

APPELLATE CIVIL

Before Rajendra Nath Mittal, J.

SHER SINGH,—Appellant.

versus.

MEHAR SINGH ETC.—Respondents.

Regular Second Appeal No. 1819 of 1969.

April 7, 1972.

Punjab Pre-emption Act (1 of 1913)—Section 15(1)(a), sub-clause 'secondly' and 15(2)—Hindu Succession Act (XXX of 1956)—Section 14—Widow's estate under custom—Nature of—Husband dying without leaving reversioners—Widow—Whether becomes absolute owner of the estate left by the husband—Widow becoming full owner of the estate under section 14, Succession Act—Sale by such widow—Right of pre-emption, thereto—Section 15(2), Pre-emption Act—Whether applies.

Held, that the estate of a widow under custom is similar to that of a widow under Hindu Law. Under custom as well as under Hindu Law, a widow gets only a limited estate which on her death passes to the next heirs of her husband. Where a husband dies without leaving any reversioners, his widow does not become absolute owner of the estate left by him. Even in the absence of reversioners, she has no right to alienate the property. The State to which the property goes by escheat has got a right to challenge the alienations of a widow. Thus where a widow inherits the estate as a limited owner and becomes full owner by virtue of section 14 of the Hindu Succession Act, 1956, in a suit for pre-emption against the sale of such estate, it is sub-clause 'secondly' of clause (a) of subsection (1) of section 15 of the Punjab Pre-emption Act, 1913, which is applicable and not sub-clause (2) of section 15 thereof. (Paras 4, 15 and 18).

Regular Second Appeal from the decree of the Court of Shri S. R. Seth, II Additional District Judge, Karnal, dated the 2nd August, 1969, affirming with costs that of Shri Ram Kumar Gupta, Sub Judge Ist Class, Karnal, dated the 7th February, 1969, granting the plaintiff's decree for possession by pre-emption of the property in suit on payment of Rs. 1617.50 including the deed expenses and the said money less any money already in deposit shall be paid or deposited for payment to defendant No. 2 on or before 10th March, 1969, otherwise the suit shall stand dismissed and the parties to bear their own costs.

K. S. Thapar and Miss. Surjit Kaur Taunque, Advocates, for the appellant.

M. S. Jain, Advocate, for the respondent.

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JUDGMENT

MITTAL, J.—This appeal has been filed against the judgment and decree of the Additional District Judge, Karnal, dated August 2, 1969, by which an appeal against the decree for possession by pre-emption on payment of Rs. 1,500 has been dismissed.

(2) Briefly, the facts of the case are that the bara in dispute was sold by Bishni, widow of Asa Singh to Sher Singh, defendant for a consideration of Rs. 1,500,—*vide* sale deed dated May 18, 1967, registered on May 19, 1967. Mehar Singh plaintiff filed a suit for possession by pre-emption on the ground that he was the son of brother of the vendor. He, however, alleged that in fact an amount of Rs. 500 was actually paid as consideration of the bara and it was also the market value thereof. In order to avoid the pre-emptors, the consideration has been stated as Rs. 1,500 in the sale deed. The defendant-vendee contested the suit and denied the preferential right of the plaintiff and averred that the vendor inherited the property from her husband and, therefore, the plaintiff had no superior right of pre-emption. Regarding the price, he stated that an amount of Rs. 1,500 was fixed in good faith and was actually paid. On the pleadings of the parties, the following issues were framed:—

- “(1) Whether the plaintiff has a superior right of pre-emption?
- (2) Whether the sale price was actually paid and or fixed in good faith?
- (3) If issue No. 2 is not proved, what was the market value of the land in suit at the time of sale?
- (4) Whether the sale in suit is not pre-emptible?
- (5) Whether the vendees are entitled to the deed expenses?
- (6) Relief.”

(3) The trial Court decided issue No. 1 in favour of the plaintiff and issue No. 4 against the defendant. On issue Nos. 2, 3 and 5, it was held that the amount of Rs. 1,500 was paid which was also the market value of the property. The defendant was also allowed the expenses of the sale deed. In the above circumstances, the suit was decreed by the trial Court. The learned appellate Court affirmed

the findings of the trial Court and dismissed the appeal. The defendant-vendee has come up in appeal to this Court.

(4) The only contention, which has been raised by the learned counsel for the vendee is that the vendor got the property from her husband who left no reversioners. It was further submitted by him that the husband of the vendor was governed by the customary law. According to custom if a male dies without any reversioners, the widow gets the property not as a limited owner but as a full owner. He submits that in the present case as the last maleholder Asa Singh died without any reversioners, Shrimati Bishni inherited his estate as full owner. From this, he infers that the right of pre-emption in the present case vests in the persons given in section 15(2)(b) of the Punjab Pre-emption Act, 1913 (hereinafter referred to as 'the Act'). On the other hand, the learned counsel for the plaintiff-respondent submits that the vendor inherited the estate as a limited owner and on coming into force of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Succession Act'), she became full owner by virtue of section 14 thereof. If she was the full owner of the property, respondent No. 1 was entitled to pre-empt the sale under sub-clause 'secondly' of clause (a) of sub-section (1) of section 15 of the Act. He further submits that she inherited only limited estate and on the enlargement of estate by virtue of section 14 of the Succession Act, she would become the full owner of the property and in that case, sub-clause (2) of section 15 of the Act would not apply to her property. Mr. K. S. Thapar concedes that if it was held that the widow inherited limited estate which was enlarged by section 14 of the Succession Act, then the plaintiff-respondent has got a superior right of pre-emption. His sole contention is that she inherited the full estate from her husband. In that case, sub-section (1) of section 15 will not apply. Before I may refer to the various authorities which were cited by the learned counsel for the parties, it will be advantageous if allegations of the parties are seen from the pleadings of the parties. In para 1, the plaintiff states that defendant No. 1 was owner and in possession of *bara* in dispute. In para 3 of the plaint, the plaintiff states about his superior right of pre-emption which is in the following terms:—

“That the plaintiff is real brother's son of the vendor-defendant No. 1 whereas the vendee is not related to the vendor in any way and is a stranger. The plaintiff has, therefore a superior right of pre-emption *qua* the vendee-defendant.”

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(5) In the written statement, defendant No. 2, raises a preliminary objection which is in the following terms:—

“That no suit for pre-emption lies as the vendor Shrimati Bishni got the Bara in inheritance from her husband.”

(6) In reply to para No. 1, defendant 2 states that para No. 1 is correct. Further, he states that the vendor inherited *bara* along with other land from her husband. In reply to para No. 3, he only states that the said para is wrong.

(7) By reproduction of the abovesaid paras, it will be seen that the vendee-respondent never took any plea about any special custom that has now been taken by him in his arguments. It is only at the time of arguments that the vendee took the position that the vendor inherited the property as an absolute owner from her husband. In support thereof, he relied on general custom and not on any special custom. Now in order to find out the general custom in the State, I wish to discuss the various authorities which have been cited at the Bar.

(8) Mr. K. S. Thapar has mainly relied on *Alla Ditta and others v. Gauhra and others* (1), where the last male-holder died childless leaving a widow who succeeded to his property. On the death of the widow, the land was taken possession of by her brother's son who claimed to hold it under a will in his favour by the widow. The proprietors of the *patti* instituted a suit for possession claiming to be entitled to the property in the absence of collaterals of the last male-holder and challenged the validity of the will. The learned Bench consisting of Rattigan and Scott-Smith JJ., held that the plaintiffs could not give a proof of custom entitling the proprietors of the *patti* to succeed to the estate of the last male-holder. While dealing with the estate of the widow, the learned Bench observed as follows:—

“Mr. Pestonji urges that the widow's estate is always a limited one. Quite so, but it is only limited for the benefit of reversioners. Where there are none she is to all intents and purposes an absolute owner. Counsel referred us also to *Wazira v. Mangal* (2), but we cannot find anything there which assists his contention. The 5th proposition laid down therein by the Financial Commissioner is against

(1) 3 P.R. 1914.

(2) 2 P.R. (Rev.) 1911.

him. To sum up, we hold that the onus was upon the plaintiffs and they have not discharged it. The appeal fails and is dismissed with costs."

(9) The learned counsel for the appellant mainly puts his reliance on the above observations which are to the effect that if the reversioners are not in existence at the time of death of the husband, then she is to all intents and purposes, an absolute owner. Subsequently, the said decision was followed by *Shadi Lal J.*, (as his Lordship then was) reported as *Giani Ram and others v. Mussammatt Mari and others* (3), wherein there was a dispute between the proprietors of a *thula* and the widow and the learned Judge observed as follows:—

"The point for determination is whether the proprietors in the *thula* have any *locus standi* to contest the widow's power to adopt a son to her husband. Now it has been laid down in *Allah Ditta v. Gauhra* (1) (*supra*) that the onus is upon the proprietors of the *patti* to establish their right to contest an alienation by a widow and that a widow's estate is only-limited for the benefit of reversioners, and where there are none she is, to all intents and purposes, an absolute owner."

(10) From the above observations in the abovesaid two cases, the learned counsel for the appellant submits that where a last male-owner dies without leaving any reversioners, the widow inherits the property as an absolute owner. It may be mentioned here that no other case has been brought to my notice by the learned counsel for the appellant where these cases have been followed subsequently. On the other hand, there is string of authorities which have taken a contrary view, wherein it has been held that the widow under the Customary Law has got a limited estate and she has got similar rights as those of a Hindu widow. The learned counsel for the respondent in support of his proposition cited various cases. The first case on which he relied is reported as *Mst. Dyal Kaur and others v. Mst. Mehtab Kaur and others* (4), where a Division Bench of Lahore High Court observed as follows:—

"A widow who holds a life interest in an estate under custom has not any wider power of alienation than a widow who holds a similar estate under Hindu Law."

(3) 24 P.R. 1917.

(4) A.I.R. 1921 Lah. 168—(1921) 74 I.C. 639.

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While discussing the powers of a widow under the Hindu Law, their Lordships relying on *Collector of Masuli-patam v. Cavalry Venkata Narraninpah* (5), observed that under Hindu Law the limited nature of widow's life interest in the estate could never alter even though there be a complete want of heirs and the restrictions imposed on her power of alienation of her husband's estate were inseparable from her estate and their existence did not depend on that of heirs capable of taking on her death. It may, however, be mentioned that *Alla Ditt's case* (1) was not brought to their Lordships' notice at the time of arguing the above case. Regarding the rights of a Hindu widow, the learned counsel for the respondent relies on *The Collector of Masulipatam v. Cavalry Venkata Narainapah* (5), where it has been observed that a childless widow takes only limited estate. The observations of their Lordships of the Privy Counsel are as follows:—

“By the Hindu Law of inheritance, a childless widow takes as heir, but it is only a special and qualified estate.

If there be collateral heirs of the husband, the widow cannot alien the property except for special purposes, such as, for religious or charitable objects, or those acts which are supposed to conduce to the spiritual welfare of her husband, in which circumstances she has a larger power of disposition than that which she possesses for purely worldly purposes. To support an alienation for the later purpose, she must show actual necessity.

The restrictions imposed by the Hindu Law on a widow's power of alienation of her husband's estate are inseparable from her estate and do not depend on the existence of heirs capable of taking on her death.

When the Crown takes by escheat for want of heirs, it has the same right to impeach an unauthorized alienation by the widow, which the heirs of the husband (had there been any) would have had.”

According to the abovesaid case, even the Crown who takes the estate of a widow by escheat has got the right to challenge her alienations. Subsequently in a case reported as *Tirath Ram v. Mussammat Kahan Devi* (6), a Division Bench of that Court observed that by Hindu Law, a widow's powers of alienation are restricted to

(5) (1860) 8 M.I.A. 529.

(6) (1920) I.L.R. Lah. 533.

religious purposes, and the fact that there are no heirs capable of taking at her death does not affect these powers. *Alla Ditta's case* (1), was referred before the learned Bench and the observations of the learned Bench were that that was a case in which the parties relied upon custom and the plaintiffs failed to establish custom relied upon by them. The decision in that case, therefore, could not have any bearing on the present case. Subsequently, the matter again came up before a Division Bench of Lahore High Court consisting of Shadi Lal, C.J., and Martineau J., reported as *Gobinda and another v. Nandu and another* (7), which was a case under custom. Their Lordships after perusing *Collector of Masulipatam's case* (5), and *Diyal Kaur's case* (3), observed that an estate of a widow under the Customary Law is subject to the same restrictions as that of a widow under Hindu Law. Their Lordships further observed that where there was no custom applicable to a case, the plaintiffs could fall back on their personal law. As I have stated that this case was under custom and their Lordships came to the conclusion that the widow under custom had a limited estate, Shadi Lal, C.J., who followed *Alla Ditta's case* (1), in *Giani Ram's case* (3), did not stick to the same view. On the other hand, their Lordships followed the subsequent view in *Diyal Kaur's case* (4), which laid down the contrary proposition than that which had been laid down in *Alla Ditta's case* (1). Later on, in *Kundan and others v. The Secretary of State and another* (8), again a Division Bench of Lahore High Court considered a similar question where all the abovesaid cases were taken into consideration and *Shrimati Diyal Kaur's case* (4), was followed. While discussing *Alla Ditta's case* (1), their Lordships made the following observations:—

“We are unable to read this observation as a considered pronouncement intended to be authoritative that a Hindu widow governed by customary rules is a full owner when her deceased husband has left no relatives, and that her position is essentially different from what it would be under her personal law. Had this been the case, the learned Judges would not have used the words “to all intents and purposes”, and obviously the intents and purposes must vary with the particular circumstances of every particular case. For instance, in the present case the Crown has intervened and is actually in possession in pursuance

(7) A.I.R. 1922 1 Lah. 217=(1922) I.L.R. 3 Lah. 450:

(8) (1926) I.L.R. 7 Lah. 543.

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of its claim to an escheat. In *Alla Ditta v. Gauhra* (1), the contest was between a relation of the widow herself, who had secured possession after her death and the village proprietors who were held to have failed to prove any title to the reversion. The effect of a claim by the Crown was never remotely contemplated.

Moreover, there are other *dicta* to the contrary by Division Benches of this Court. One is in *Dalipa and others* (9), 'so far as we are aware it has never been suggested that the life interest in an estate which custom grants to a widow is in any way wider than the interest which she takes under Hindu Law'.

Another is in *Mussammat Diyal Kaur v. Mussammat Mehtab Kaur* (4), 'there is no ground for supposing that a widow who holds a life interest in an estate under custom has any wider powers of alienation than a widow who holds a similar estate under Hindu Law.'

A third was delivered in *Gobinda v. Nandu* (7), expressing approval of what is quoted above from *Mussammat Diyal Kaur v. Mussammat Mehtab Kaur* (4), and the headnote of the report states the Judges to have laid down that the estate of a widow under customary law is subject to the same restrictions as that of a widow under Hindu Law.

We are asked to disregard these observations because each of the three cases dealt with a situation where the last male owner had left behind him female relatives or male relatives through females who under Hindu Law would have been entitled to succeed as *bandhus*. It is pressed upon us that the remarks must inevitably have been inspired by the facts of the particular cases with which the Judges were dealing. If we are to take this view, precisely the same criticism applies to Mr. Sheo Narain's own case *Allah Ditta v. Gauhra* (1), and it must go out too.²²

(11) In the end, their Lordships observed that the nature of a Hindu widow's estate in the Punjab is to be determined by what the evidence before the Court proves to be the custom applicable to the parties concerned. If there was no proof of a customary rule, the question was to be decided in accordance with Hindu Law, subject

to any modification of that law by custom which may be proved. In the circumstances of this case, the view which was taken was a contrary view than that of *Allah Ditta's case* (1), and it was also observed that the words "to all intents and purposes" vary with the particular circumstances of each particular case. The next case to which reference was made is *Imam Din v. Khamandi and others* (10). *Allah Ditta's case* (1), was again referred before the learned Judge and after taking into consideration *Allah Ditta's case* (1) and *Kundan's case* (8), his Lordship came to the same conclusion that a widow under custom has only a life estate and in the case of alienation by a widow holding life estate, it was wholly immaterial whether the next heir is a male collateral or a female. The observations of the learned Single Judge regarding *Allah Ditta's case* (1), are that that dictum was not followed in *Kundan and others v. The Secretary of State and another* (8) (supra) and it was obvious that it was stated in too wide terms. Again in *M. Mohammad Sharif and others v. Teja Singh and others* (11), Coldstream, J., with whom Jai Lal, J., concurred observed as follows:—

"It has frequently been observed by this Court that the powers of widow under the Customary Law of the Province are analogous to those of a widow governed by Hindu Law".

(12) The learned counsel for the respondents then referred to *Syed Khadam Hussain and others v. Syed Mohammad Hussain and another* (12), where almost all the abovesaid cases were taken into consideration by a Division Bench of the Lahore High Court consisting of Bhide and Din Mohammad JJ. After considering the case law, their Lordships came to a conclusion that the powers of the widows under the Customary Law were limited. Their Lordships also took into consideration *Allah Ditta's case* (1) and made the following observations:—

"As against these authorities counsel for the respondents refers to *Allah Ditta v. Gauhra* (1), where Rattigan and Scott Smith, JJ., while admitting that a widow's estate is always a limited one, added that it is only limited for the benefit of reversioners and that where there are none, she is to all intents and purposes an absolute owner. But apart from the fact that in the present case reversioners are in existence

(10) A.I.R. 1927 Lah. 366—100 I.C. 1014.

(11) A.I.R. 1936 Lah. 453.

(12) A.I.R. 1941 Lah. 73.

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and consequently this ruling is of no force, it was distinguished in *Tirath Ram v. Mussammat Kahan Devi* (6), on the ground that the plaintiffs there had failed to establish the custom relied upon by them. Similarly, in *Kundan and others v. The Secretary of State and another* (8), a Division Bench of this Court composed of Eforde and Campbell JJ., did not approve of the dictum reproduced above and treated it as mere obiter. In *Imam Din v. Khamandi* (10). Addison J., agreed with Eforde and Campbell JJ., in their view *Allah Ditta v. Gauhra* (1). Besides, there is ample authority in support of the proposition that a widow under Customary Law enjoys the same status as a widow under Hindu Law."

(13) Their Lordships also followed the subsequent view expressed in *Kundan's case* (8). The question regarding the rights of widows in her husband's estate under the Customary Law also came up for consideration before a Full Bench consisting of five Hon'ble Judges in *Ali Mohammad v. Mt. Mughlani and others* (13). Their Lordships in that case again took the same view that the widow had a limited estate in the property and approved of *Syed Khadam Hussain's case* (12). Their Lordships observed as under:—

"The estate of a widow under the customary law of the Punjab is analogous to that of the widow under the Hindu Law. Under both laws she holds for life for the purpose of maintenance with certain powers of disposition which are necessarily incident to her position. She is, at least under the customary law, in no sense a co-sharer, and the succession, on her death, is not to her but to her husband. In fact, her estate is one interposed only for a limited purpose between that of her husband and the next heir."

(14) Subsequently, their Lordships observed that a Hindu widow enjoyed a larger power in the matter of enjoyment of estate than the widow under the Punjab Customary Law. This Full Bench decision was followed by another Full Bench of three Hon'ble Judges in *Rabidat v. Mt. Jawali* (14). In this case also, their Lordships observed as under:—

"In cases where there is a gap in custom, such gap must be filled in by reference to the personal law of the parties.

(13) A.I.R. 1946 Lah. 180.

(14) A.I.R. 1946 Lah. 353.

There being no custom on the subject of gifts by widows either simpliciter or for religious or charitable purposes, reference must necessarily be made to the principles of Hindu Law governing the subjects.

The position of a widow and the nature and the incidents of her tenure under the customary law of the Punjab are exactly identical with those under the Hindu Law."

(15) By the abovesaid authorities, it is clear that it has been the consistent view of the Courts that the estate of the widow under custom is similar to that of a widow under Hindu Law. It is also clear that under custom as well as under Hindu Law, the widow has got only a limited estate which on her death should pass to the next heirs. Even in the absence of reversioners, she has got no right to alienate the property. Even the State to which the property goes by escheat has got a right to challenge the alienations of a widow. Mr. Thapar wanted to distinguish these cases and submitted that the view taken in *Allah Ditta's case* (1), was the only correct view and the widow under custom who had no reversioners was the absolute owner of the property. I am unable to appreciate his argument. I, with great respect, agree with the view which has been expressed in the authorities cited by the learned counsel for the respondent.

(16) The written statement of the appellant also does not plead any special custom. Even no special custom has been proved that in the case of a widow in Karnal district, she gets the property as an absolute owner. In the aforesaid circumstances, it is also not possible for me to hold that there is special custom in the said district by which the widow gets an absolute right in the property on the death of her husband when he leaves no heirs.

(17) The learned counsel for the appellant also contended that the observations in *Collector of Masuli-patam's case* (5) (supra) are too widely worded and in fact the rights of Hindu widow are also very wide. That case has also been followed in Punjab and has been accepted to be the correct law till today. In these circumstances, I also do not agree with this submission of the learned counsel for the appellant. This was the only point which was urged before me.

(18) In the circumstances stated above, sub-clause (2) of section 15 of the Act is not applicable to the present case and the plaintiff-respondent has got a superior right of pre-emption. This appeal, therefore, fails and is dismissed with costs.

B. S. G.