Before K. Kanan, J.

RAM CHANDER AND ANOTHER (THROUGH LRS),—*Appellants*

versus

CHAMELA RAM SON OF BHAGWANA AND OTHERS,—*Respondents*

RSA No. 979 of 1983

14th November, 2011

Code of Civil Procedure, 1908 - S.100 - Hindu Succession Act,1956 - S. 8, 30 - Collusive suit between Defendant No.1 on the one hand, and Defendants Nos. 2 & 3 on the other - Present suit filed by respondent in RSA, that property being ancestral could not have been alienated through any means, including a collusive suit - During trial, first defendant died and Defendants Nos.2 & 3 relied on the Will of the former in their favour - Suit allowed, holding that no testamentary disposition of property could be made because it was ancestral in nature - First appellate upheld the judgment and decree of trial Court - In RSA judgments and decrees of Courts below reversed on the ground that as per Explanation to Section 30 of Hindu Succession Act, testamentary disposition could be made in respect of ancestral property, in cases governed by Customary Hindu Law - RSA allowed, suit dismissed.

Held, That both the Courts, in my view, have committed a fundamental error in taking the disposition by the 1st defendant through a Will as constituting alienation, which was impermissible under the Customary Hindu Law. Section 30 of the Hindu Succession Act specifically makes possible a bequest in respect of an interest in joint family property. Explanation appended to Section 30 is more significant, for it takes note of the existing customary law to the contrary and still allows for the bequest of the property.

(Para 4)

Further held, That there have been decisions of this Court as well specifically dealing with the fact that Jat Sikhs who were governed by the customary Hindu law will still have a right to make a bequest in respect

of ancestral properties by virtue of Section 30 of the Hindu Succession Act. This was dealt with by this Court in **Rali Ram Vs. Shiv Charan AIR 1984 P&H 376, Varesh Kumar Vs. Kailash Devi 1993 (3) PLR 700 and Kuldeep Singh Vs. Gurdial Singh 2007(4) PLR 69.** The trial Court and the Appellate Court would not have come to the decision that they did, if they had made a reference to Section 30.

(Para 5)

Sandeep Arora, Advocate for Jagdish Manchanda, Advocate, *for the appellants.*

Gurinder Singh, Advocate for Akshay Bhan, Advocate, *for the respondents.*

K. KANNAN J.

(1) The defendants are the appellants before this Court. The suit by the plaintiff was for a declaration that the Court decree obtained by the defendants No.2 and 3 with the 1st defendant was collusive and amounted to alienation of ancestral properties without any necessities. The Court found that the properties were ancestral and although it found that the decree obtained by the defendants No.2 and 3 constituted a gift of properties from the 1st defendant without any necessity dismissed the suit, taking note of the fact that the 1st defendant had died during the pendency of the suit and the properties had been in the possession of the defendants No.2 and 3 and the suit could not have been maintained in the manner framed without a consequential relief of recovery of possession. The Court found, however, as a matter of fact that the 1st defendant had purported to have executed a Will in favour of the defendants No.2 and 3 before his death on 16.01.1968 and held that the Will was true but disposition by the 1st defendant in respect of ancestral property amounted to alienation of the property and therefore, not valid in law.

(2) In appeal by the plaintiffs, the plaintiffs sought for an amendment of the plaint seeking for the relief of recovery of possession. The amendment was ordered and the technical objection that came in the way of the plaintiffs from securing the relief was no longer there and the trial Court judgment was set aside but affirming all other findings and holding that the plaintiffs were entitled to the declaration as sought for and to recover possession

of the property as well. The defendants have challenged the findings of the trial Court and the decree granted by the Appellate Court in the second appeal.

(3) The relationship between the parties would require to be given briefly to examine the basis of the claim of the defendants. Dallu Ram was the father, who had three sons Bhagwana, Telu and Ganga Ram. Bhagwana had two sons Kanhiya and Chamela. Chamela was the plaintiff. Kanhiya had sons Ram Chander and Lachhman, the defendants No.2 and 3. Telu was the 1st defendant. The contention of the plaintiffs was that the property held by the 1st defendant was ancestral having got the property from Dallu Ram. He had no issues and the suit had been instituted by defendants No.2 and 3 claiming that there had been a family settlement under which defendants No.2 and 3 had been allotted all the properties, which Telu Ram possessed. Mutations had also been sanctioned on the basis of such settlement. The suit was not contested by Telu Ram and he conceded for a decree to be obtained in favour of defendants No.2 and 3. The collusion was writ large in the proceedings and the trial Court held that the moment it was admitted that Telu Ram did not have any self-acquisition and that he had inherited the property from his father, it because matter of legal inference that they were ancestral and such an ancestral property could not have been allowed to be alienated in favour of his brother's children to the exclusion of the surviving brother's son. It is not very clear from the pleadings or the evidence of parties whether Telu Ram had exclusive entitlement from his father without reference to his brother Bhagwan and Ganga Ram. Both parties appeared to have accepted the fact that Telu Ram himself did not purchase the property and that he had inherited from his father. When Telu Ram died could have been a matter of relevance, for if the succession had been subsequent to the date of the Hindu Succession Act, the property held by Telu Ram under Section 8 could have been still seen only as his separate property in terms of the law laid down by the Hon'ble Supreme Court in **Yudhisiter *versus* Ashok Kumar (1).** I take the property, however, as the ancestral property as contended by the plaintiff and as affirmed by the trial Court as well as the Appellate Court.

(4) Both the Courts, in my view, have committed a fundamental error in taking the disposition by the 1st defendant through a Will as

(1) AIR 1987 SC 558

constituting alienation, which was impermissible under the Customary Hindu Law. Section 30 of the Hindu Succession Act specifically makes possible a bequest in respect of an interest in joint family property. Explanation appended to Section 30 is more significant, for it takes note of the existing customary law to the contrary and still allows for the bequest of the property. The Section is reproduced as under:-

> "**30. Testamentary succession.**
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> 30. Testamentary succession. 1***** Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, (39 of 1925.) or any other law for the time being in force and applicable to Hindus.
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> Explanation.-The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section."

(5) There have been decisions of this Court as well specifically dealing with the fact that Jat Sikhs who were governed by the customary Hindu law will still have a right to make a bequest in respect of ancestral properties by virtue of Section 30 of the Hindu Succession Act. This was dealt with by this Court in **Rali Ram *versus* Shiv Charan (2), Varesh Kumar *versus* Kailash Devi (3)** and **Kuldeep Singh *versus* Gurdial Singh (4).** The trial Court and the Appellate Court would not have come to the decision that they did, if they had made a reference to Section 30. Although several issues had been framed and the appeal has been drawn up urging several grounds, I would find the only substantial question of law that arises for consideration is the tenability of the plaintiffs' claim during the pendency of suit when 1st defendant died and he had executed a Will

(2) AIR 1984 P&H 376
(3) 1993 (3) PLR 700
(4) 2007 (4) PLR 69

in favour of defendants No.2 and 3. The suit had been originally filed only for declaration that the Civil Court decree was collusive and not binding. During the pendency of the suit itself, the 1st defendant was died and the mere declaratory action could not have proceeded and when the Court found that the mere relief of declaration could not have been persisted by the plaintiff when the property had fallen to the hands of the defendants No.2 and 3, it must have noticed that the bequest through a Will does not amount to an impermissible alienation after the Hindu Succession Act, 1956. It failed to take note of the subsequent development in law and the Appellate Court completely was off the mark in not making the reference to the Section. The plaintiffs' suit ought to be dismissed in view of the specific finding entered by the trial Court, which was not being modified in appeal that the Will had been established through the witnesses, who had spoken to the genuineness of the document. As a matter of fact, the trial Court had also found that the suit had been instituted in the year 1976 and the Will had been executed by the 1st defendant on 17.01.1968 when he was still in a sound health. Consistent with the finding regarding the genuineness propounded by the defendant, the plaintiffs' suit was liable to be dismissed.

(6) The decisions of the Courts below are set aside and the appeal is allowed with costs.

P.S.Bajwa

Before K. Kannan, J.

SHAMBHU NATH SHASTRI,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

CWP No. 8447 of 1989

29th September, 2011

Constitution of India - Art.226/227 - Appointment - Petitioner prayed for direction that only those teachers who were qualified Sanskrit teachers be appointed when a teacher from Sanskrit faculty retires from High or Higher Secondary Schools - State had appointed Hindi teachers against posts meant for Sanskrit teachers only when