

I am, therefore, of the opinion that no question of law arises in this case and I would, therefore, dismiss this petition and discharge the rule with costs. Counsel's fee Rs. 150.

Shri Bipan Lal
Kuthiala
v.
The Commissioner of
Income-tax,
Punjab, Simla

FALSHAW, J.—I agree.

Kapur, J.

APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

RATTAN SINGH,—Defendant—Appellant.

versus

GOSAIN AND OTHERS,—Respondents.

1953

June, 30th

Regular Second Appeal No. 522 of 1948.

Custom (Punjab)—Alienation—Widow—Heterogeneous village proprietary body—Locus Standi of, to challenge widow's alienation.

In 1865 G. S. purchased the land in dispute from some of the proprietors of the village. His grandson's widow gifted the land to R. S. The proprietors of the village brought the suit for declaration that the gift was against custom and would not affect their reversionary rights. Trial Court dismissed the suit on the ground that the plaintiffs were members of a heterogeneous proprietary body and thus had no *locus standi* to sue. On appeal the District Judge reversed the decision of the Trial Court and held that the gift being to a stranger could be challenged by the plaintiffs. R. S. appealed to the High Court.

Held, that the plaintiffs who were members of a heterogeneous village proprietary body had no right of succession to the estate on the death of the widow and they could not, therefore, challenge the alienation made by the widow.

Regular Second Appeal from the decree of Shri T. C. Sethi, District Judge, Gurdaspur, dated the 13th May, 1948, reversing that of Shri B. L. Malhotra, Sub-Judge, 1st Class, Gurdaspur, dated the 5th January, 1948, and granting the plaintiffs a declaratory decree as prayed for against the defendants and leaving the parties to bear their own costs throughout.

H. R. MAHAJAN and LABH SINGH, for Appellant.

P. L. BAHL and T. S. NARULA, for Respondents.

Rattan Singh

JUDGMENT.

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KAPUR, J. This is a defendant's appeal against an appellate decree of District Judge, T. C. Sethi, dated the 13th of May, 1948, reversing the decree of the trial Court whereby the suit of the plaintiffs was dismissed.

A gift was made by Mst. Chhangi, widow of Kaka, in favour of Rattan Singh, mutation of which was refused by the revenue authorities but after a decree of the Civil Court obtained on the 9th of January, 1946, by the donee against the donor, the mutation was effected. Kaka, the husband of Mst. Chhangi, was grandson of Ghamanda Singh who purchased the land in dispute in 1865 from some proprietors of the village.

The plaintiffs brought a suit for declaration that the gift was against custom and would not affect their reversionary rights. They alleged that they were the reversioners of the deceased Kaka Singh. The defence was that the suit was barred by time, that the plaintiffs had no *locus standi* to sue and they were not reversioners of the alienor. Both the Courts below have found that the suit is within time. The trial Court held that the plaintiffs were not competent to sue and the District Judge reversed that finding. Although it has been held that the village is a heterogeneous village but the District Judge has held that the proprietors of heterogeneous village can challenge a gift made by a widow to a stranger.

The finding in regard to the heterogeneous nature of the proprietary body has not been questioned before us. The only question which has been debated is whether a heterogeneous proprietary body of a village can successfully challenge an alienation made by a widow. In the present case Kaka Singh, the husband of the widow, and his family obtained this property by purchase and they are not in any way related to the founders of the village. The village proprietary body is a heterogeneous one and according to paragraph 69 of Rattigan's Digest of Customary Law the onus

is on the proprietary body to establish its customary right to contest an alienation by one of their body. The law in regard to succession of proprietary bodies to the estate of heirless owners is stated at page 157 of Rattigan's Digest of Customary Law (1938 edition). It is there stated—

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“The proprietary body of a village is not entitled to succeed to the estate of a deceased proprietor dying heirless, where it consists of a heterogeneous collection of various tribes none of whom can show any connection or relationship whatsoever with the founder of the village or with any member of the original proprietary body ; 1927, 103 Ind. Cas. 274. In the event of a deceased proprietor dying without heirs, his estate would descend to the proprietary body only if the village is a homogeneous one and complete community of interest is maintained. Where no general community in interest between the several land-holders in the village has been preserved, the estate of an heirless proprietor escheats to the Crown and does not devolve upon the proprietary body (Rattigan's Digest of Customary Law, relied on).”

In *Duni Chand v. Lekhu* (1), Tek Chand, J., held that if a deceased proprietor dies without heirs, his estate would descend to the proprietary body only if the village is a homogeneous one and complete community of interest is maintained and where there is no general community of interest between the several land-holders in the village, the estate of a heirless proprietor escheats to the Crown and does not devolve upon the proprietary body.

In *Labh Singh v. Ahmad Shah* (2), a Division Bench consisting of Shadi Lal, C. J., and Coldstream, J., observed at p. 372—

“The claim of the proprietary body stands on a different footing. There is authority

(1) A.I.R. 1927 Lah. 255

(2) 97 I.C. 369

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in support of the proposition that in villages, where a complete community of interests is maintained, the co-proprietors are entitled to get the estate of a deceased proprietor as against the Crown. But this condition is not satisfied in the present case. The proprietors in this village belong to various tribes and are not united by any community of interest except the obvious fact that they all own land in the same village and are jointly responsible for the payment of the entire land revenue."

In a Division Bench judgment of the Lahore High Court in *Mohammad Akbar v. Dharamsala Baba Siddi Das* (1), where two heirless Sidhu proprietors had gifted land to a Mahant, it was held that members of the same proprietary body as the deceased donors had failed to establish their *locus standi* to challenge the gift. In that case the plaintiffs were heterogeneous collection of Muhammadans and Sikhs none of whom could show any connection or relationship with the founder of the village or with any member of the original proprietary body.

Question 31 and the answer thereto of the *Riwaj-i-am* of the Gurdaspur District are as follows—

"Question 31.—Enumerate in the order of their succession the persons entitled to the estate of a man who dies intestate, leaving no relations.

Answer 31.—All the tribes of the Shakargarh tahsil state that in the absence of all relations including daughters and sisters and their descendants the land should be recorded as Government property. Those of the Pathankot tehsil state that the village community has a preferential claim. Those of the other

(1) I.L.R. 8 Lah. 719

tehsils state that the contingency of a man having no collaterals in his own village or any other is inconceivable." Rattan Singh
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Thus the Riwaj-i-am also does not support the plaintiffs.

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The plaintiffs have produced four witnesses, P.W.1 to P.W.4, who all belong to this village. They merely stated that in the case of a proprietor dying without heirs his estate is inherited by the proprietors of the *Patti* of the village and becomes *shamilat*. No instance has been given by anyone of these witnesses and it is nothing more than their mere *ipsi dixit*. Of the mutations that have been relied upon by the plaintiffs only Exhibit P.8 is of tehsil Gurdaspur, but the deceased in that case was a Labana and the mutation was made in favour of the proprietors of *taraf* Labana. Presumably the *taraf* was a homogeneous portion of the village. The evidence which has been produced by the plaintiffs is in my opinion wholly inadequate to discharge the onus which was on them and it has not been proved that the plaintiffs have any right of succession to the estate on the death of the widow and they cannot, therefore, challenge the alienation made by the widow.

I would, therefore, allow this appeal, set aside the judgment and decree of the District Judge and restore that of the trial Court. In the circumstances of this case I leave the parties to bear their own costs throughout.

FALSHAW, J.—I agree.