APPELLATE CIVIL

Before Inder Dev Dua, J.

HIRA SINGH,—*Appellant.*

Versus

ISHAR SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 402 of 1963.

Custom—Ancestral property—Alienation of—Declaratory decree obtained by collaterals in a suit challenging the alienation—Effect of—None of the reversioners heirs according to law at the time when succession opens—Heirs under the law—Whether entitled to take benefit of the declaratory decree.

1964

March, 3rd.

Held, that a declaratory decree obtained by one or more reversioners enures for the benefit of the entire reversionary body and the individual reversioner, who actually happens to be the next heir at the time the succession opens is entitled to take advantage of the decree, the sole object of which is to remove or get rid of a common apprehended injury in the interests of all the reversioners, whether presumptive or contingent. The reversioner actually suing has no personal interest apart from the interest common with the entire reversionary body, the reversionary interest being a mere possibility to succeed or *spes successions,* a possibility common to all reversioners. It is from the nature of things difficult to predicate the actual heir at the time of inheritance falling in. The declaratory decree merely saves from the operation of the alienation the right of the actual reversioner entitled to succeed and it does not in law completely wipe out the alienation by declaring it to be void in the sense of being non-existent; nor does such a decree change the line of succession. If the actual heir for certain reasons is incapable of taking advantage of such a decree, it does not mean that someone else who, if an heir, could have taken advantage of the decree, becomes entitled to succeed according to the law of succession. If no reversioners entitled to take advantage of the decree is an heir when the succession opens, the property, which is subject-matter of alienation, would under the law be held not to form part

of the estate left by the deceased with the result that neither the actual heir nor the reversioner who, if he had been an heir, could have enjoyed the benefit of the declaratory decree can dispossess the alienee.

Regular Second Appeal from the decree of the Court of Shri Jaswant Singh, Senior Sub-Judge, with enhanced *appellate powers, Ferozepur, dated the 31st day of January, 1963, reversing that of the Sub-Judge, Ist Class, Muktsar, dated the 11th January, 1962, and granting the plaintiff a decree for possession of the land in dispute measuring 75 kanals 6 marlas, situated in village Dohewala, on their paying the charge Rs. 1300/- to Hira Singh, defendant respondent and leaving the parties to bear their own costs.*

N. L. DHINGRA, ADVOCATE, for the Appellants.

PURAN CHAND, ADVOCATE, for the Respondents.

JUDGMENT.

DUA, J.—This judgment will dispose of three appeals (Regular Second Appeals Nos. 402, 556 and 591 of 1963) which arise out of the same facts and have actually been dealt with together by the Courts below. Dua, J.

The facts gaving rise to this controversy may briefly be stated. Sucha Singh, sometime in 1919 sold 86 *kanals* and 5 *marlas* of land in favour of Hira Singh for a sum of Rs. 4,000. Baggu Singh, father of Ishar Singh, etc., plaintiffs, brought the usual declaratory suit challenging the alienation. Baggu Singh, it may be mentioned, was the uncle of the vendor Sucha Singh. The trial Court partly decreed the suit by declaring a valid charge on the land to the extent of Rs. 1,200; this charge was on appeal raised by the learned District Judge, Ferozepur, to Rs. 1,300 on 16th October, 1920. Hira Singh, vendee sometime later mortgaged the land in favour of Mukhtiar Singh. On Sucha Singh's death which occurred in 1961, the sons of

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Baggu Singh; brought the present suit for possession. A similar suit was also brought by Kartar Kaur, the daughter of Sucha Singh. The trial Court dismissed the suit of Ishar Singh and others, sons of Baggu Singh, and decreed the suit of Kartar Kaur.

On appeal the learned Senior Subordinate Judge; decree the suit of Ishar Singh and others and dismissed that of Kartar Kaur. Three appeals have accordingly been preferred in this Court, R.S.A. 402 of 1963, by Hira Singh and the other two by Kartar Kaur in the two suits.

The first point raised by Shri N. L. Dhingra in R.S.A. 402 of 1963 can be disposed of very briefly. He has contended that in lieu of 86 *kanals* and 5 *marlas* during consolidation proceedings only 68 *kanals* and 8 *marlas* have been allotted, with the result that it was only this area which should have been decreed in favour of the decree-holder. This point is covered by ground No. 2 in the memorandum of appeal in this Court. The grievance which has been stressed with force is that by means of amendment of the pleadings this point was brought out but has not been tried by the Courts below. The settlement of issues has accordingly also been assailed. It is obvious that this point has not been urged in the lower appellate Court and I find from the grounds of appeal taken in the lower appellate Court that this point was not agitated there. I am, therefore, disinclined to entertain this point on second appeal. As a matter of fact it was for the appellant to have obtained a proper issue on the pleadings and to have sought trial of this plea. Having not done so, it is too late to ask this Court on second appeal to send the case back for framing a fresh issue for trial on a point requiring evidence.

The main point which has been raised is short and it really arises on account of the enforcement of the Hindu Succession Act, according to which the line of succession in regard to even landed property has been varied by bringing in new heirs who are not entitled to challenge alienations of ancestral immovable property by male-holders.

The trial Court came to the conclusion that Smt. Kartar Kaur, being an heir of Sucha Singh, on his death in 1961; was entitled to succeed to this property and was, therefore, entitled to take possession of the land in question on payment of Rs. 1,300. The lower appellate Court, however, took the view that Smt. Kartar Kaur was not entitled to assail the alienation in favour of Hira Singh with the result that she is not entitled to take benefit of the decree. According to the decree, therefore, the learned Senior Subordinate Judge thought that Baggu Singh's sons were entitled to take possession.

The learned counsel for the appellant has criticised this view on the ground that the declaratory decree of 1920 did not have the effect of changing the line of succession which is now determined by statute and that Ishar Singh and others not being heirs when the succession opened could not claim possession of the land in suit which formed a part of the estate of the deceased. Reference has been made by the learned counsel to *Gurmit Singh* v. *Tara Singh* (1), where the reversioners were held not to succeed to the land when the succession had opened after the enforcement of the Hindu Succession Act, 1956. He has also assailed the right of Smt. Kartar Kaur to succeed on the ground that a daughter derives her right to succeed only from her father and not from the common ancerstor with the result that

(1) 1959 P.L.R. 677.

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she cannot be considered as an agnate. Not being an agnate, she could not contest the alienation made by her father from whom she derived her title. The alienation being binding on her, she could not claim a right to take possession of the land in question because as against her this no longer formed part of the estate of her deceased father. Support for this contention has been sought from *Milkha Singh* v. *Ram Kishen* (2), and also from *Mt. Basso* v. *Harnam Singh* (3), Reference has also been made to *Mst. Taro* v *.Darshan Singh* (4), but the facts of that case were peculiar and do not seem to me to be of any assistance in determining the point raised in the case in hand.

Shri Puran Chand appearing for the collaterals has also challenged the right of the daughter to succeed. He has, however, in support of the collaterals' claim merely submitted that the decree which set aside the alienation and held the sale not binding on the then plaintiffs gives the collaterals a right to obtain possession of the property.

Shri R. M. Vinayak, appearing for Smt. Kartar Kaur, has submitted that his client is entitled to take benefit of the decree because it has converted the sale into a mortgage and this conversion can be taken advantage of by the person who happens to be the true heir and successor at the time the succession opens.

I have devoted my most anxious attention to the arguments adressed. The position in regard to the effect of declaratory decree obtained by collaterals in a suit challenging alienation of ancestral property as being contrary to the restrictions imposed by Punjab custom has been the

(2) A.I.R. 1934 Lah. 725.
(3) A.I.R. 1937 Lah. 636.
(4) A.I.R. 1960 Punj. 145.

subject-matter of various judicial pronouncements. The position, as I understand it is, that a declaratory decree obtained by one or more reversioners enures for the benefit of the entire reversionary body and the individual reversioner who actually happens to be the next heir at the time the succession opens is entitled to take advantage of the decree, the sole object of which is to remove or get rid of a common apprehended injury in the interests of all the reversioners, whether presumptive or contingent. The reversioner actually suing has no personal interest apart from the interest common with the entire reversionary body, the reversionary interest being a mere possibility to succeed or *spes successionis,* a possibility common to all reversioners. It is from the nature of things difficult to predicate the actual heir at the time of inheritance falling in. The declaratory decree merely saves from the operation of the alienation the right of the actual reversioner entitled to succeed and it does not in law completely wipe out the alienation by declaring it to be void in the sense of being non-existent; nor does such a decree change the line of succession. If the actual heir for certain reasons is incapable of taking advantages of such a decree, it does not mean that someone else who, if an heir, could have taken advantage of the decree, becomes entitled to succeed according to the law of succession. If no reversioner entitled to take advantage of the decree is an heir when the succession opens, the property, which is subject-matter of alienation, would under the law be held not to form part of the estate left by the deceased with the result that neither the actual heir nor the reversioner, who, if he had been an heir, could have enjoyed the benefit of the declaratory decree, can dispossess the alienee.

For the foregoing reasons, in my opinion, the appeal by the vendee must succeed and the judg-

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ments and decrees of the Courts below set aside and the suit both of the reversioners and of Smt. Kartar Kaur be dismissed. In the peculiar circumstances of the case, however, parties are left to bear their own costs throughout.

B.R.T.

REVISIONAL CIVIL

Before S. B. Capoor, J.

HARI CHAND,—*Petitioner.*

Versus

NIRANJAN SINGH,—*Respondent.*

Civil Revision No. 654 of 1963.

1964

March, 5th.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 1(2) and 2(j)—Area included in the municipal limits after the enforcement of the Act—Whether covered by the definition of "urban area".

Held, that the operation of the East Punjab Urban Rent Restriction Act cannot be restricted only to those areas which were included within the limits of a municipal committee, the cantonment board, a town committee or a notified area committee as they existed at the time of the enforcement of the Act. The definition of "urban area" in clause (j) of section 2 of the Act makes it clear that any area falling within the limits of a municipal committee or other local bodies as mentioned in that clause are to be deemed urban area for the purpose of the Act and are to be synonymous with urban areas. The term "any area administered by a municipal committee" occurring in clause (j) of section 2, is to be interpreted in the sense of any area being administered by the municipal committee for the time being, that is, when the matter comes up for adjudication before the Court and not with reference to the position at the time of the coming into force of the Act.