as well as during arguments on behalf of the respondent it was maintained that he was within his rights to issue a notice under section 80 of the Civil Procedure Code. Keeping in view the attitude of the respondent and the serious nature of the contempt of Court committed by him, I sentence him to simple imprisonment for two months.

K. S. K.

APPELLATE CIVIL

Before D. K. Mahajan and B. S. Dhillon, JJ.

JASWANT ETC.—*Appellants.*

versus.

SHRIMATI BASANTI DEVI,—*Respondent.*

S.A.O. No. 86 of 1968.

April 20, 1970.

Hindu Succession Act (XXIX of 1956)—Section 22—Whether applies to completed transfers of immovable property—Agricultural lands—Whether covered by the section.

Held, that a completed transfer also falls within the ambit of sub-section (1) of section 22 of the Hindu Succession Act, 1956. The words 'proposes to transfer' in the section thus include a completed transfer, otherwise this section will become otiose and its very purpose will be defeated. Although the section is very unhappily worded yet there is indication in the section itself of the intention of the Legislature. The provision has been enacted to keep out strangers coming into the heirs of Class I of the Schedule after the coming into force of the Act. Courts must give meaning to a legislative provision unless the Court is forced to a conclusion that it will in fact be legislating and not interpreting the same. (Para 5)

Held, that section 22 does not provide for devolution of agricultural lands. It merely gives a sort of right of pre-emption. Entry No. 6 in List III of Schedule VII of the Constitution of India, 1950, clearly takes out agricultural lands from the ambit of the concurrent list. Agricultural land is specifically dealt with in Entry No. 18 of List II of the Constitution, the only exception being in the case of devolution. Therefore, section 22 of the Act does not embrace agricultural lands. (Para 8)

Case referred by Hon'ble Mr. Justice D. K. Mahajan, on 21st February, 1969 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice

D. K. Mahajan, and Hon'ble Mr. Justice Bhopinder Singh Dhillon, finally decided the case on 20th April, 1970.

Second Appeal from the order of the Court of Shri Ved Parkash Aggarwal, III Additional District Judge, Gurgaon, dated 11th June, 1968, reversing that of Shri Inder Mohan Malik, Sub Judge Ist Class, Rewari, District Gurgaon, dated 16th March, 1968, (dismissing the suit of both the plaintiffs with no order as to costs) and remanding the case to the Court below for decision on merits and directing the parties to appear before the lower Court on 24th June, 1968.

J. V. GUPTA AND G. C. GARG, ADVOCATES, for the appellants.

ROOP CHAND, ADVOCATE, for the respondent.

JUDGMENT OF THE DIVISION BENCH :

The judgment of this court was delivered by Mahajan, J.

(1) In pursuance of my order, dated February 21, 1969, with the concurrence of my Lord the Chief Justice, this case was referred to a larger Bench and that is how it has been placed before us.

(2) The facts of this case are set out in the referring order and I am reproducing the same from that order :—

"On facts there is no dispute. Ranjit was the last male holder of the property in dispute. On his death which took place after the coming into force of the Hindu Succession Act, his two daughters Murti Devi and Basanti Devi succeeded to him. Murti Devi sold the property in dispute and the sale was sought to be pre-empted by Basanti Devi. At the trial, a preliminary issue was framed on the plea of the vendees that Basanti Devi's plaint did not disclose any cause of action. The basis for this contention was that under section 15(2) of the Punjab Pre-emption Act, as amended by Punjab Pre-emption (Amendment) Act X of 1960, a sister of Murti Devi, the pre-emptar, had no right of pre-emption Basanti Devi, however, placed reliance on section 22 of the Hindu Succession Act which is reproduced below :—

'22. (1) Where after the commencement of this Act, an interest in any immovable property of an intestate, or any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and

any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the Court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.'

The trial Court negatived the contention of Basanti Devi that section 22 will come into play. The reasons recorded by the trial Court were that section 22 comes into play only where there is a proposal to transfer property and not where there is a completed transfer of property. On appeal by Basanti Devi, the Lower appellate Court has taken the view that section 22 does come into play and the reason that has prevailed with the lower appellate Court is that section 22 really confers a right of pre-emption. It has also been stated that this rule of pre-emption is not abrogated by Punjab Pre-emption Act. Against this decision the present second appeal has been preferred to this Court."

(3) It is the interpretation of section 22 of the Hindu Succession Act with which we are concerned in this case. Two questions arise: (1) Whether this provision applies to completed transfers; and (2) whether it applies to agricultural land. So far as the first question is concerned, to say the least, this section is very unhappily worded. However, one thing is clear that there is indication in the section itself of the intention of the Legislature. This provision has been enacted to keep out strangers coming into the heirs of class I of the Schedule after the coming into force of the Act.

Mr. J. V. Gupta, learned counsel for the appellant-vendees, contends that in terms section 22 does not apply because it only covers the case of proposed transfers of property and not cases where the property has been actually transferred. Mainly reliance is placed upon the phrase "proposes to transfer" in sub-section (1) and stress is again laid on sub-section (2) of section 22 wherein again the expression used is "may be transferred under this section" coupled with the further use of the expression "if any person proposing to acquire the interest is not willing to acquire it". Similar language has been used in sub-section (3).

(4) If this section is literally interpreted, these difficulties do crop up, but then this provision will become otiose and its very purpose will be defeated by a surreptitious transfer or an open transfer before a decision to transfer it is known. In my opinion, the words 'proposes to transfer' include a completed transfer. Once this interpretation is placed, section 22 would work and become operative. When this was pointed out to the learned counsel for the appellants, he contended that sub-section (2) of section 22 will become otiose because in the case of a completed transfer, there would be no question of the Court stepping in and fixing the price of the property in case there is an honest and a valid contract. This would not be so. If proper market value has been paid no question to determine the price will arise. In any case, there is nothing in the sub-section which prevents the co-heir to accept the stipulated price. But in case the price fixed is fictitious, the Courts will determine the price under the sub-section. There are other types of transfers such as gifts and exchanges. In such types of transfers, even if complete, the sub-section will come into play. Therefore, it is idle to suggest that in every case sub-section (2) will present difficulty when it is being sought to be applied to a completed transfer.

(5) In my opinion, the correct way to interpret the section and to give its meaning is to hold that a completed transfer also falls within the ambit of sub-section (1) and the words 'proposes to transfer' would thus include a completed transfer as well. As already said, otherwise this section would become wholly unworkable. It is well known canon of construction that Courts must give meaning to a legislative provision unless the Court is forced to a conclusion that it will in fact be legislating and not interpreting the same.

(6) The second question presents no difficulty. It is necessary to advert to entry No. 18 in List II and entries Nos. 5 and 6 in List III of the VII-Schedule. For facility of reference, those entries are reproduced below :—

List II—

Entry No. 18 ... Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land improvement and agricultural loans; colonization.

List III—

Entry No. 5 ... Marriage and divorce; infants and minors; adoption; wills; intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

Entry No. 6 ... Transfer of property other than agricultural land; registration of deeds and documents.

(7) I had an occasion to deal with the question of the applicability of the Hindu Succession Act to agricultural lands in the matter of succession and I compared the language of entry No. 18 of List II of the Constitution of India with its counter-part in the Government of India Act, 1935, namely, entry No. 21. I pointed out that there were material differences in the language of these two entries because devolution had been taken out from the said entry and put in the concurrent entry No. 5 of List III which enabled the Central Parliament to legislate regarding succession. But that is not so in the case of agricultural land. Entry No. 6 of List III, when read, points out that the Central Parliament has no jurisdiction to legislate over agricultural lands beyond the power it has under entry No. 5 of List III, that is, regarding devolution. It is, therefore, clear that section 22 will not cover the case of agricultural lands.

(8) Mr. Roop Chand, the learned counsel for the respondent, stressed that the words 'immovable property' used in section 32 will include agricultural lands. Undoubtedly, they do. But one cannot lose sight of the fact that when the Central Legislature used

these words it did so knowing fully well that it had no power to legislate regarding agricultural lands excepting for the purposes of devolution. Section 22 does not provide for devolution of agricultural lands. It merely gives a sort of right of pre-emption. In fact, as already pointed out, entry No. 6 in List III, clearly takes out agricultural lands from the ambit of the concurrent list. Agricultural land is specifically dealt with in entry No. 18 of List II. The only exception being in the case of devolution. Therefore, it must be held that section 22 does not embrace agricultural lands.

(9) The last argument of Mr. Roop Chand, the learned counsel for the respondent, was that section 22 is *ultra vires* the Constitution as the Central Legislature had no right to pass such a law regarding agricultural lands. This argument cannot be accepted because it cannot be presumed that the Legislature was passing law regarding matters which it had no power to pass particularly when with regard to immovable property other than agricultural land, it has the power to enact such a law. This view finds support from the decision of the Federal Court in re *Hindu Women's Rights to Property Act,* (1), wherein in a similar situation their Lordships of the Federal Court refused to strike down the provisions of the Hindu Women's Rights to Property Act, 1937, on the precise arguments.

(10) For the reasons recorded above, we allow this appeal, set aside the judgment and decree of the learned lower Appellate Court and restore that of the learned trial Court though on totally different grounds. In the circumstances of the case, there will be no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

M/S. JAGDISH PARSHAD BABU RAM, ETC.—*Petitioners.*

versus

THE STATE OF HARYANA ETC.—*Respondents.*

Civil Writ No. 164 of 1970.

April 20, 1970.

Constitution of India (1950)—*Articles 19 and 226—Government solely importing raw material for use of industries in the country—Industrial*

(1) A.I.R. 1941 F.C. 72.