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opinion on the validity or otherwise of the argument. It is not a case where the appellant can justly contend that on the face of the record the charge levelled against him is unsustainable. The appellant no doubt very strongly feels that on the relevant evidence it would not be reasonably possibly to sustain the charge but that is a matter on which the appellant will have to satisfy the magistrate who takes cognisance of the case. We would, however, like to emphasis that in rejecting the appellant's prayer for quashing the proceedings at this stage we are expressing no opinion one way or the other on the merits of the case.

There is another consideration which has weighed in our minds in dealing with this appeal. The appellant has come to this Court under Article 136 of the Constitution against the decision of the Punjab High Court; and the High Court has refused to exercise its inherent jurisdiction in favour of the appellant. Whether or not we would have come to the same conclusion if we were dealing with the matter ourselves under section 561-A is not really very material because in the present case what we have to decide is whether the judgment under appeal is erroneous in law so as to call for our interference under Article 136. Under the circumstances of this case we are unable to answer this question in favour of the appellant.

The result is the appeal fails and is dismissed.

B. R. T.

APPELLATE CIVIL.

Before Bishan Narain and I. D. Dua, JJ.

JAGAT RAM,—*Appellant.*

versus

CHANDU LAL AND OTHERS,—*Respondents.*

Regular Second Appeal No. 615 of 1954.

1960

March 28th

Customary law—Right to challenge alienations of ancestral immovable property—In whom vests—Declaratory

decree obtained that impugned alienation will not affect the rights of reversioners—Effect of, on the reversionary body—Joint alienation by two brothers of their property—Whether can be challenged by surviving brother in respect of the deceased brother's share—Punjab Limitation (Custom) Act (I of 1920)—Sections 7 and 8 and Article 2 of the Schedule—Right to sue for possession—When accrues in the case in which declaratory decree has been obtained.

Held, that a male holder is completely free and his power is absolute and wholly unfettered and uncontrolled under the rules of customary law so far as the disposal or alienation of his self-acquired property is concerned. It is only a widow whose power of gratuitously alienating her husband's self-acquired property is restricted with the result that if she does so alienate the said property without the consent of the next presumptive reversioner, who himself happens also to be the actual heir or successor to the estate on the widow's death, then obviously he cannot take advantage of the declaratory decree successfully challenging the alienation.

Held, that ancestral property is ordinarily inalienable except for necessity or with the consent of male descendants or, in the case of a sonless proprietor, with the consent of his male collaterals. Where there is no male descendant or a male collateral, entitled to control the holder's power of disposition, in existence at the date of alienation of ancestral immovable property, the proprietor is of course at liberty to deal with it as he likes. From this it follows that in order to screen the alienation from attack and to validate it or make it indefeasible, if the alienor has male descendants in existence, then the consent of all of them is essential, subject of course to the proviso that a *bona fide* consent by the alienor's son would bind the consenting party's sons and other descendants as well, and the latter cannot maintain a suit to avoid such an alienation. Consent by the descendants of an alienor is presumed to be *bona fide* and the onus of proving the contrary lies on the party disputing it. If, however, one or some only out of the descendants of the alienor have consented to the alienation, then it cannot have the effect of making the alienation indefeasible or absolutely unassailable ; the other or remoter descendants being fully competent to sue to set it aside. Similarly, where some only out of the body of male collaterals, clothed with the

right to control the alienor's power of disposition, have consented, the other or remoter collaterals possessing such power may sue. Unless, therefore, the consent or concurrence of the descendants and reversioners, who have not sued, has the effect of validating the alienation or making it unassailable and completely immune from challenge, the right of the other descendants or remoter collaterals to attack the alienation cannot be defeated. It is, however, possible to give the consent to an alienation so as to validate it, even after the transaction, and it is not necessary that consent should be given before or at the time of the alienation. This rule provides the substantive provision of customary law as prevailing in the Punjab.

Held, that the proper person to object to an alienation of ancestral immovable property, according to the provisions of customary law, is the next reversionary heir, but when he happens to be a minor or has colluded with the alienor or has refused, without sufficient cause, to institute proceedings or has precluded himself by his own act or conduct from suing or has otherwise concurred in the alienation which is not justified, the next reversioner is fully competent to maintain action assailing the alienation. The mere assent of the next reversioner or of one of several reversioners will not by itself debar other reversioners from suing to set aside the alienation.

Held, that in the case of a joint alienation by two brothers, the survival of one of them does not make the sale of the deceased brother's share indefeasible as against the reversioners who successfully impugned the sale and secured the declaratory decree. Nor can the declaratory decree be said to have exhausted itself on this account. The declaratory decree gave the right of possession to the reversioners only after the death of both the brothers. The sale transaction being indivisible and having been so treated in the declaratory decree, it is difficult to hold that on the death of one of them and while the other was alive, the right to sue for possession accrued to the reversioners under the declaratory decree. The decree could not have the effect of making the present plaintiff's, in law, superior heirs than the surviving brother and the possession of the estate could only be claimed by those who happen to be the actual heirs, according to the law of succession governing them, on the death of both the brothers. In the instant case sale was make by Mohnu

and Sohnu, two brothers, in 1897 and fifth-degree collaterals obtained the declaratory decree in 1909. Mohnu died issueless and also without leaving any widow behind in 1914. Some time later Sohnu died leaving behind a widow, who died in 1949. Held that the right to sue for possession under the declaratory decree obtained in 1909 accrued to the plaintiffs on the death of the widow of Sohnu in 1949, and not on the death of Mohnu in 1914.

Case referred by Hon'ble Mr. Justice Mehar Singh, on 24th August, 1958, to a larger Bench for decision of the legal points involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Bishan Narain and Hon'ble Mr. Justice Dua, decided the case on merits on 28th March, 1960.

Second appeal from the decree of Shri J. N. Kapur, District Judge, Hoshiarpur camp at Dharamsala, dated the 21st May, 1954, modifying that of Shri G. C. Jain, Senior Sub-Judge, Kangra at Dharamsala, dated the 18 November, 1953, (granting the plaintiffs a decree for possession for 1/2 share of the land in suit except fields Nos. 90 and 194 which had not been proved to have been included in the decree and dismissing the rest of the claim of the plaintiffs and leaving the parties to bear their own costs) to the extent of granting the plaintiffs a decree for the possession of the entire land in suit excepting khasra Nos. 90 and 194, with costs throughout.

M/s. S. K. JAIN AND V. K. MAHAJAN, ADVOCATES, for the appellant.

MR. A. C. HOSHIARPURI, ADVOCATE for the respondent.

JUDGMENT

I. D. Dua, J.

Dua, J.—The land, in dispute, measuring 20 kanals and 16 marlas belonged to two brothers Mohnu and Sohnu, sons of Jai Singh, in equal shares. On 7th of July, 1897 they sold it in favour of Mutsaddu, who on 3rd of December, 1903 sold it in favour of Bali Bhadar alias Balandu and Sardhu, sons of Goshaon. On 2nd of July, 1960, Ram Rath and others, claiming to be fifth-degree

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collaterals of the original vendors, instituted the usual declaratory suit, impugning the sale by them to be contrary to custom. On 20th of November, 1909 this suit was decreed and the plaintiffs were granted a declaration that the sale in qusetion would not affect the plaintiffs' reversionary rights after the death of Mohnu and Sohnu. In 1914 Mohnu died issueless and also without leaving any widow behind. It appears that some time later Sohnu also died, but he was survived by his widow Smt. Janki, who also died on 11th of October, 1949. The present suit was instituted by Chandu Lal, etc., the successors-in-interest of the plaintiffs, who had obtained the decree in 1909, for possession of the suit land on the basis of the earlier declaratory decree. The successors-in-interest of the vendees resisted the suit, in so far as Mohnu's share is concerned, on the ground that it was barred by time. This plea prevailed with the trial Court with the result that it passed a decree in favour of the plaintiffs for possession of only half the share of the land in suit except fields Nos. 90 and 194 which had not been proved to have been included in the declaratory decree.

The plaintiffs feeling aggrieved took an appeal to the Court of the District Judge who, disagreeing with the view of the Court of first instance, decreed the plaintiffs' suit in its entirety except khasra Nos. 90 and 194 which, as observed by the learned Senior Subordinate Judge, had not been proved to have been included in the earlier declaratory decree. The lower appellate Court construed the declaratory decree to mean that until both the vendors Mohnu and Sohnu died, the reversioners could not ask for possession, the sale in question being a joint sale by both the brothers, and that Sohnu could not possibly have claimed

possession of Mohnu's share of land on his death on the basis of the declaratory decree.

Jagat Ram feeling aggrieved by the judgment and the decree of the learned District Judge has come to this Court on second appeal, which originally came up for hearing before a learned Single Judge in September, 1958. Unfortunately the plaintiffs respondents were not represented at that stage with the result that no arguments could be addressed on their behalf. The learned Single Judge was himself of the opinion that the "right to sue" within the contemplation of article 2(b) in the Schedule to Punjab Act No. I of 1920, in so far as the half share of the land left by Mohnu deceased is concerned, accrued to the plaintiffs not at the time of the death of Mohnu but only on the death of his brother Sohnu, in whose presence the plaintiffs could not maintain their suit for possession. But a decision by Gosain, J., in *Bishna and others* v. *Sohna and others* (1), was cited before him in support of a contrary view and the learned Judge considering that the view taken by him was not in accord with the view taken by Gosain, J., thought it proper to have the case heard by a larger Bench. It is in these circumstances that this appeal, which would normally have been disposed of by a Single Judge, has been placed before us for disposal.

The learned counsel for the appellant has contended that though the sale by Mohnu and Sohnu was incorporated in one document, it really represented two separate transactions involving sale of separate shares belonging to Mohnu and Sohnu. In support of his contention he has contended that in the column of "ownership" in the

(1) 1958 P.L.R. 605

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revenue papers Mohnu and Sohnu have been described to be owners of half share each. Reference has also been made by the counsel to *Abdul Karim* v. *Ghulam Nabi Khan and others* (1), where Dalip Singh, J., observed that whether a transaction is one in essence or whether two transactions are embodied in one document, is essentially a question of intention; and on the facts of the reported case, where two estates in the land were separate and also separately owned, the learned Judge concluded in favour of there being two separate transactions, there being nothing to show that the vendee in that case would not have purchased the one estate without the other. It is quite clear that the facts of the reported case are essentially different from those with which we have to deal and that decision affords no guidance in the case in hand. But this apart, what we have to see is whether keeping in view the terms of the declaratory decree of 1909, the right to sue for possession of the alienated land accrued to the present plaintiffs on the death of Mohnu which occurred in 1914 or on the death of Janki which took place in October, 1949.

On behalf of the appellant reliance has been placed on sections 7 and 8 and article 2 of the Schedule to Punjab Act I of 1920. These provisions are in the following terms :—

"7. Subject to the provisions of section 6—

(a) No suit for the possession of ancestral immoveable property on the ground that an alienation of such property or the appointment of an heir is not binding on the plaintiff according to custom shall lie if a suit for a declaration that the alienation or appointment of an heir

(1) A.I.R. 1934 Lah. 402 (1)

is not so binding would be time-barred, unless a suit for such a declaration has been instituted within the period prescribed by the schedule.

(b) No suit for the possession of ancestral immoveable property by a plaintiff on the ground that he is an heir appointed in accordance with custom entitled thereto shall lie if a suit for a declaration that his alleged appointment as heir was validly made according to custom would be time-barred, unless a suit for such a declaration has been instituted within the period prescribed by the schedule.

8. When any person obtains a decree declaring that an alienation of ancestral immoveable property or the appointment of an heir is not binding on him according to custom, the decree shall enure for the benefit of all persons entitled to impeach the alienation or the appointment of an heir.

SCHEDULE

Description of suit	Period of limitation	Time from which period begins to run
1. ***	***	****
2. A suit for possession of ancestral immoveable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom—		
(a) if no declaratory decree of the nature referred to in article 1 is obtained	6 years	As above
(b) if such declaratory decree is obtained	3 years	The date on which the right to sue accrues or the date on which the declaratory decree is obtained, whichever is later.
***	***	****"

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It is conceded by the learned counsel for the appellant that there is no case which directly applies to the present facts. He has, however, tried to draw some assistance from the ratio and reasoning of some of the reported cases which, according to him deal with analogous problems. *Rehman* v. *Suraj Mal, etc.*, (1), is a decision by a Full Bench of the Lahore High Court in which M. C. Mahajan, J., (as he then was) construed the phrase "all persons entitled to impeach the alienation" as used in section 8 Punjab Limitation (Custom) Act,) (Punjab Act I of 1920) not to be synonymous with the phrase "persons who successfully could institute a suit to impeach the alienation." The counsel submits that merely because Sohnu could not successfully impeach the alienation of 1897, it cannot be concluded that the declaratory decree could not enure for his benefit under section 8 of Punjab Act I of 1920. There is an obvious fallacy in the contention of the learned counsel. In the reported case the Full Bench was not dealing with the case of a person who being himself a party to a sale tried to take benefit of section 8. The facts with which M. C. Mahajan, J., was dealing were completely different from those before us and the question which arose for decision there does not appear to me to have any resemblance or similarity to the question which arises for consideration in the instant case. It is a settled proposition of law that observations in decided cases must be read in their own context and must not be considered in isolation or detached from and taken out of their context. A precedent is an authority on its own facts and to understand and apply the ratio of a decision it is necessary to see what were the facts on which the decision was given and what was the point which

(1) A.I.R. 1945 Lah. 76

had to be decided. In the reported case the Court was merely concerned with the right of an after-born son of the alienor to take advantage of a declaratory decree secured by the collaterals of his father before his birth, and indeed the Full Bench on Letters Patent appeal upheld the right claimed by him.

Narotam Chand v. *Mst. Durga Devi*, (1) is equally unhelpful because there also the question which arose for consideration was very much different from the one with which we have to deal. The proposition that a declaratory decree obtained by a reversioner in respect of an alienation enures for the benefit of whoever may be the person entitled to succeed when the inheritance falls in is obviously unexceptionable and this is all that the learned counsel tried to deduce from this decision. To take certain sentences from this judgment out of their context, as the counsel has attempted to do, merely demonstrates how misleading such a method can be in trying to understand and grasp the correct ratio of a decided case.

The next authority to which our attention has been invited is *Ali Mohammad* v *Mst. Mughlani and others* (2), which is a decision by five Judges of the Lahore High Court. The counsel has drawn our attention to the four propositions enunciated by M. C. Mahajan, J. (as he then was) at page 193. The learned counsel has submitted that his case falls within proposition (4) which is stated in the following terms :—

> "(4) A gratuitous alienation by a widow of her husband's self-acquired property with the consent of the next presumptive reversioner, though not valid at

(1) A.I.R. 1949 E.P. 109
(2) A.I.R. 1946 Lah. 180

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the time when made, will become indefeasible if the consenting reversioner outlives the widow and the inheritance becomes vested in him. If a declaratory decree has already been granted in respect of such an alienation that decree will become infructuous and inoperative."

It is not possible for me to uphold this contention. The obvious fallacy in the submission made by the counsel is that this proposition deals with the alienation by a widow, of her husband's self-acquired property, with the consent of the next presumptive reversioner. In this connection it must be borne in mind that a male holder is completely free and his power is absolute and wholly unfettered and uncontrolled under the rules of customary law so far as the disposal or alienation of his self-acquired property is concerned. It is only a widow whose power of gratutiously alienating her husband's self-acquired property is restricted with the result that if she does so alienate the said property without the consent of the next presumptive reversioner, who himself happens also to be the actual heir or successor to the estate on the widow's death, then obviously he cannot take advantage of the declaratory decree successfully challenging the alienation. This proposition has, therefore, no applicability to the facts of the case before us and is, therefore, not of much assistance to the appellant.

Reliance has then been placed on the decision of Gosain, J., in *Bishna and others* v. *Sohna and others* (1), and particular emphasis has been laid on the following observations at page 608 :—

"It is true that a declaratory decree obtained at the instance of any reversioner

(1) 1958 P.L.R. 605

declaring an alienation to be not binding on the reversionary body will enure for the benefit of all persons who are entitled to challenge the alienation. It is also true that the persons entitled to challenge an alienation are not necessarily those who are entitled to challenge the alienation successfully. For example, an after-born son will be entitled to the benefits of the decree, although he was not in existence and he himself would not have been entitled to impeach the alienation successfully in case there were no reversioners existing at the time of the alienation who were entitled to challenge the alienation. The two factors given above, however, do not mean that the benefits of the decree will be available even to those persons who have by their own conduct, e.g., by joining in the alienation itself or by "expressly consenting to the alienation itself, precluded themselves from challenging the particular alienation. Those persons must be deemed to have lost all their rights, title and interest in the property and if they are the only persons who are in existence at the time of the alienor's death, the alienation will become indefeasible. As shown above, in the present case Bishna and Sohna were themselves alienors and had expressly consented to the exchange of one-third of the property by Khazana by being active parties to the said alienation itself and they must be deemed to have lost their rights of challenging the

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alienation in question and, as such, they are not the persons entitled to derive benefit of the declaratory decree obtained by the sons of Sohna."

Here again the counsel has ignored the facts with which Gosain, J., was dealing. Bishna, Sohna and Khazana, three brothers, had exchanged their agricultural land with Achhru, the predecessor-in-interest of the defendants. The sons of Sohna challenged the exchange and secured a declaratory decree from the Court of the District Judge on appeal in the following terms :—

> "The plaintiff-appellants shall restore to the alienee-defendant-respondents or their heirs and legal representatives (as the case may be) upon the death of all the alienors, the possession of the entire land got in exchange. In case the plaintiff-appellants want to have the possession of the original share of any one or more of the alienors (as he or they die) in the land in suit, they shall restore to the alienees or their heirs and legal representatives (as the case may be) the same share of the land got in exchange."

On the death of Khazana, the sons of Sohna filed a suit for possession of one-third share of the land given by the three alienors in exchange. This suit was dismissed on the ground that they were not in a position to return the exchanged land during the lifetime of their father and uncle. On appeal the learned District Judge further held that they had no *locus standi* to sue for possession during the lifetime of their father.

Thereafter Bishna and Sohna along with the three sons of Sohna instituted the suit for possession out of which the appeal heard by Gosain, J., arose. Bishna and Sohna having joined in the alienation were held by the Courts below to have precluded themselves from bringing the suit for possession: Sohna's sons were, however, non-suited on account of the dismissal of their earlier suit for possession. On second appeal by the five plaintiffs, Gosain, J., made the observations quoted above. Bishna and Sohna being the only heirs of Khazana, the alienation was considered by the learned Judge to have become indefeasible and none of the plaintiffs was thus held entitled to get possession from the alienees.

It is obvious that the sons of Sohna could not claim possession of the land in question in the lifetime of their father, and Bishna and Sohna being parties to the exchange the declaratory decree could clearly not enure for their benefit. This, in my opinion, is the real ratio of the case and this dictum was sufficient to dispose of the appeal. The observation that Bishna and Sohna being the only heirs of Khazana, the alienation of Khazana's share must be deemed to have become indefeasible, on which the appellant has principally relied and with which Mehar Singh, J., expressed his dissent, seems to me to have proceeded or to be based on the assumption that the exchange of land by the three brothers was severable into three parts and that the consent given by Sohna was binding on his sons. It was held by a Full Bench of the Lahore High Court (Abdul Rashid, C.J., and M. C. Mahajan and G. D. Khosla, JJ.), that where the grandfather alienates the ancestral immoveable property and the fathers give their consent bona fide to the alienation, the grandsons have no right to challenge it : See *Santa Singh* v. *Banta Singh*,

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etc., (1), when considered in the background of the facts of that case, the observations of Gosain, J., may be justified. I am also aware of *Prabhu*, etc., v. *Mst. Jiwni* (2), in which a reversioner's possessory suit was held barred by *res judicata* and limitation, but then that decision also proceeded on its own facts and on the terms of the particular declaratory decree.

The facts of the case before us are, however, materially different and the above observations of Gosain, J., in Bishna's case do not, in my opinion, apply to them. The sale before us is not severable and Sohnu, the co-alienor, is also not alive, nor are the present plaintiffs in any way adversely affected by Sohnu being a party to the sale. On no conceivable ground could Sohnu's participation in the sale validate the transaction or make it indefeasible as against the present plaintiffs or their predecessors who had successfully impugned the sale and secured a declaratory decree. But this apart, the declaratory decree in the instant case gave the right of possession to the reversioners only after the death of both Mohnu and Sohnu. The sale transaction being indivisible and having been so treated in the declaratory decree, it is difficult to hold that on Mohnu's death, and while Sohnu was alive, the right to sue for possession with respect to this land accrued to the plaintiffs under the declaratory decree. The language of the decree does not warant this view. Besides, the decree could by no means have the effect of making the present plaintiffs, in law, superior heirs than Sohnu; possession of the estate could only be claimed by those who happen to be the actual heirs, according to the law of succession governing them, on the death of Mohnu and Sohnu, the alienors.

(1) A.I.R. 1950 Lah. 77
(2) I.L.R. (1959) 12 Punj. 2242

To accede to the appellant's contention would, in my view, lead to certain very startling results which do not seem to be warranted or justified by the rules of customary law. For one thing, it would have the effect of making alienations by two or more brothers almost always immune from attack, at least *qua* a portion of it because as soon as one of them dies, the alienation with respect to his share would become indefeasible and the remoter reversioners, though fully entitled to impeach the alienation, would rarely, if at all, be in a position to take advantage of a valid declaratory decree properly obtained. I am exceedingly doubtful if the rules of customary law postulate such a position. The declaratory decree obtained in the present case could obviously not enure for the benefit of Sohnu, who was himself a co-alienor, and nothing convincing was urged at the Bar against this position. Indeed the counsel for the appellant tried to rely on this proposition in support of the contention that the declaratory decree had on this account exhausted itself.

Ancestral immovable property is ordinarily inalienable except for necessity or with the consent of male decendants or, in the case of a sonless proprietor, with the consent of his male collaterals. Where there is no male descendant or a male collateral, entitled to control the holder's power of disposition, in existence at the date of alienation of ancestral immovable property, the proprietor is of course at liberty to deal with it as he likes. From this it follows that in order to screen the alienation from attack and to validate it or make it indefeasible, if the alienor has male descendants in existence, then the consent of all of them is essential, subject of course to the proviso that a bona fide consent by the alienor's son would bind the consenting party's sons and other descendants as

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well, and the latter cannot maintain a suit to avoid such an alienation. In this connection I may also state another proposition, according to which consent by the descendants of an alienor is presumed to be bona fide and the onus of proving the contrary lies on the party disputing it. If, however, one or some only out of the descendants of the alienor have consented to the alienation, than it cannot have the effect of making the alienation indefeasible or absolutely unassailable; the other or remotor descendants being fully competent to sue to set it aside. Similarly, where some only out of the body of male collaterals, clothed with the right to control the alienor's power of disposition, have consented, the other or remotor collaterals possessing such power may sue. Unless, therefore, the consent or concurrence of the descendants and reversioners, who have not sued, has the effect of validating the alienation or making it unassailable and completely immune from challenge, the right of the other descendents or remotor collaterals to attack the alienation cannot be defeated. I may make it clear that it is possible to give the consent to an alienation so as to validate it, even after the transaction, and it is not necessary that consent should be given before or at the time of the alienation. This rule provides the substantive provision of customary law as prevailing in the Punjab.

If the alienation has not been validated or has not become indefeasible and is liable to be impugned according to the rule just stated, then the question of *locus standi to sue* would arise. The proper person to object to an alienation in such circumstances, as is well known, is the next reversionary heir, but when he happens to be a minor or has colluded with the alienor or has refused, without sufficient cause, to institute proceedings or has

precluded himself by his own act or conduct from suing or has otherwise concurred in the alienation which is not justified, the next reversioner is fully competent to maintain action assailing the alienation. The mere assent of the next reversioner or of one of several reversioners will not by itself debar other reversioners from suing to set aside the alienation.

These propositions have not been controveted at the Bar, and rightly so. If, therefore, this be the correct position, then it is not easy to appreciate how the present plaintiffs could be deprived of their right to sue for possession under the declaratory decree merely because they did not institute a suit for possession immediately after Mohnu's death. The very fact that in 1909 a competent Court passed a declaratory decree holding the sale not to be binding on the plaintiff-collaterals, conclusively shows that the sale had not become indefeasible merely on account of Sohnu's consent. Being vulnerable in spite of Sohnu's concurrence, the impugned sale can, under no rule of customary law or other recognised principle, be logically considered to have become binding on the decree-holders or the present plaintiffs merely because Sohnu outlived Mohnu. Nor can the declaratory decree be considered to have exhausted itself on this account. The appellant has not contended that he was entitled to successfully sue for possession on Mohnu's death; indeed his case is that the present plaintiffs could not, at that time, legally sue for possession because, so it is argued, the declaratory decree should be deemed to have exhausted itself on the ground of Sohnu having outlived Mohnu. As already observed, I do not find it possible to sustain this contention.

In the light of the above discussion the observations of Gosain, J., in Bishna's case must be held

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to be confined to the facts of that case and in my opinion they could not have been intended and should not be construed to lay down any such general and broad proposition as is contended on behalf of the appellant before us. If, however, those observations are intended to lay down any rule of general application governing all cases of joint alienations by two or more co-owners so as to make indefeasible the alienation with respect to the share of the joint alienor dying earlier, irrespective of the rights of his other descendants or collaterals and of the terms of the declaratory decree holding the alienation not to be binding on the reversionary body, then in my humble opinion, in view of the foregoing discussion (and I speak with great respect) they do not reflect the correct legal position under the Punjab Custom and I would, therefore, respectfully disagree : see *inter alia Faqir Chand, etc.*, v. *Mst. Bishan Devi, etc.*, (1). That decision is thus not applicable to the case in hand and is of no assistance to the appellant.

For the reasons given above, this appeal fails and is hereby dismissed but with no order as to costs.

Bishan Narain, J.

Bishan Narain, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before A. N. Grover, J.

KAILASH CHANDERA SHARMA,—*Petitioner.*

versus

THE SUPERINTENDENT OF OFFICES AND OTHERS,—*Respondents.*

... **Civil Writ No. 70-D of 1960.**

1960

March 31st

Code of Criminal Procedure (V of 1898)—Sections 94 and 95—scope and ambit of—Money orders and postal orders—Whether covered by the words "document or thing."

(1) A. I. R. 1947 Lah. 185 (D. B.).