

Bijja Singh and others
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The former is a Chief Court judgment in which the rule of *chundawand* was applied, but this was based on the ground that the property of the ancestor had been divided according to that rule. No instances are given and the *Riwaj-i-am* has not been discussed and this instance is neither sufficient to rebut the general custom or the custom in the *riwaj-i-am* of the District nor is it an authority for the proposition that in this particular area the rule of *chundawand* prevails.

In Exhibit D. 2 it was only an incidental remark that the parties were governed by *chundawand* rule. This question does not seem to have been in dispute and it is not an adjudication on the question of custom. These are the only two instances which have been relied upon by the defendant.

There is no other reliable evidence which is relevant to the issue. I would therefore dismiss this appeal but leave the parties to bear their own costs in this Court.

Khosla, J. KHOSLA, J. I agree.

APPELLATE CIVIL

Before Khosla and Kapur JJ.

MESSRS RAM GOPAL DULA SINGH,—Defendants-Appellants

versus

SARDAR GURBUX SINGH AND OTHERS,—Respondents

Regular First Appeal No. 86 of 1951.

1954

Dec., 27th

Hindu Law and Transfer of Property Act (IV of 1882)—Section 6—Spes Successionis—Whether transferable—Transfer of right of expectancy for consideration—Estate vesting in the transferor—Contract, whether becomes enforceable—Transfer of Property Act (IV of 1882)—Principles of—Whether applicable to Punjab.

Held, that a right of expectancy or *spes successionis* is non-transferable both in accordance with the principles of Hindu Law as well as under section 6(a) of the Transfer of Property Act and, therefore, the contract transferring the right of expectancy, even if for consideration, does not become enforceable in equity on the estate vesting in the transferor of the right of expectancy.

Held, that although the Transfer of Property Act, 1882, is not applicable to the Punjab, the principles of this Act are applicable because they are based on justice, equity and good conscience. It is only the rules of procedure which are not applicable.

Case law reviewed.

First Appeal from the decree of Shri Hira Lal Jain, Sub-Judge, 1st Class, Amritsar, dated the 2nd day of March 1951, passing a preliminary decree for the partition of share of the property in suit in favour of the plaintiff against all the defendants Nos. 1 to 10 and also a preliminary decree for rendition of accounts in favour of the plaintiff against defendants 1, 7, 8, 9 and 10 in respect of the income and expenditure regarding the property in suit. The plaintiff's share therein is 1/2, the other half share with respect of Amritsar property belongs to defendants Nos. 7 and 8 and concerning the Jagraon property the defendants 9 and 10 are entitled to 1/2 share from the date of sale thereof to them by the defendants Nos. 7 and 8 and the defendants Nos. 7 and 8 are entitled to 1/2 share thereof until the sale of it by them to the defendants 9 and 10 and leaving the parties to bear their own costs.

K. L. GOSAIN and A. N. GROVER, for the Appellants.

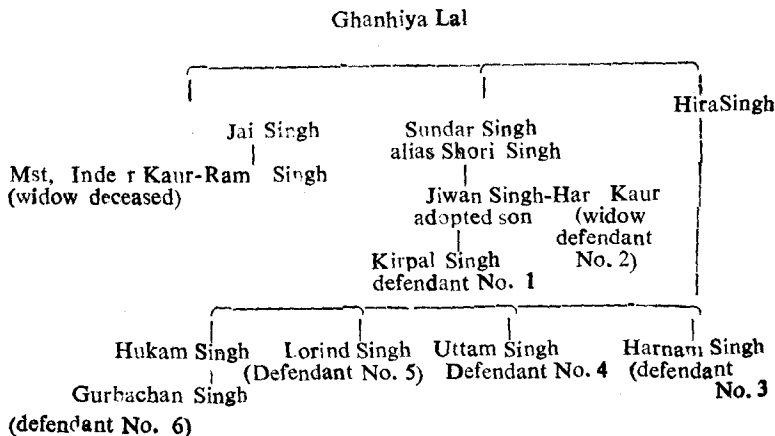
F. C. MITTAL and D. R. MANCHANDA, for the Respondents.

JUDGMENT

KAPUR, J. This is a defendant's appeal against a judgment and decree of Mr. Hira Lal Jain, Subordinate Judge, first Class, Amritsar, dated the 2nd of March, 1951, decreeing the plaintiff's suit for possession by partition of the property in dispute with costs.

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The following pedigree-table will be helpful in understanding the facts of the case:—



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The property in dispute belonged to Ram Singh, grandson of Ghanhiya Lal. On his death about forty years before the suit his widow Mst. Indar Kaur succeeded to the estate and she died on the 27th of March, 1944. By three sale deeds (Exhibits P. 2, P. 3, and P. 4) Jiwan Singh, son of Sundar Singh *alias* Shori Singh sold his rights of expectancy in regard to the estate which was in possession of Mst. Indar Kaur to Jiwan Singh, adoptive father of plaintiff Gurbakhsh Singh, as follows:—

On the 15th of February, 1914, Jiwan Singh sold half of his rights as a reversioner for a sum of Rs. 925 and it is stated in this sale deed—

“I have therefore of my own accord absolutely sold all the rights relating to the one-half of the one-half share of the entire property which I expect to get after the death of Mst. Indar Kaur, widow of Bhai Ram Singh, for a consideration of Rs. 925”.

On the 13th September, 1914, by document (Exh. P. 3 at page 45 of the printed paper book), Jiwan Singh sold for a sum of Rs. 400 one-quarter, and by Exh. P. 4, dated the 21st September, 1914, he sold the remaining one-quarter of his reversionary rights in almost identical language to Jiwan Singh, adoptive father of plaintiff Gurbakhsh Singh.

Jiwan Singh, the vendee of the reversionary rights, died on the 28th October 1944. There are seven properties in dispute out of which properties ‘A’ to ‘D’ and ‘F’ as given in the plaint are situate in Amritsar and ‘E’ at Jagraon in the district of Ludhiana. Defendants Nos. 3, 4, 5 and 6

sold their half share in these properties to defendants Nos. 7 and 8 and the other half was sold by Kirpal Singh son of Jiwan Singh to Madan Lal Ram Gopal on the 7th October 1947, and on the 17th October 1948, Ram Gopal and Dula Singh defendants Nos. 7 and 8 purchased the other half from Madan Lal-Ram Gopal and thus they claim to have become the owners of the whole of the property in suit. The plaintiff has brought a suit for possession by partition of the half share of the entire property and for rendition of accounts relating to the income of the entire property as from the 27th of March, 1944, up to the date of the suit which was the 24th of January, 1950. The plaintiff has alleged that Jiwan Singh sold all his rights which he expected to get on the death of Mst. Indar Kaur for a valid consideration by three deeds of sale which I have already given and that the defendants were not allowing the plaintiff the full benefit of his share and therefore he claims partition of the property by metes and bounds and separate exclusive possession of his half share thereof. He has also alleged that he was in possession of a portion of the property in dispute and was "co-sharer in the rest".

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The defence was that the plaintiff was not in possession of any portion of the property and therefore the suit was defective in form and the value of the suit had not been correctly fixed nor had the court-fee been properly paid. It was also pleaded that the plaintiff had no right to sue as all he purchased was a *spes successionis* which is illegal. The defendants also pleaded estoppel. After replication the Judge stated several issues. The value of the property in suit as determined by the commissioner is Rs. 56,350 but it appears that the objection regarding court-fee was given up by counsel for defendants Nos. 7 and 8.

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The trial Court found that the plaintiff was in exclusive possession of a portion of the property, that he was owner of the half, that the transfer of the property in favour of Jiwan Singh by Jiwan Singh, adopted son of Shori Singh, was valid, that the plaintiff was not estopped by his conduct and he was entitled to accounts and that the share of the plaintiff and the defendants is half and half. The defendants have come up in appeal to this Court.

The first question to be determined is as to the applicability of the rule in the Full Bench decision of the Lahore High Court in *Asa Ram v. Jagan Nath* (1), where it was held if the plaintiff alleges that he is in joint possession and the Court finds that allegation to be untrue then ordinarily the suit will be dismissed solely on the ground that the plaintiff being out of possession is not entitled to sue for partition without asking for possession of the property in dispute, and reference was there made to the judgment of Rankin C.J. in *Nandala Mukherji v. Kalipada Mukherji* (2). The possession of the plaintiff is based on his claim that he is in possession of a portion of House No. 1229/8 in Kucha Gandanwala, Namak Mandi, Amritsar, through a tenant Mohan Singh P.W. 1 and through Sham Singh P.W. 3 who is a tenant of a portion of the same house in the groundfloor and it was admitted by him that the rest of the house is in possession of defendants Nos. 7 and 8. Mohan Singh has executed a rent deed in plaintiff's favour Exh. P. 1 of the 6th of January, 1950, the suit having been brought on the 24th January, 1950, In cross-examination the plaintiff has admitted that tenants who were in possession under Mst. Indar Kaur continued to remain in possession and no new tenant

(1) I.L.R. 15 Lah. 531 (F.B.)

(2) I.L.R. 59 Cal. 315

was introduced and Sham Singh, P.W. 3 who is alleged to be in possession on behalf of the plaintiff of a portion of the groundfloor of house No. 1229/8 was an old tenant. A suit was brought in regard to a will which Indar Kaur had made and the present plaintiff applied on the 3rd March, 1945, to be made a party to those proceedings and he admits at page 27 line 8 that at that time he was not in possession of any portion of the property and when the Subordinate Judge refused to make him a party and he went up in revision to the Lahore High Court which was dismissed on the 18th April 1947, he was even then not in possession of any portion of the property. He further states that he took possession on the 15th October, 1949, of a portion of this house which was lying vacant and locked it up. At that time he was working as an assistant (a superior clerk) at Simla, dealing with N.C.C. and that he came to Amritsar after taking leave, but he could not give the date when he was on leave and he had given the key of the lock to Hira Singh, a relative of his who is alive and has not been produced as a witness. It was Hira Singh who gave this portion on rent to Mohan Singh, P.W. 1, and informed the plaintiff by post, but this letter has not been produced.

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Mohan Singh has appeared as a witness and claims that he is in possession by virtue of Exh. P. 1 of the 6th of January, 1950. He is the Chief Goods Clerk at Amritsar, and he proves Exh. P. 1, the rent deed, and states that he made the payment of advance rent to Hira Singh who is a nephew (sister's son) of the plaintiff and that the plaintiff is not living at Amritsar, but is at Simla. His cross-examination shows that he knew the plaintiff in Simla, where his son is also employed, and he stated that he was posted in Amritsar in November, 1949, and was living in a house outside

Messrs Ram Chatiwand Gate. When cross-examined further he
 Gopal-Dula was unable to give the exact location of the house
 Singh which he states he had taken on rent from the
 r plaintiff. His ration card which he had at the time
 Sardar Gurbux he states he took the house on rent still shows him
 Singh as residing outside Chatiwand Gate although he
 and others states that he left that house a year ago. He also
 Kapur, J. had a sister and members of her family residing
 in a portion of this very house and they have got
 ration cards, but those ration cards have not been
 produced to show that the witness is actually re-
 siding in the house that he claims he is residing
 in and even his sister sometimes lives in Simla
 and sometimes lives in Amritsar. From the testi-
 mony of the plaintiff and the witness P.W. 1
 Mohan Singh I do not think it is established that
 Mohan Singh was in possession of a portion of the
 house in dispute on behalf of the plaintiff when the
 suit was brought.

Then there is Sham Singh, P.W. 3 who, accord-
 ing to the plaintiff, was an old tenant under
 Mst. Indar Kaur. The plaintiff claimed that at the
 time of the suit he was the tenant of the plaintiff.
 No rent deed was executed by this witness in favour
 of the plaintiff and he executed a rent deed
 in regard to the groundfloor in February, 1950,
 during the pendency of the suit. On the 8th July
 1949, a decree in regard to a portion of the present
 house in suit was passed against him in favour of
 Lorind Chand who is defendant No. 5 and the pre-
 sent defendants made an application for ejection
 against him on the basis of that decree and order
 of eviction has been passed against him. He is not
 a disinterested witness and I am unable to believe
 that he was a tenant of the plaintiff at the time
 when the suit was brought.

From this evidence I am unable to conclude
 that the plaintiff is in possession of a portion of

the property. The property in dispute was in possession of the receiver from the 16th October, 1945, to the 22nd June 1948, when possession was delivered to defendants Nos. 1, 7 and 8 which is shown by the statement of Amin Chand Khanna, Official Receiver, Amritsar, D.W. 3. I am of the opinion, therefore, that the evidence of possession of the plaintiff is very meagre and is insufficient to sustain the finding given by the learned Judge that the plaintiff is in possession of the portion which he claims he is in possession of and as he is not in possession of any property and his suit is for partition it should on the rule laid down in *Asa Ram v. Jagan Nath* (1), be dismissed. But plaintiff's counsel submitted that really it is a suit for possession and not merely for partition. If that was so, the sole dispute should have been confined to the amount of court-fee payable and not whether the plaintiff is in possession at all. In my opinion the rule is applicable and the suit should be dismissed on that ground alone.

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The second question that arises for decision is as to what was sold to the plaintiff and whether the plaintiff has any right to claim possession. In the suit as laid it is alleged that Jiwan Singh purchased from Jiwan Singh son of Sundar Singh a right of expectancy which is clear from the averments in paragraph No. 4 of the plaint which I quote *in extenso*—

“Jiwan Singh referred to in para No. 3 above absolutely sold all his rights which he expected to get on the death of Shrimati Indar Kaur, widow of Ram Singh aforesaid, pertaining to property, detailed in the heading above for lawful and valid consideration, by means

(1) I.L.R. 15 Lah. 531

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of three sale deeds in favour Sardar Jiwan Singh, father of the plaintiff, as detailed below:—

One-fourth share ($\frac{1}{2}$ share of $\frac{1}{2}$ share) of the entire property in suit by means of sale deed dated the 15th February, 1914, registered on the 16th February, 1914, in lieu of Rs. 925, one-eighth share ($\frac{1}{2}$ share of the remaining share) by means of sale deed dated the 13th September 1914, registered on the 17th September, 1914, in lieu of Rs. 400 and one-eighth share (his remaining share) by means of sale deed, executed and registered on the 21st September, 1914, in lieu of Rs. 400. Thus Jiwan Singh, father of the plaintiff-aforsaid became the sole owner of the share of the property of Jiwan Singh, son of Sundar Singh. Sardar Jiwan Singh, father of the plaintiff, died in 1921. The contesting plaintiff is his only son, heir and representative. All the three sale deeds are attached herewith."

There is no other claim in the plaint as far as I can see. In the replication also the position taken in the plaint in regard to the sale of expectancy is reiterated. Plaintiff's Advocate made a statement on the 21st December, 1950, where he said—

"The transfer of one-half share of the house in dispute was made by Jiwan Singh son of Sundar Singh in favour of Jiwan Singh, adoptive father of the plaintiff, in the year 1914, during the lifetime of Indar Kaur, but after the death of her husband Ram Singh."

Thus at no stage of the pleadings was it the case of the plaintiff that anything more than a mere right of expectancy had been transferred to the plaintiff or his predecessor-in-interest.

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Thus what was transferred was a right of expectancy or *spes successionis* which both in accordance with the principles of Hindu Law as well as under the Transfer of Property Act, section 6 (a) is non-transferable. But then it is contended in appeal before us that the Transfer of Property Act is not applicable to the Punjab and even though a right of expectancy may not be transferable the contract becomes enforceable in equity on the estate vesting in the transferor of the rights of expectancy if the transfer is for consideration. Several cases were relied upon but I am unable to hold that this is so.

As this is a question of some importance it is necessary that the law relating to this should be discussed at some length. It is true that the Transfer of Property Act is not applicable to the Punjab but even the Lahore Judges were not in accord as to what is exactly the meaning of this, but there is no disagreement as to the principles of the Transfer of Property Act being applicable to the Punjab because they are based on justice, equity and good conscience. It is only the rules of procedure which are not applicable. See *Punjab National Bank, Ltd. v. Jagdish Sahai and others*, (1). In some cases it had been held that it is the rules laid down in the Act as amended in 1929, which are applicable; see *Tulsi Ram and others v. Thakar Dass-Madan Mohan Lal*, (2). In *Kader Moideen v. Nepsan and others*, (3), it was contended before the Privy Council that the principles of the

(1) A.I.R. 1936 Lah. 390
(2) 38 P.L.R. 76
(3) 25 I.A. 240

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Transfer of Property Act should be followed in preference to English practice. As to this the Privy Council said that they were not prepared to dissent from this contention, but they expressed no final opinion on this.

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The rule as to the inalienability of expectancy interests was laid down by the Privy Council in *Sham Sunder Lal and others v. Achhan Kunwar and another* (1) where Lord Davey said that such a reversioner could not by Hindu Law make a disposition of or bind his expectant interests or his "future rights". Relying on this pronouncement Maclean C.J. and Banerjee J. in *Nund Kishore Lal v. Kanee Ram Tewary* (2), were of the opinion that the interests of a Hindu reversioner expectant upon the death of a Hindu female could not be validly mortgaged. Delivering the judgment of the Privy Council in *Venkatanarayana Pillai v. Subbammal*, (3), Mr. Ameer Ali was of the opinion that although on the death of a female owner inheritance to the reversioner opens out and the one most nearly related to the last full owner becomes entitled to possession but in her lifetime the reversionary right is a mere possibility or *spes successionis*.

In *Amrit Narayan Singh v. Gaya Singh* (4), Mr. Ameer Ali observed that a Hindu reversioner during the lifetime of a female owner holding a life estate has no right or interest in *praesenti* and he has nothing to assign or to relinquish or to transmit to his heirs. His right becomes concrete only on her demise; until then it is mere *spes successionis*, and if he is a minor his guardian cannot bargain with it on his behalf or bind him by any

(1) 25 I.A. 183 at p. 189

(2) 1.L.R. 29 Cal. 355

(3) 1.L.R. 38 Mad. 406

(4) 1.L.R. 45 Cal. 590 at p. 603

contractual engagement in respect thereto. This question arose in the following circumstances. On the death without issue of a Hindu leaving a widow, a daughter and his daughter's son, a minor, the widow obtained possession of her husband's property against the opposition of the agnates. On her death a dispute arose with the agnates as to the right of the daughter to succeed. The matter was referred to arbitration, but before the arbitration took place a compromise was entered into in which the husband of the daughter acted for her and her infant son, the effect of which was to completely extinguish the reversionary interest of the minor in regard to his grandfather's estate, and an award was made in accordance with the compromise and a decree was made in spite of the opposition of the daughter. The daughter died and after her death the minor son brought a suit to set aside the arbitration proceedings together with the compromise and award as being fraudulent and for a declaration that he was not bound by them, and it was held that until the death of the daughter the minor son had no right or interest in the property which could be the subject of bargain. Relying on these judgments the Division Bench in *Annada Mohan Roy v. Gour Mohan Malik* (1), held that the interest of a reversioner under Hindu Law is a mere chance of succession and cannot form the subject of any contract, surrender or disposal. At page 541 Mookerjee, A., C.J., observed as follows—

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“We must accordingly take it as settled by the decisions of the Judicial Committee that the interest of a Hindu reversioner is an interest expectant on the death of a qualified owner; it is not a vested interest, it is a *spes successionis* or a mere

(1) I.L.R. 48 Cal. 536

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chance of succession, it cannot be sold, mortgaged, assigned or relinquished, for a transfer of a *spes successionis* is a nullity and has no effect in law.

Continuing the learned Judge again said at page 542—

“There can, in our opinion, be no doubt that according to the decisions of the Judicial Committee, so long as the estate is vested in the female heirs, the interests of the reversioner is a mere chance of succession which cannot form the subject of any contract, surrender or disposal. This view is now generally accepted in nearly all the Indian High Courts.”

And then the learned Judge has given a list of cases where this was followed. The learned Judges then considered the effect of section 6 of the Transfer of Property Act and also the English cases *Holroyd v. Marshall* (1), and *Tailby v. Official Receiver* (2), and at page 546 the learned Acting Chief Justice referred to the doctrine that though the assignment was of a defective title, yet as the assignor afterwards acquired a good title, the Court would make that good title available to make the assignment effectual, and observed—

“But this principle plainly has no application where the contract of assignment refers to property which has been expressly rendered inalienable by the Legislature.”

(1) (1861) 10 H.L.C. 191
(2) (1888) 13 A.C. 523

In this very case *Annada Mohan Roy v. Gour Mohan Mullick* (1), the learned Judges after referring to various Hindu Law tests said at page 555—

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“The Hindu jurists do not appear to have ever contemplated the transfer of mere chance or possibility of succession, which, as is abundantly clear from numerous passages of the Dayabhaga, was not property (Dayabhaga, Chap. 1, paras, 13, 14, 15, 18, 19, 26, 30, 38; 39 and 42). These passages show that the expectant interest of a son, in other words, what has been called, not very felicitously, ‘the inchoate right of inheritance created by birth’ is not property; while the father lives, no property is vested in the sons, and they have no ownership which could form the subject of partition which is in essence a form of alienation. There is thus no ground to hold that the claim of the plaintiff, tested by Hindu Law, apart from the provision of section 6 of the Transfer of Property Act, can be seriously entertained.”

Thus it is quite clear that neither under section 6(a) of the Transfer of Property Act nor under the provisions of Hindu Law, apart from the provisions of the Transfer of Property Act, is such a right alienable, or transmittable, nor can it form the subject-matter of a valid contract, and if it cannot form the subject-matter of a contract it cannot be enforced.

This case *Annada Mohan Roy v. Gour Mohan Mullick* (1), was taken to the Privy Council and is reported as 50 I.A. 239, and the judgment of the

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Calcutta High Court was upheld. After referring to *Harnath Kaur's* case (1), their Lordships posed the question (at page 244) whether, either under the Transfer of Property Act or under the Hindu Law applying to purchases of expectations of inheritance, there is any ground upon which these contracts can be supported, and their lordships answered this question in the following words at the same page—

“Dr. Abdul Majid has developed these points and his points appear to be two, setting aside for the moment the Transfer of Property Act, upon the ground that it deals with an actual transfer or conveyance and not with a contract to transfer. It is contended that there is nothing in the reason of the thing to prevent two parties, who are concerned in which these parties were concerned, from entering into a contract for the future sale of future expectations. It is admitted that there is no authority to be found anywhere which supports the view that such a contract is possible.”

No doubt it is true that a reference was then made to two cases which dealt with the prohibition under the Transfer of Property Act, but in my opinion it cannot be said that the Privy Council has in any way disagreed with the Calcutta High Court in regard to such contracts being unenforceable under Hindu Law or have cast any doubt on what was stated by the Board in *Harnath Kaur v. Indar Bahadur Singh* (1).

Reference may now be made to *Harnath Kaur v. Indar Bahadur Singh* (1). In that case a Hindu reversioner got a decree declaring that a will

(1) 50 I.A. 69

authorizing the widows of the last male holder of an Oudh estate to adopt, was invalid. Prior to this he purported to sell half the estate in consideration of Rs. 25,000 advanced to him and the sale deed declared that when he (the reversioner) succeeded he would put the vendee in possession. After the death of the widow and the death of the vendee, the latter's widow brought a suit for possession or in the alternative to recover the money. It was held that there was no effectual transfer since the vendor had only an expectancy but that the money advanced could be recovered. At page 74 Sir Lawrence Jenkins, after referring to the finding of the Courts below that such a transfer was inoperative as at its date the reversioner had no interest capable of transfer but merely an expectancy, said:—

“It cannot be disputed that, according to the ordinary Hindu Law, this is the true view”.

and the widow did not succeed in getting possession of the half estate although the reversioner had come into possession but a decree for the return of the money advanced was given by the Privy Council applying section 65 of the Indian Contract Act.

In *Bhana and another v. Guman Singh and others* (1), it was held that an agreement by which the reversioners of a Hindu widow agreed not to force their right to sue for a declaration that a gift of property made by the widow was not binding upon them, did not require compulsory registration. At page 386 the Court said that the reversioners had no transferable right, title or interest in the property during the lifetime of the widow. This was a case under Hindu Law and no mention is made of the Transfer of Property Act.

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I shall now deal with cases which have arisen in the Punjab. The earliest case to which reference may be made is *Tota and others v. Abdulla Khan and another* (1). Chatterji, J., in his referring order at page 302 said that mere possibilities of succession are not capable of alienation but sales of them are not illegal, and at page 304 he said that under Hindu Law the interest of a reversioner is not capable of alienation and he referred to *Kunj Koonwar v. Komal Koonwar* (2), *Ram Chandra Tantradas v. Dharmo Narain Chukerbatty* (3), and *Ram Achhan Kaur v. Thakur Das* (4). Sir Charles Roe C.J. gave the leading judgment and he said that no outsider could be introduced to challenge an alienation made by a widow and therefore, the right of a reversioner to alienate his right of succession could not be transferred to an outsider, nor could such an outsider challenge a widow's alienation. The learned Judge also said that the principles of Hindu Law have some bearing on the point as also the principles which underlie the Transfer of Property Act, and Reid J. specifically held that the principles contained in section 6(a) of the Transfer of Property Act embodied the spirit of the customs which limit the powers of alienation in the Province, and Clark J. was of the opinion that the power of a reversioner to transfer his reversionary right is opposed to the principle of Tribal Law of the Punjab, and the exercise of the power, at least "till recent times, is almost unknown". The Court therefore dismissed the suit of the alienee of reversionary rights who had challenged the alienation made by the widow in possession.

(1) 66 P.R. 1897

(2) 6 W.R. 34

(3) 15 W.R. 17

(4) I.L.R. 17 All. 125 at pp. 132 and 150

In *Malik Ala Bakhsh v. Ghulam and others*, (1), a Division Bench of the Lahore High Court held that though the sale of a reversionary right of succession did not at the time that the sale took place affect a transfer of property but it gave rise to a right which the Courts would enforce as inheritance had fallen into possession on the well-known rule of equity which treats everything as done which had been agreed to be done, but this being an old case naturally could not take into account the law as laid down by the Privy Council in *Harnath Kuar v. Indar Bahadur Singh* (2), and if the Transfer of Property Act embodies the principles of justice, equity and good conscience it cannot be said that such a contract would be enforceable.

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The next Punjab case on this point is *Jawala Sahai v. Ram Singh* (3), where it was held that a reversioner's right to contest an alienation under Customary Law is not transferable to a stranger and where a reversioner who succeeds after the death of a widow alienates his reversionary rights, the alienee has no status to contest the validity of mortgages made by the widow, and the full Bench decision was followed.

The contrary view was taken in *Gujjar v. Auliya* (4), by a Division Bench but that was a case where transfer was by one reversioner of his right of expectancy to another reversioner, and it was held that this transfer is not void, but that question does not arise in the present case. Moreover, this case seems to have been decided on its own facts and is no authority for the proposition which was debated before us.

(1) 13 P.R. 1899
(2) 50 I.A. 69
(3) 67 P.R. 1939
(4) 78 P.R. 1914

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In *Indar Singh v. Munshi* (1), it was held at page 126 that mere reversionary rights cannot be alienated and that an agreement to transfer such rights does not require registration as it does not itself create any rights at all.

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In *Gurbhaj v. Lachhman* (2), a Letters Patent Bench held that the right of succession on the death of a widow in Hindu Law is a mere *spes successionis* and the reversioner has no right or interest in the property *in praesenti*, and therefore a deed relinquishing the right of succession does not require registration. Sir Shadi Lal, C. J. referred in this case to *Amrit Narayan Singh v. Gaya Singh* (3), and *Harnath Kunwar v. Indar Bahadur Singh* (4). At page 92 Sir Shadi Lal, C.J. observed—

“The transfer of a *spes successionis* does not carry with it any interest in immovable property, and the deed evidencing such transfer does not stand in need of compulsory registration.”

Achhar etc. v. Padmun etc. (5), was also relied upon by the respondent, but in that case also it was held that the right of an expectant heir to succeed to an estate is a mere *spes successionis* and cannot be the subject-matter of an assignment, but following the judgment of the Chief Court in *Malik Ala Bakhsh v. Ghulam and others* (6), it was held that a contract of this kind gives rise to a right which the Court will enforce under section 18 of the Specific Relief Act when the inheritance falls into possession.

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- (1) I.L.R. 1 Lah. 124
 (2) I.L.R. 6 Lah. 87
 (3) I.L.R. 45 Cal. 590 (P.C.)
 (4) 50 I.A. 69
 (5) L.P.A. 87 of 1924
 (6) 13 P.R. 1899

Reference may now be made to *Thakar Singh and others v. Mst. Uttam Kaur and others* (1), where it was held that the right of expectancy cannot be the subject-matter of a valid transfer so as to invest the transferee with a right to sue and that the principle contained in section 6(a) of the Transfer of Property Act embodies in this respect the spirit of the customs prevailing in the Punjab. *Tota and others v. Abdullah Khan and another* (2) was relied upon at page 634, and the Privy Council cases, which I have mentioned above, were also referred to.

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Another Division Bench of the Lahore High Court in *Sher Mohammad Khan and others v. Chuhr Shah and another* (3), held that the sale of reversionary rights in a widow's estate is opposed to the principles of Customary Law, and according to the principles of section 6 of the Transfer of Property Act which can be taken as a guide, though the Act is not in force in this Province, such a transfer is void.

I may here refer to two Punjab cases which though not dealing with transfer of a right of expectancy dealt with rights which are contained in section 6 of the Transfer of Property Act. In *Tara Chand v. Bakshi Sher Singh and others* (4), it was held that though the Transfer of Property Act does not apply to the Punjab, the general principles based on the judgments of Equity Courts can be invoked in aid by the Courts in this Province and the Principle of section 6(dd) which bars a transfer of a right to future maintenance is applicable to the Punjab.

In *Baba Hakam Singh v. Narinjan Singh and another* (5), it was held that a right to take accounts and to recover such sums as may be found

(1) I.L.R. 10 Lah. 613
(2) 66 P.R. 1897
(3) A.I.R. 1936 Lah. 753
(4) 38 P.L.R. 702
(5) A.I.R. 1937 Lah. 934

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due is not assignable being a mere right to sue within the meaning of section 6, Clause (e) of the Transfer of Property Act, and the assignee is therefore, not entitled to maintain a suit for such a purpose, and reliance was placed on *Khetra Mohan Das v. Biswanath* (1).

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I would therefore hold that by deeds Exhs. P. 2 to P. 4 of the year 1914, Jiwan Singh purported to sell his right of expectancy which is not transferable, assignable, transmittable and cannot be the subject-matter of a contract at the date of the transfer. As was held in *Harnath Kuar's case* (2), Jiwan Singh had no interest which was capable of being transferred, and this is apart from the provisions of the Transfer of Property Act.

The respondent then submitted that there is another track of decisions which becomes applicable to this case and which starts with *Malik Ala Baksh v. Ghulam and others* (3), I have already discussed this case. What was held there was that although sale of reversionary rights passes no interest yet when the estate falls into possession the vendee can enforce his rights under section 18 of the Specific Relief Act. This rule was followed by Beadon J. in *Attar Chand v. Umar Hayat* (4), but it appears that it was nothing more than *obiter*.

In *Arur Singh v. Todar Mal* (5), the contract by the reversioner was that the reversioner intended to sue for the cancellation of a sale by a widow in possession and that on being successful he would give possession of half the land to the plaintiff and get a sale deed registered. It was held that the alienee may be entitled to sue for a specific performance on the death of the widow but he had no cause of action to bring the suit

(1) I.L.R. 51 Cal. 972
 (2) 50 I.A. 69 p. 74
 (3) 13 P.R. 1899
 (4) 20 I.C. 556
 (5) 49 I.C. 501

during her lifetime because the contract itself did not create any interest in or charge on the property.

Musammat Bhagwati v. Mussammat Chooli (1), was then referred to where it was also held that a contract of sale of reversionary rights can be enforced when the estate falls into possession. The learned Judges relied upon section 43 of the Transfer of Property Act although they did not give full effect to section 6 of the same Act. The case was decided on the ground that any interest subsequently acquired by the transferor with a defective title is available to make the transaction effectual when the title is perfected.

Counsel next relied on *Naranjan Singh v. Dharam Singh* (2), where it was held that an agreement to sell a reversionary right of succession can be enforced in the Punjab when the inheritance falls into possession and although *Annada Mohan Roy v. Gour Mohan Mullick* (3), was referred to, it was distinguished on the ground that the Transfer of Property Act was not in force. This was a judgment by Broadway J. with whom Currie J. agreed and *Malik Ala Bakhsh v. Ghulam and others* (4), was followed.

Another judgment which was relied upon is a Single Bench by Currie J. in *Gobinda v. Chanan Singh* (5), where the same proposition was laid down.

In *Kishan Singh v. Mst. Lachhmi* (6), it was contended by counsel that a transfer of this kind could not be allowed to operate, but the learned Judges contended themselves by saying—

“This contention is completely answered by another decision of the Lahore High Court, namely, *A. I. R. 1930 Lah. 928*”,

(1) 55 I.C. 598
 (2) 179 I.C. 29
 (3) 50 I.A. 239
 (4) 13 P.R. 1899
 (5) A.I.R. 1933 Lah. 378
 (6) R.S.A. 1310/1937

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and that such a transaction gives rise to a right which the Courts will enforce when the inheritance falls into possession and such a contract is enforceable in a Province where the Transfer of Property Act is not in force.

Reliance was also placed by counsel on two judgments of Pilon J.C. of the Peshawar Court. The first one is *Kabal Shah v. Muhammad Baqa* (1), where it was held that section 6 of the Transfer of Property Act is not a bar to a suit for specific performance, and the second is *Zabta Khan v. Said Habib* (2), where it was held that a transfer of reversionary rights may be valid as an executory contract which will take effect when a title to the property has opened out to the vendor both by a rule of equity and by the application of section 18 of the Specific Relief Act.

A Travancore case *Chacko Thomas v. Mathai Abraham* (3), was then cited and it was held there that an agreement to convey property to be acquired in the future is enforceable in spite of section 6 of the Transfer of Property Act. The Punjab cases that I have already given were relied upon as also a judgment of Buckley J. in *In re Ellenborough Towry Law v. Burne* (4).

Two English cases were cited before us by the respondent's counsel in *re Ellenborough Towry Law v. Burne* (4). What was held in this case was that a volunteer cannot enforce a contract of an assignment of an expectancy even though under seal, but the learned Judge added—

“It cannot be and is not disputed that if the deed had been for value the trustees could have enforced it.

* * * *

Future property, possibilities, and expectancies are all assignable in equity for value.”

(1) 73 I.C. 120

(2) 75 I.C. 246

(3) A.I.R. 1954 Tra-Co. 357

(4) (1903) 1 Ch. 697

The case referred to by Buckley J. was relied upon by Mr. Faqir Chand Mital and that case is *Tailby v. Official Receiver* (1), in which it was held that a right to sue for accounts is assignable in equity, which is contrary to the view taken even in the Punjab in *Baba Hakam Singh v. Naranjin Singh and another* (2).

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This track of decisions is in my opinion not available to the plaintiff in the present case. In the first place the suit is not for specific performance, and if it had been, many other defences might have been open to the defendants. In any case, the suit being only for possession on the ground that there was a sale of expectancy in favour of the plaintiff's predecessor-in-interest, the cases starting with *Malik Ala Bakhsh v. Ghulam and others* (3), have no applicability.

And secondly, the Privy Council cases in *Harnath Kuar v. Indar Bahadur Singh* (4), and *Annada Mohan Roy v. Gour Mohan Mullick* (5), show that if the right of expectancy is not alienable and cannot form the subject-matter of a contract, such a contract would be unenforceable as was held in *Annda Mohan Roy v. Gour Mohan Mullick* (5), where it was said at page 555—

“There is thus no ground to hold that the claim of the plaintiff, tested by Hindu law, apart from the provisions of section 6 of the Transfer of Property Act, can be seriously entertained.”

And this judgment was affirmed by their Lordships of the Privy Council.

Besides, if this agreement was allowed to be enforced it would be defeating the Hindu Law because it would come to this that although expectations cannot be transferred *in praesenti* or in

(1) 13 App. Cas. 523
(2) A.I.R. 1937 Lah. 934
(3) 13 P.R. 1899
(4) 50 I.A. 69
(5) 50 I.A. 239
(6) I.L.R. 48 Cal. 536

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future, a person may bind himself to bring about the same result by giving to the agreement the form of a promise to transfer not the expectations but the fruits of the expectations by saying that what he has purported to do may be described in different language from that which the law has chosen to apply to it for the purpose of condemning it. When the law refuses the transaction as an attempt to transfer a chance, it indicated the true aspect in which it requires the transaction to be viewed. I have taken these words from the judgment of Tyabji J. in *Sri Jagannada Raju v. Shri Rajah Prasada Rao* (1), at page 559. Only I have substituted the word 'law' for the word 'Legislature' and the word 'Act'. This observation has received the approval of the Privy Council in *Annada Mohan Roy v. Gour Mohan Mullick* (2).

I would hold therefore that the present is neither a suit for specific performance nor can the agreement be specifically performed in the present case.

I would, therefore, allow this appeal, set aside the decree of the trial Court and dismiss the plaintiff's suit with costs throughout.

Khosla, J.

KHOSLA, J.—I agree.

(1) I.L.R. 39 Mad. 554
(2) 50 I.A. 239