decree of the Hon'ble Mr. Justice G. L. Chopra, dated the 12th day of January, 1959 in R.S.A. No. 102 of 1954 affirming that of Shri Mohindar Singh Matharu, Senior Sub-Judge (with enhanced appellate powers), Hoshiarpur, dated the 5th December, 1953, modifying with costs the decree of Shri Harnam Singh, Sub-Judge, 1st Class, Una, dated the 20th April, 1953, granting the plaintiff a decree for declaration sought for with the condition that he would be able to redeem the land in suit on payment of Rs. 1.475 only after the death of Shrimati Mehar Devi, defendant No. 2, and allowing costs against defendant No. 1, Jai Ram to the extent of granting the plaintiff-appellant a decree for*

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*declaration prayed for in the terms, i.e., the mortgage by defendant No. 2, Mehar Devi in favour of defendant No. 1, Jai Ram, by means of mortgage deed Exhibit D. 1, in dispute would not effect the reversionary rights of the plaintiff after the death of Mehar Devi defendant No. 2 the mortgagor, as the mortgage was without necessity and not binding on the reversioner the plaintiff, the land being ancestral.*

SHAMAIR CHAND AND PARKASH CHAND JAIN, ADVOCATES,  
for the Appellant.

YASH PAL GANDHI, ADVOCATE, for the Respondents.

#### JUDGMENT

Dulat, J.

DULAT, J.—The land in suit belonged to Beli Ram and it was on his death inherited by his widow, Mehr Devi. In April, 1951, Mehr Devi, mortgaged the land 12 *kanals* 18 *marlas* in area, with Jai Ram for Rs. 2,000 and in October, that year Tota Ram, a brother of Beli Ram, brought a suit to challenge the mortgage on the ground that it was made without necessity. The trial Court found necessity for the mortgage proved to the extent of Rs. 1,475, and finding it without necessity for the balance, granted Tota Ram, a declaration that it would not affect his reversionary rights except to the extent of Rs. 1,475. Both parties appealed against the decree. The appellate Court allowed the plaintiff's appeal and held that the mortgage was wholly without necessity and, therefore, granted a decree to the plaintiff that it would not affect his reversionary rights after Mehr Devi's death. The mortgagor, Jai Ram, then filed a second appeal in this Court, and at the time that it was heard by Chopra J., the Hindu Succession Act, 1956, had come into force. It was urged, therefore, that in view of the provisions of section 14 of that Act, the suit of the reversioner—plaintiff had

become pointless as Mehr Devi had become absolute owner of the property and not merely a limited owner and no reversionary right was any longer in existence. Chopra J., agreed that on the coming into force of the Hindu Succession Act, 1956, Mehr Devi had become full owner of the suit land. He, however, found that the Act did not touch the mortgagee rights which had been transferred by Mehr Devi, before the Act and at a time when she was a limited owner, and, in the circumstances, the reversioner still had a right to obtain a declaration in respect of the mortgagee rights. It was urged before the learned Judge that under the new Act the next heirs to Mehr Devi would be her daughters, two of whom had children of their own living, and that the suit was thus purely speculative. Again Chopra J., agreed in substance but still thought that because the suit had been lodged before the Act, the decree granted to the plaintiff need not be reversed. On these conclusions the learned Judge dismissed the appeal, leaving the parties to their own costs. Jai Ram has filed an appeal under clause 10 of the Letters Patent.

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Mr. Shamair Chand, urges that although Chopra J., agreed with his contention that Mehr Devi was the full owner of the suit land, he failed to give effect to that conclusion when further holding that any reversionary right in the property still subsisted. There is, in my opinion, substance in this contention. The Supreme Court in *Kot-turuswami v. Veeravva* (1), pointed this out clearly, observing—

“The right of a reversioner as one of the heirs under section 42, Specific Relief Act, is limited to the question of preserving the estate of a limited owner for

(1) A.I.R. 1959 S.C. 577.

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the benefit of the entire body of reversioners; but as against a full owner the reversioner has no such right. In our opinion, under the Act Veerava becoming a full owner of her husband's estate, the suit could not succeed."

The case, before the Supreme Court concerned the adoption of a son by a Hindu widow, who was at the time of the adoption a limited owner, but, who became full owner subsequent to the adoption, and the finding was that once the widow became full owner of the property no reversionary interest in that property remained in existence. In the present case, therefore, if it is true, as found by Chopra J., himself, that Mehr Devi, became the full owner of the suit land when the Hindu Succession Act came into force, there could be no question of anyone trying to protect his reversionary interest in such property as it is only, according to the Supreme Court, in the case of a limited owner that any question of reversionary interest arises.

Mr. Gandhi, in this connection, invited our attention to a Full Bench decision of this Court, *Amar Singh and others v. Sewa Ram and others* (1), where it was held that any alienation made by a Hindu widow, when she was a limited owner, could be challenged by a reversioner even after the Hindu Succession Act came into force, but that conclusion was reached because the alienation was a complete transfer of ownership rights, being a gift in that particular case, and the Full Bench actually found that when the Hindu Succession Act came into force the widow was not in possession of the property and, therefore, never became

its full owner. The present is not a case of a gift or a sale, and it is clear that at the time the Hindu Succession Act came into force Mehr Devi was in possession of the property through her mortgagee. She was the owner of the property in spite of the mortgage and her limited ownership, as it previously was, became full ownership on the enactment of the Hindu Succession Act and reversionary rights in the property, therefore, ceased to exist. The Full Bench decision of our Court in *Amar Singh and others V. Sewa Ram and others* (1), is, therefore, of no assistance to learned counsel's argument.

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 Dulat, J.

The precise question, which is now before us, arose in the Madras High Court in *Arumuga v. Nachimuthu* (2). That was a case concerning a mortgage made in February, 1953. A suit to challenge the mortgage was brought immediately afterwards, but the Hindu Succession Act came into force in the meantime while the litigation was still pending. The question was whether such a suit could be maintained, and Ramaswami J., held that it could not be, and he set aside the decree granted to the plaintiffs in that suit. I find myself in respectful agreement with that view.

Mr. Gandhi, then suggests that, properly speaking, Mehr Devi cannot be said to have been in possession of the land in suit when the Hindu Succession Act came into force because the property was in the possession of the mortgagee. It was, however, clearly held by the Supreme Court in *Kotturawami v. Veerava* that the expression "possessed by a female Hindu" used in section 14 of the Hindu Succession Act is not confined to actual physical possession of the property by the

(1) I.L.R. (1960) 2 Punjab 343.  
 (2) A.I.R. 1958 Mad. 459.

Jai Ram female, and that property in her constructive  
 Tota Ram and possession through a licensee or a lessee or a  
 others mortgagee would also be in her possession. The  
 Dulat, J. mere fact, therefore, that the suit property was  
 in the physical possession of the mortgagee, can  
 be of no consequence, and as I have already men-  
 tioned, Chopra, J., was himself of the opinion that  
 Mehr Devi was possessed of the property when the  
 Hindu Succession Act came into force and she  
 became its full owner. It follows, in my opinion,  
 that no reversionary interest remained in that  
 property once Mehr Devi became its full owner,  
 and there is no point in the suit of Tota Ram seek-  
 ing to protect his reversionary right in such  
 property.

For these reasons I would allow this appeal  
 and set aside the decree granted to the plaintiff  
 in this case and, instead, dismiss the plaintiff's  
 suit but, in all the circumstances, leave the parties  
 to their own costs throughout.

Khosla, C.J. G. D. KHOSLA, C. J.—I agree.

B.R.T.

#### CIVIL MISCELLANEOUS

*Before Mehar Singh and A. N. Grover, JJ.*

MESSRS. RAJ WOOLLEN INDUSTRIES,—*Petitioner.*

*versus*

THE COMMISSIONER OF INCOME-TAX, SIMLA,—

*Respondent.*

**Income Tax Reference No. 15 of 1958.**

*Income-tax Act (XI of 1922)—Section 10(1) and  
 10(2) (XV)—Expenses incurred in connection with the  
 business carried on in contravention of law—Whether ad-  
 missible deductions.*