

Ajaib Singh v. Makhan Singh, etc. (Pattar, J.)

(6) The essence of the provision in section 457(1) of the Companies Act is that before exercising the powers mentioned in clauses (a) to (e) thereof, the Official Liquidator must obtain the sanction of the Court. That sanction was obtained by the Official Liquidator. No notice of that application was to be given to the respondents to this petition and, therefore, they cannot object that the notice of that application was not given to the petitioner on whose petition the order for winding-up was made. I, therefore, hold that the sanction accorded by Sandhawalia, J., was in order and the respondents cannot challenge its validity. The preliminary issue is consequently decided in favour of the Official liquidator and against the respondents.

K. S. K.

APPELLATE CIVIL.

Before P. S. Pattar, J.

AJAIB SINGH,—Appellant.

versus

MAKHAN SINGH, ETC.,—Respondents.

R.S.A. No. 311 of 1966

June 1, 1973.

Punjab Limitation (Custom) Act (I of 1920)—Article 2(b)—Alienation of ancestral property by more than one alienors—Shares of the alienors in the property defined—Declaratory decree avoiding the alienation obtained by collaterals—One of the alienors dying—Suit for possession by the heirs of such alienor on the basis of the declaratory decree—Whether maintainable.

Held, that if there are more than one alienors and their shares in the alienated property are defined, a suit for possession on the death of one of the alienors for possession of his share in the property is maintainable by his heirs on the basis of a declaratory decree already obtained regarding that alienation. The right to sue accrues to such heirs under Article 2(b) of Punjab Limitation (Customs) Act, 1920 from the date of the death of the alienor. (Para 8).

Regular Scenod Appeal from the decree of the Court of Shri H. K. Mehta, Additional District Judge, Amritsar, dated 24th

November, 1965, affirming that of Shri T. R. Handa, Sub-Judge 1st Class, Amritsar, dated 5th August, 1965, dismissing the suit and leaving the parties to bear their own costs.

G. S. Virk, Advocate, for the appellant.

K. R. Mahajan, Advocate, for the respondent.

JUDGMENT

PATTAR, J.—This in an appeal filed by Ajaib Singh plaintiff against the judgment dated 24th November, 1965, of Shri H. K. Mehta, Additional District Judge, Amritsar dismissing his appeal against the decree dated 5th August, 1965, of the Sub-Judge First Class, Amritsar, whereby he dismissed his suit for possession of land but left the parties to bear their own costs.

(2) The facts of this case are that Gurdit Singh, Dasaundha Singh, Mangal Singh and Tilok Singh, sons of Buta Singh were the owners of a vacant site bearing Khasra No. 720 old/149 new measuring 2 Kanals 2 Marlas situated in village Gohri, tehsil and district Amritsar, and they sold the same on the basis of a registered sale deed, dated 24th November, 1942, to one Ibrahim Hazi Mehtab Din. Ajaib Singh plaintiff, son of Dasaundha Singh vendor, Surjan Singh, son of Mangal Singh vendor, Harbans Singh, son of Tilok Singh vendor and Bua Singh and Bawa Singh, sons of Gurdit Singh vendor, filed civil suit in the year, 1946 for a declaration that the sale in suit was made without consideration and legal necessity and it would not affect their reversionary rights after the deaths of the alienors. The District Judge, Amritsar by his judgment, dated 15th November, 1947, passed a decree for declaration as prayed for in the plaint in favour of Ajaib Singh plaintiff and others against the vendees that the sale shall not affect their reversionary rights after the deaths of the vendors. After passing of the said decree, dated 15th November, 1947, the right, title and interest in this property of Ibrahim was purchased by Banta Singh, son of Kesar Singh of their village. Banta Singh, died about two years prior to the filing of this suit and the defendants 1 to 4 are his sons, Kartar Kaur defendant No. 5, is his widow and Dalbir Kaur defendant No. 6 is his daughter. Dasaundha Singh vendor, died on 5th January, 1961. Ajaib Singh plaintiff, who is the son of Dasaundha Singh, filed suit for possession of one-fourth share of this property on the basis of the aforesaid decree. The suit was contested by the defendants.

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They admitted that the decree had been passed in favour of Ajaib Singh and others. It was pleaded that Dhano and Phiono, the daughters of Dasaundha Singh are also entitled to succeed to his property and, therefore, the plaintiffs alone could not file this suit. They further pleaded that right to sue for possession of the entire property or a portion thereof will arise only for the first time on the death of all the alienors and, therefore, the plaintiff has no cause of action to file this suit. On these pleadings of the parties the following preliminary issue was framed by the trial Court:—

“Is the suit premature?”

The Subordinate Judge held, that according to the law laid down in *Raja Vs. Mehar Din and others* (1), that the right to sue for possession did not accrue to the plaintiff and that the right would accrue to him after the death of all the vendors. He, therefore, dismissed the suit and left the parties to bear their own costs. Feeling aggrieved the plaintiff filed an appeal in the Court of the District Judge, Amritsar, which was dismissed by the Additional District Judge on 24th November, 1965. Thereafter this second appeal was filed by Ajaib Singh.

(3) It is admitted that Dasaundha Singh alienor died on 5th January, 1961, and the plaintiff Ajaib Singh is his son. Admittedly Dasaundha Singh had one fourth share in the property in suit. This property belonged jointly in equal shares to Dasaundha Singh deceased and his brother Mangal Singh, Talok Singh and Gurdit Singh. The lower Courts have relied on *Raja v. Mehar Din* (1) wherein in *Mohammad Sharif J.*, held as under:—

“Clause (b) of Article 2 treats the entire property as one entity and the alienation as a single cause of action and where the alienors, if there were more than one, have died, a right to sue for the possession of the entire property in terms of the declaratory decree arises for the first time only when the last of the alienors has died. Till then the suit for the whole property cannot be maintained and consequently the right to sue cannot be said to have arisen.”

(1) A.I.R. 1948 Lah. 159.

Article 2(b) of the Punjab Limitation (Custom) Act, (No. 1 of 1920), referred to in this judgment reads as under:—

| <i>“Description of suit.</i> | <i>Period of Time from which limitation. period begins to run.</i> |
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| 2. A suit for possession of ancestral immovable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom. | |
| (a) * * * * | |
| (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. ” |

In that ruling the facts were that on 14th August, 1919, Karam Din the father of the plaintiff and Mehar Din uncle of the plaintiff sold land measuring 82 Kanals 8 Marlas in favour of Elahi Mohammad. The plaintiff filed a suit for a declaration challenging this sale and a decree was passed in his favour on 23rd February, 1922 to the effect that the alienation of the suit land made by the vendors shall not affect the reversionary rights of the plaintiff after the deaths of the vendors. Karam Din, father of the plaintiff died on 16th January, 1933, while Mehar Din, his uncle died on 18th June, 1943. The plaintiff filed a suit for possession of the land on the basis of the declaratory decree on 2nd August, 1944, alleging that the alienors were dead and he was entitled to possession of the property in pursuance of the declaratory decree passed in his favour. One of the pleas taken in that case by the defendants was that Karam Din alienor had died long before the suit was instituted and, therefore, the suit of the plaintiff for possession of his $\frac{1}{2}$ share in the land was barred by limitation. The trial Court decreed the plaintiff's suit.

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However, on appeal the Senior Sub-Judge dismissed the suit of the plaintiff as regards one half share of Karam Din and confirmed the decree regarding the remaining one half share. Feeling aggrieved the plaintiff filed second appeal in the High Court. It was contended by the counsel for the appellant in the High Court that it was a joint sale in which the declaratory decree clearly recited that the plaintiff's right of reversion shall not be effected after the death of defendants 1 and 2 and, therefore, the right to sue accrued to the plaintiff on the death of both the alienors. On these facts it was held by the Lahore High Court, that the right to sue accrued to the plaintiff after the death of both the alienors and the appeal was accepted and the judgment and decree of the trial Court was restored. In the body of this judgment it was observed as follows:—

- (i) It was a joint sale made by two brothers and there was no proof to indicate what was the share possessed by each in the property sold by them.
- (ii) In the declaratory decree, it was not clearly stated that on the death of one, suit for possession of a share could be brought.

No authority one way or the other was cited before him as no such authority existed. The Hon'ble Judge, then remarked that his own reading of this Article 2, was that it treated the entire property as one entity and the alienation has a single cause of action. If there are more than one alienor then the right to sue for possession of the entire property in terms of declaratory decree would arise for the first time only when the last of the alienors has died and till then no suit for possession would be maintainable. With due respect I do not entirely agree with the observations made in this authority.

(4) This ruling is distinguishable and has no application to the facts of this case. Firstly in the instant case the shares of the alienors in the land transferred by them were definite and each of the four brothers, who alienated this land had 1/4th share in the land sold by them. Secondly the suit is not for the entire property sold by the four brothers in the year 1919 and the suit is only for 1/4th share of the disputed property which belonged to Dasaundha Singh, father of the plaintiff, who had died. Thirdly in *Raja's case (supra)* the plaintiff who had obtained the declaratory decree was found to be the heir of both the alienors. However, in

the instant case, the plaintiff claims to be the sole heir of Dasaundha Singh deceased. The sons of all the other alienors were also co-plaintiffs with him in the declaratory suit. The plaintiffs will have no cause of action to sue for possession of any portion of the land of the other three alienors who have got children and are alive.

(5) Further if the reasoning given in the above ruling *Raja's case (supra)* is accepted regarding the date on which the right to sue accrues then some anomalous results would follow. Suppose A and B, governed by agricultural custom, have equal shares in the land, sell the same and A dies about six months thereafter. X, the son of A files a suit for possession of $\frac{1}{2}$ share of this land which belonged to his father A and for a declaration regarding the remaining $\frac{1}{2}$ share of his land belonging to his uncle B, that the sale will not be binding on his reversionary rights after the death of his uncle 'B'. This suit is maintainable under the law. The suit for possession of $\frac{1}{2}$ share of the land belonged to A will be maintainable under Article 2(a) of the Schedule to Punjab Limitation (Custom) Act (No. 1 of 1920), while the suit for declaration regarding one half share of B will be governed by Article 1 of Act No. 1 of 1920. The observations made in *Raja's case (supra)* that the entire property is to be treated as one entity and the alienation as a single cause of action and a suit for possession of the part of ancestral property which has been alienated cannot be instituted, especially in cases in which alienors had definite shares in the property cannot be accepted as correct. It is not mentioned in Article 2(b) of the Schedule to Punjab Act No. 1 of 1920, that suit for possession of a part of the land cannot be instituted.

(6) According to section 6 of the Punjab Custom (Power to Contest) Act (No. 2 of 1920), any person can contest an alienation of ancestral property being contrary to custom if he is a descendant in male lineal descent from the great great-grandfather of the person making the alienation. Section 8 of the Punjab Limitation (Custom) Act, (No. 1 of 1920) lays down that when any person has obtained a decree declaring that an alienation of ancestral immovable property would not be binding on him according to custom, the decree shall ensure for the benefit of all persons entitled to impeach the alienation.

(7) In the instant case if the son of any of the four alienors had obtained a decree for declaration declaring that the sale shall not

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be binding on him according to custom, the decree shall enure for the benefit of all persons, who are entitled to impeach the sale. If the nearest reversionary heir at the time of making the alienation does not bring a suit for declaration challenging the alienation then it can be brought by the remote heir if he is a descendant from the great-great-grandfather of the alienor. However, when the succession opens on the death of the alienor or alienors then the only person, who can file a suit for possession of the property on the basis of the declaratory decree will be the person, who is the immediate heir of the deceased alienor or alienors.

(8) For the reasons given above, I hold that if there are more than one alienors and their shares in the alienated property are defined, a suit for possession on the death of one of the alienors for possession of his share in the property is maintainable by his heirs on the basis of a declaratory decree already obtained regarding that alienation. The right to sue accrues to such heirs under Article 2(b) of Punjab Act No. 1 of 1920 from the date of the death of the alienor. As a result this appeal is accepted, the judgment and decree of the lower appellate Court are set aside and the suit is remanded to the trial Court for decision on merits. As the point of law involved is not free from difficulty, I would leave the parties to bear their own costs.

K. S. K.

APPELLATE CIVIL.

Before Manmohan Singh Gujral and D. S. Tewatia, JJ.

BHAN SINGH,—Appellant.

versus

STATE of Punjab,—Respondent.

R.S.A. No. 267 of 1968.

July 20, 1973.

Constitution of India (1950)—Article 311(2)—Reversion of an officiating Government servant on the ground of his record being 'generally unsatisfactory'—Whether attaches stigma and invites penal consequences—Provisions of Article 311(2)—Whether attracted.