

# THE INDIAN LAW REPORTS

## PUNJAB SERIES

CIVIL APPELLATE SIDE.

Before Falshaw, J.

BHOLA SINGH,—Defendant-Appellant.

versus

JAGAT SINGH,—Plaintiff-Respondent.

Regular Second Appeal No. 336 of 1951.

Custom (Punjab)—Jullundur District—Question and Answer 27-A—Minor—Valid necessity existing—Sale of minor's immovable property—Guardian—Whether can sell. 1955  
March, 17th

Held, that the guardian cannot sell any of the immovable properties of the minor but can only mortgage it for a necessary purpose.

Hashmat and another v. Ibrahim and others (1), relied upon.

Second Appeal from the decree of the Court of Shree P. S. Bindra, Senior Sub-Judge, with enhanced Appellate Powers, Jullundur, dated the 3rd day of May, 1951, modifying that of Shree Banwari Lal, Sub-Judge, 1st Class, Phillaur, dated 19th February, 1951, and granting a decree for possession in favour of the plaintiff against the defendant on the condition that the plaintiff pays Rs. 200 on or before 18th June, 1951. In case the amount is not deposited in the trial Court as ordered above, the suit will be considered to have been dismissed with costs throughout. In

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case the amount is deposited the parties will bear their own costs throughout and the plaintiff will be entitled to get possession.

SHAMAIR CHAND, for Appellant.

K. C. NAYAR, for Respondent.

#### JUDGMENT.

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FALSHAW, J. The facts in this second appeal are that on the 29th of April, 1940, Mst. Dhanno, the mother of Jagat Singh plaintiff who was then a minor, sold occupancy rights in nine *kanals* of land to one Sundar Singh for Rs. 200. The sale was pre-empted by Bhola Singh the present appellant. Some time after he attained his majority, Jagat Singh instituted the present suit for possession of the land on the ground that his mother had no right to sell it and he was not bound by the sale.

The suit was resisted by Bhola Singh on various grounds, the chief of which were that the sale was for necessity and that the plaintiff's mother as his guardian was competent to alienate the land for necessity. The plaintiff's suit was decreed by the trial Court, which held that, although the alienation was for necessary purpose, the plaintiff's mother as his guardian had no authority to sell the land. Bhola Singh's appeal in the Court of the Senior Subordinate Judge succeeded only to the extent that it was held that under the custom governing the parties the plaintiff's mother could have mortgaged the land for a necessary purpose, and therefore the plaintiff's decree for possession of the land in suit was made conditional on his paying Rs. 200

within a certain time. Bhola Singh has come in second appeal claiming that the sale should be upheld.

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There is no doubt that the sale was for a very necessary purpose, since at the time there was a danger of losing the whole of the plaintiff's occupancy rights consisting of a half share in 169 *kanals* of *chahi* land and 83 *kanals* of *barani* land, regarding which the landlord had obtained a decree for Rs. 280 as arrears of rent and it was only by raising Rs. 200 from Sundar Singh by selling 9 *kanals* of the *barani* occupancy land that this sum could be raised.

There is also no doubt that the parties are governed by custom and the relevant question in the *riwaj-i-am* of Jullundur District regarding the powers of alienations of guardians of minors is No. 27-A which reads—

“To what extent under what conditions and for what purposes, can guardians alienate the property movable or immovable of their wards by sale, gift or mortgage?”

May guardian lease the property of his ward? If so, for what period?”

The answer is—

“All tribes agree that the guardian cannot sell or alienate by gift any of the immovable property of the minor but that

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he can mortgage it for the payment of the deceased father's debts and other necessary expenses.

The guardian can also lease the lands of the minor for some years and he can of course sell, if really necessary, movable property."

As against this on behalf of the appellant reliance is placed on the fact that under Hindu law a guardian can sell the property of a minor for a necessary purpose and on general custom. The only statement of general custom on this point appears to be somewhat inadequately set out in the final paragraph of the Chapter of Rattigan's Digest of Customary Law dealing with guardianship, in which it is stated that generally speaking, the customary guardian is empowered to alienate the minor's property for a necessary purpose e.g., in order to pay off the debts due by the minor's deceased father. Reliance is also placed on some adverse criticisms in various judgments on the *riwaj-i-am* of Jullundur District.

I do not consider that the so-called statement of general custom by Rattigan is a sufficient ground in this case for refusing to give effect to the custom as stated in the *riwaj-i-am* of Jullundur District, since while in the statement the word 'alienation' is used, it is obvious that the exact forms of alienations permissible on the part of

guardians of minors may differ from district to district, and if in a particular district alienation by mortgage or lease is permitted but not alienation by sale, it does not seem to me that this definitely contravenes the statement of general custom.

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As regards the criticism of the *riwaj-i-am* of Jullundur District, there is no doubt that in connection with a question of the right of succession of daughters it has been held that its presumption of correctness can be rebutted by a few instances. This was held by Tek Chand and Skemp, JJ., in *Mt. Santi v. Dharam Singh and others*, (1), and the same *riwaj-i-am* has been adversely commented on by Harries, C. J. and Mahajan, J. in *Sheikh Rahmat Ali and another v. Sheikh Mubarik Ali*, (2), regarding the rights of an adopted son to succeed to his natural father. The adverse remarks regarding the Jullundur *riwaj-i-am* have also been repeated by Teja Singh and Bhandari, JJ. in *Mohammad Khalil and another v. Mohammad Bakhsh*, (3), which was a case dealing with the powers of a sonless Arain to dispose of his ancestral property by will in favour of his legal heirs.

The adverse criticisms do not, however, appear to me to be a sufficient reason for casting doubt on

(1) A.I.R. 1935 Lah. 834

(2) A.I.R. 1945 Lah. 199

(3) A.I.R. 1949 E.P. 252

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the validity of the answer given in the *riwaj-i-am* to question 27-A, regarding which there are hundreds of instances cited in the Appendices relating to all the four tehsils of Jullundur District. There are over 200 instances cited at Nos. 492 to 698 regarding Question 27-A in the Appendix relating to Jullundur Tehsil, to which the present parties belong, and out of these instances only in one case does the Court appear to have decided to the contrary has been cited in the present case by the appellant and thus in spite of the fact that the accuracy of the *riwaj-i-am* has been questioned on certain other points where it went against the general custom of the Punjab, I can not see any reasons for supposing that the custom of the district was not correctly stated on this particular point. It may be mentioned that a similar provision in the *riwaj-i-am* of Gurdaspur District by which mortgages of the property of minors for necessary purposes were permitted but not sales was upheld by Harnam Singh, J., in *Hashmat and another v. Ibrahim and others* (1). In the circumstances, I hold that the decision of the lower appellate Court was correct and dismiss the appeal but leave the parties to bear their own costs in this Court.

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(1) A.I.R. 1952 Punjab 251