

What is to be seen is an efficiently managed farm. An efficiently managed farm may comprise of a number of blocks and if all those blocks are efficiently managed as an integrated whole, then the mere fact that the principal structures and investment are concentrated on one of those blocks will not derogate from the other blocks being part of the efficiently managed farm. The entire farm is to be treated as one unit and the Commission was in error in treating the blocks as three separate farms and then applying the tests of section 32-K separately to each of them. The error is patent on the face of the order of the Commission, and that being so, there is no option but to quash that order with the direction that the Commission should go into the matter of the entire holding of the petitioner as one unit and then come to a conclusion whether the requirements of section 32-K(1)(iv) are satisfied. So long as this determination is not made, the possession of the petitioner should not be disturbed. The petitioner will be entitled to his costs which are assessed at Rs. 50.

Mohan Singh
v.
The State of
Punjab and
others
Mahajan, J.

R.S.

APPELLATE CIVIL

Before Shamsheer Bahadur, J.

ISHWAR DAS,—Appellant.

Versus

RAJ KUMAR AND OTHERS,—Respondents.

Execution Second Appeal No. 1303 of 1961.

Punjab Debtors' Protection Act (II of 1936)—S. 9—Whether abrogated by sections 4 and 8 of Hindu Succession Act (XXX of 1956) in the case of Hindus where succession opens out after the coming into force of the said Act.

1963
May, 16th.

Held, that section 9 of the Punjab Debtors Protection Act, 1936 itself provides in clear terms that it is to be applicable only when the succession is governed by any rule of custom. In the case of Hindus as defined in the Hindu Succession Act, 1956 Custom has now ceased to be the rule of succession which is provided for in section 8 of the said Act and, therefore, section 9 of the Punjab Debtors' Protection Act is no longer applicable to them being abrogated by the provisions of the Hindu Succession Act in a case where succession opened out after the coming into force of that Act.

Second Appeal from the decree of the Court of Shri Bedri Parshad Puri, District Judge, Hoshiarpur, Camp Dharamsala, dated 16th May, 1961 affirming that of Shri Ram Pal Singh, Sub Judge 1st Class, Kangra, Camp Hamirpur, dated 8th December, 1960 holding that the property is not liable to be attached and sold, and accepting the objections and dismissing the application for execution and further ordering for withdrawal of attachment.

A. C. HOSHIARPURI, ADVOCATE, for the Appellant.

V. C. MAHAJAN, ADVOCATE for the Respondents.

JUDGMENT

Shamsher
Bahadur, J.

SHAMSHER BAHADUR, J.—This is a decree-holder's appeal from the appellate order of the District Judge, Hoshiarpur, who affirmed the order of the executing Court holding that the property in suit is exempt from attachment and sale in execution of a decree.

The appellant decree-holder obtained a money decree for Rs. 1,270 against the estate of Khushal Chand in the hands of his legal representatives. In execution proceedings, property belonging to Khushal Chand was attached but the judgment-debtors objected that it was not liable to attachment and sale. These objections were dismissed in the first instance by the executing Court but in appeal the learned

District Judge of Hoshiarpur on 14th of April, 1960 remanded the case under Order 41, rule 23-A of the Code of Civil Procedure. The trial Judge was directed to give a fresh decision after striking further issues on the points indicated in the judgment of the District Judge, concerning ancestral nature of the property and the liability under custom of the legal representatives of Khushal Chand. As a result of the remand order, two additional issues were framed to determine whether the property in dispute was ancestral and also whether the family of Khushal Chand was governed by agricultural custom in the matter of succession. The property having been found to be ancestral and the family of Khushal Chand to be governed by custom, the objections were allowed to prevail and the property was held immune from attachment and sale. From this order of the executing Court passed on 8th of December, 1960. the decree-holder preferred an appeal which having been dismissed by the learned District Judge on 16th of May, 1961, he has come to this Court in further appeal.

Ishwar Das
v.
Raj Kumar
and others ..

Shamsher
Bahadur, J.

The principal ground taken up by Mr. A. C. Hoshiarpuri, is that section 9 of the Punjab Debtors' Protection Act, 1936, which is the basis of the decision of the Courts below is no longer applicable, being abrogated by the provisions of the Hindu Succession Act, 1956. Under section 9, "when custom is the rule of decision in regard to succession to immovable property then, notwithstanding any custom to the contrary, ancestral immovable property in the hands of a subsequent holder . . . shall not be liable in the execution of a decree or order of a court relating to a debt incurred by any of his predecessors in interest.". Admittedly Khushal Chand died after the enactment of the Hindu Succession Act and as stated in section 2, the provisions of this Act apply to any person, who is a Hindu by religion in any of its forms or developments.

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A new rule of succession is provided in section 8 by which the property of a male Hindu dying intestate is to devolve in accordance with heirs set out in class I of the Schedule. The heirs in this class are the son, daughter, widow, mother and others of the deceased. It is contended by Mr. Hoshiarpuri that the controlling words of section 9 of the Debtors' Protection Act: "when custom is the rule of decision in regard to succession to immovable property" make it clear that it has now become obsolete and inapplicable, the succession being governed by the provisions of section 8 of the Hindu Succession Act, 1956. Section 4 of the Hindu Succession Act deals with the overriding effect of the statute and it is said that "any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act." Mr. Mahajan, for the respondents, contends that no provision having been made with regard to matter covered by section 9 of the Debtors' Protection Act, its validity is not disturbed or affected. In my opinion, this argument is devoid of force. Section 9 itself provides in clear terms that it is to be applicable only when the succession is governed by any rule of custom. Custom has now ceased to be the rule of succession which is provided for in section 8. The inclusion of female descendants of Khushal Chand in the list of objectors is itself indicative of the fact that they derive their rights by virtue of the provisions of the Hindu Succession Act. It has been ruled recently by a Division Bench of this Court of Dulat and Mahajan JJ. in *Hans Raj Pandit v. Dhanwant Singh* (1) that "section 4 of the Hindu Succession Act does away with the rule of custom so far as succession is concerned and, therefore, after the Hindu Succession Act came into force, no Hindu can be said to be governed by the

(1) I.L.R. 1961 (1) Punj. 369; 1961 P.L.R. 391.

rules of customary law and the succession to the property held by a Hindu must be regulated by the provisions of the Hindu Succession Act". In that particular case, section 9 was found to be applicable because the succession had opened out before the passing of the Hindu Succession Act.

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Mr. Mahajan, for the respondents further submits that the appellant is precluded from raising the point as no appeal was preferred from the order of the District Judge, Hoshiarpur, passed on 14th of April, 1960, remanding the case to the trial Judge, who held that the "property will not be liable to attachment and sale if it is held that it was ancestral in the hands of Khushal Chand and that he was governed by custom in the matters of succession." This observation of the learned District Judge is somewhat inconsistent as in the operative portion of the order a little later it is directed that the trial Court will redecide the entire matter after striking further issues about the ancestral nature of the property and the governance of custom in the family of the judgment-debtor. He could not himself decide the matter and then send the matter for a fresh decision of the trial Judge. Mr. Hoshiarpuri is, therefore, right that the decree-holder did not prefer an appeal as he awaited the findings of the executing Court after remand. In any event, it was not challenged by him then and it is not challenged even now that the property is ancestral. All that is contended for is that section 9 of the Debtors' Protection Act, whose protection is sought for saving the property from attachment and sale, is no longer applicable after the enactment of the Hindu Succession Act.

In my opinion, the objections preferred by the judgment-debtors cannot prevail and this appeal must accordingly succeed. I would, therefore, allow this

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appeal and set aside the objections of the judgment-debtors. In the circumstances, there would be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Prem Chand
Pandit, JJ.

GANPAT,—Petitioner.

versus

JAGMAL AND OTHERS,—Respondents.

Civil Writ No. 1573 of 1960.

1963
May, 17th.

Punjab Security of Land Tenures Act (X of 1953)—Ss. 6 and 18—Right of the tenant to purchase the land under his tenancy—Transfers made after 15th August, 1947—Whether to be ignored—Period of six years of tenancy to entitle the tenant to exercise his right of purchase—Whether must have expired before the commencement of the Act.

Held, that if a tenant is still a tenant of the land at the date when he wants to exercise his right of purchase under section 18 of the Punjab Security of Land Tenures Act, 1953, all transfers between the 15th August, 1947 and the 2nd February, 1955, have to be ignored excepting *bona fide* sales or mortgages with possession or transfers resulting from inheritance as is provided in section 6 of the Act as amended by Punjab Act XIV of 1962.

Held, that it is not necessary that a tenant must have been a tenant for a period of six years on the 15th April, 1953, the date of the commencement of the Act, before exercising his right of purchase under section 18 of the Act. The object of the Act is to afford relief to tenants and the surplus area has been created for tenants and, there can be no objection on principle in letting the tenant acquire rights of ownership if he satisfied the requirements of section 18. The Act puts an overall limit on the