

For all the reasons given above this appeal is allowed and the decree of the Courts below is set aside and the suit dismissed, but in the circumstances the parties will be left to bear their own costs throughout.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat and Prem Chand Pandit, JJ.

GURPAL SINGH AND OTHERS,—Appellants.

versus

BACHAN KAUR *alias* GURDIAL KAUR AND OTHERS,—
Respondents.

Regular Second Appeal No. 91 of 1961.

Custom—Rattigan's Digest of Customary Law—Paragraphs 64 and 66—Whether contain correct statement of the custom—Females inheriting from persons other than those mentioned in paragraph 64—Whether acquire absolute estate.

1963

Sept., 17th.

Held, that Rattigan's Digest of Customary Law has been accepted all along as a book of great authority for the purposes of discovering the rules of custom applicable in the Punjab and before any statement of custom contained therein is doubted, there must be cogent evidence to support such a doubt. Paragraphs 64 and 66 of the Digest contain the correct statement of the custom actually applicable to females and taken together and in the absence of anything else, the meaning is clear enough, and it is that if a female acquired property by inheritance from her husband, her father, grandfather, or son or grandson, she takes a limited estate, but if she acquires the property from any other relative of hers, then she takes an absolute estate.

Second Appeal from the decree of the Court of Shri A. D. Kaushal, Ist Additional District Judge, Ferozepore, dated the 1st day of December, 1960, modifying, on the cross-objections filed by the Mst. Bachan Kaur, plaintiff,

the decree of Shri Rajindar Lal Garg, Sub-Judge, 1st Class, Moga, dated the 1st day of March, 1960, granting Mst. Bachan Kaur, plaintiff a decree for a declaration against the defendants.

JUDGMENT

Dulat, J.

DULAT, J.—On the 29th September 1952, Smt. Indi sold an area of 675 kanals 15 marlas of agricultural land to Gurpal Singh and his two brothers for Rs. 35,000. About seven years later, on the 8th of December 1959, her daughter Smt. Bachan Kaur brought a suit on behalf of herself and her minor sons challenging the sale and claiming a declaration that it would not affect the plaintiffs' reversionary rights. The ground was that the sale was without consideration and legal necessity and was not binding on the plaintiffs under the rule of custom governing them and of course it was said that Smt. Indi had only a life interest in the property, i.e. a widow's estate. The suit was resisted by the vendees who pleaded that Smt. Indi was not a limited but a full owner of the property and was competent to sell it and that the plaintiffs had no right to challenge the sale. It was further pleaded that the sale had been made for good consideration and valid necessity. The pleadings gave rise to five issues of which only two are now important, namely —

(1) Was the alienation in question for consideration and legal necessity or otherwise valid and

(2) Was Smt. Indi full owner and competent to sell the property?

On the second issue the Court found that Smt. Indi was not the full owner of the property and on the first issue

it found that although the alienation was for consideration, legal necessity was established only to the extent of Rs. 23,166. The Court, therefore, granted Smt. Bachan Kaur a declaration, but the declaration was that the sale would not affect her reversionary rights and she would be entitled to redeem the property after the death of Smt. Indi on payment of Rs. 35,000. Against this decree the vendees appealed and at the same time cross-objections were filed on behalf of the plaintiffs claiming that the decree should have been that the plaintiffs would be entitled to take back the property after the death of Smt. Indi without any payment. The vendees of course claimed that the entire suit should have been dismissed.

Gurpal Singh
and others,
v.
Bachan Kaur
alias
Gurdial Kaur
and others,

Dulat, J.

Before the learned Additional District Judge, who heard the appeal and the cross-objections, it was contended that Smt. Indi was the complete owner of the property because she had acquired it not from her husband, father, grandfather, son or grandson, but from her uncle. For this argument reliance was placed on the statement of custom contained in paragraphs 64 and 66 of Rattigan's Digest of Customary Law and although the learned District Judge did observe that the language of those paragraphs, if accepted literally, supported the vendees, he felt bound to hold to the contrary largely in view of a decision of the Pepsu High Court in *Chajja Singh v. Pritam Singh* (1) and thus came to the conclusion that Smt. Indi was not full and complete owner of the property but was only holding a limited estate like a Hindu widow.

Regarding the question of legal necessity, the learned District Judge found that although the bulk of the property was under a previous mortgage there was still an area of about 109 *kanals* which was unencumbered and which was in occupation of certain

(1) A.I.R. 1950 Pepsu 59 (F.B.).

Gurpal Singh
and others,
v.

Bachan Kaur
alias
Gurdial Kaur
and others,

Dulat, J.

tenants under Smt. Indi and that the income from that area would have been normally sufficient for the maintenance of Smt. Indi and there was, therefore, no necessity for her to sell the land. He thus held that the legal necessity for the transaction in dispute was not established except to the extent of the previous mortgage plus a proportion of the expenses incurred in connection with the sale, totalling Rs. 23,166. The learned District Judge formed the opinion that the sale should be binding only to the extent of that amount and in the result he dismissed the vendees' appeal, while he allowed the cross-objections and modified the decree granting Smt. Bachan Kaur a declaration that the sale in dispute would not affect her reversionary rights after Smt. Indi except to the extent of Rs. 23,166. It is against this decree that the present second appeal has been brought on behalf of the vendees, Gurpal Singh and others.

It is admitted that Smt. Indi inherited the suit-land from her uncle, who was either a brother of her father or a cousin. It is also admitted that the parties are governed by general agricultural custom prevalent in the Punjab. Mr. Tirath Singh on behalf of the appellants urges that the most authoritative statement of general custom is to be found in Rattigan's Digest of Customary Law and paragraphs 64 and 66 are directly in point and if those are accepted as correct, then the conclusion must be that Smt. Indi had absolute power of disposal of the property which she inherited from her uncle. Paragraph 64 of the Digest runs thus—

“64. Except as provided in paragraph 39 or paragraph 62, no female in possession of immovable property acquired from her husband, father, grandfather, son or grandson otherwise than as a free and

Gurpal Singh
and others,
v.

Bachan Kaur
alias
Gurdial Kaur
and others,

Dulat, J.

question, therefore, is not whether the rule mentioned in Rattigan's Digest is rational in the sense of being logically consistent with any other rule but whether the rule is a correct statement of the custom actually applicable to females. Rattigan's Digest has been accepted all along as a book of great authority for the purposes of discovering the rules of custom applicable in the Punjab and it appears to me, therefore, that before any statement of custom contained in that book is doubted, there must be cogent evidence to support such a doubt. In the present case there is none. Mr. Bachittar Singh sought to rely on the answer to question No. 53 of the Riwayat-i-Am of the Ferozepore District to which both the parties belong, but he had to admit that the answer does not assist his case. No instance is brought to light where a female inheriting property from her uncle may have been found to have only a limited estate in it. The decision in *Chajja Singh v. Pritam Singh* (1) is not a relevant instance, for it does not concern any district in the Punjab, nor am I persuaded that resort can be had to the rule of Hindu Law for the parties here are admittedly governed by custom and there is to be found in a book of great authority a statement of custom governing the matter. I consider, therefore, that the rules contained in paragraphs 64 and 66 of Rattigan's Digest must be applied and the conclusion must be that Smt. Indi was not holding a limited estate in the disputed land but was its complete owner and competent to dispose of the property at will.

The above finding concludes the appeal, but since the question of legal necessity was argued at length, it is I think proper to indicate our conclusion. The evidence shows that Smt. Indi was not possessed of any other property except the land in suit. She

was fairly old at the time of the sale and her daughter's own evidence is that Smt. Indi was compelled to do manual work for her livelihood. The land in suit was not in her own village but in another village 50 miles away and there was a dispute going on between her and the *pattidars* of the village regarding the land. There is no evidence that Smt. Indi was actually in receipt of any income from the disputed land but assuming for a moment that she was getting some income, there is, I find, no evidence at all to show what the extent of the income was. The learned District Judge's conclusion, therefore, that the income must have been sufficient for the comfortable maintenance of Smt. Indi is at best a conjecture resting on little evidence. The vendees were told that Smt. Indi wanted to sell the property as she had no other means of subsistence and she was desirous of clearing the previous mortgage and with the rest of the money she wanted to buy some land in her own village. There is no indication in the evidence that the vendees did not honestly believe this statement, nor any indication that they ought not to have believed it. In these circumstances it is a reasonable conclusion that Smt. Indi sold the property in order to be able to comfortably maintain herself, since in the circumstances in which she was placed no other reasonable course seems to have been open to her. It is true that by making the sale Smt. Indi obtained a substantial sum of money over and above the mortgage charge, but that of course was unavoidable in view of the value of the property and in fact it was the surplus amount which she was in need of in order to keep herself in comfort. I would, therefore, hold that considering everything the sale in dispute made by Smt. Indi for legal necessity.

Gurpal Singh
and others,
v.

Bachan Kaur
alias
Gurdial Kaur
and others.

Dulat, J.

On both the points thus the conclusion should in my view be in favour of the appellants. I would,

Gurpal Singh
and others,
v.
Bachan Kaur
alias
Gurdial Kaur
and another

therefore, allow this appeal, set aside the decree granted by the appellate Court and instead dismiss the suit of the plaintiffs, but considering all the circumstances leave the parties to bear their own costs, throughout.

Dulat, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

BHAGAT RAM PATANGA,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Civil Writ No. 22 of 1963.

1963

Sept., 18th.

Punjab Municipal Act (III of 1911)—S. 16(I) (e)—Order under—When can be set aside—Flagrant abuse of position as a member—Meaning of—Allegations of misconduct and holliganism against a member in a meeting of the municipal committee—Whether amount to flagrant abuse of his position as a member.

Grover, J.

Held, that under section 16(1) (e) of the Punjab Municipal Act, it is, no doubt, for the State Government to form the opinion whether a person has been guilty of flagrant abuse of his position as a member of the Committee but if on the facts stated either in the order or in the show-cause notice which preceded the order, it is apparent that those facts were altogether extraneous or were not germane or relevant to the provision of the law under which action is taken, then the orders must be struck down.

Held, that if a person, in the discharge of his duties as a member of the municipal committee, is guilty of a flagrant abuse of power, his case would be covered by section 16(1) (e) of the Act. The allegation that the member misconducted himself, did not maintain decorum, did not obey the chair and brought some visitors to create disturbance in the meeting of the committee which was being held for