

CASE NO.:  
Appeal (civil) 7122 of 1997

PETITIONER:  
Ranbir singh and others

RESPONDENT:  
Kartar Singh and others

DATE OF JUDGMENT: 25/02/2003

BENCH:  
DORAISWAMY RAJU & SHIVARAJ V. PATIL

JUDGMENT:

J U D G M E N T

Shivaraj V. Patil, J.

This appeal is filed by the plaintiffs assailing the judgment and decree passed by the High Court in a second appeal reversing the judgment and decree of the first appellate court affirming the judgment and decree of the trial court.

The plaintiffs filed suit against the defendants for possession of shares in the suit properties. The trial court as well as the first appellate court concurrently held that the original plaintiff Surtu was daughter of Basanti, who had inherited the life estate in the property of her husband Sihnu and his brother Nainu; that the parties are governed by custom on which a widow having life estate in the ancestral property does not have the right of alienation. In view of these concurrent findings it was held that the oral gift made by Basanti in favour of Ram Ditta and Khazan on 20th February, 1936 in respect of the suit properties was void and not binding on Surtu. Ram Ditta and Khazan have been held to be collaterals of Sihnu within fourth degree, who would have inherited the suit lands after the death of Basanti, had she died before coming into force of Hindu Succession Act. Their defence that gift was made by way of surrender or in acceleration of succession was rejected by the trial court as well as the first appellate court stating that the gift was not of entire holding of Basanti as she had retained one-third property for herself and that the gift cannot be held to be surrender or in acceleration of succession. The defendants raised objection that the suit of Surtu was barred under Punjab Limitation (Custom) Act, 1920 (for brevity 'the Act'). The trial court recorded a finding that the suit filed by Surtu was within time and this finding was affirmed by the learned District Judge in first appeal relying on Full Bench judgment of the High Court in Narotam Chand and another vs. Mst. Durga Devi [AIR 1949 East Punjab 109], that the suit of the plaintiff was governed by general law of limitation under Article 65 of the Limitation Act, 1963 (old Act of 1908) wherein the period of limitation prescribed is 12 years for a suit for possession of immovable property from the date of cause of action that has arisen to Surtu on

the death of Basanti on 2.9.1968 and not by the Act.

The High Court in the second appeal in the impugned judgment has recorded, thus: -

"The preliminary objection of limitation that suit of Surtu was barred under Punjab Limitation (Custom) Act, 1920, (hereinafter called as the 'Act'), is also decided against the appellants-defendants. Shri Bhupender Gupta, learned counsel appearing for appellants-defendants, has not challenged the concurrent findings of fact arrived at by both the Courts below that Basanti had inherited life estate in the property of her husband Sinhu alias Lehn as well as his brother Nainu which was ancestral in their hands and she could not alienate the said property by way of oral gift dated 2.2.1936 under the custom governing the parties. Shri Bhupender Gupta has limited his challenge to the findings of both the Courts below on the point of law that the suit of Surtu was time barred under Punjab Limitation (Custom) Act, 1920."

Learned single Judge of the High Court allowed the second appeal holding that the suit filed by the plaintiff was barred by time observing that both the courts below did not correctly appreciate and apply the aforementioned Full Bench decision, and set aside the judgment and decree passed in favour of the plaintiff dismissing the suit as barred by time. In these circumstances the plaintiffs have brought this appeal to this Court.

At the outset it may be stated that the only point that arise for consideration in this appeal is whether the suit filed by the plaintiff was barred by time.

The learned counsel appearing on either said in their arguments reiterated the submissions that were made before the High Court. While the learned counsel for the appellants challenged the correctness of the impugned judgment, the learned counsel for the respondents supported it. Both the learned counsel in support of their contentions relied on the very Full Bench aforementioned decision of the High Court.

In the light of what is stated above, the question that arises for consideration is whether the suit filed by the plaintiffs is barred by time. The answer to this question depends on whether the suit filed by a daughter (plaintiff) in the year 1969 challenging the gift made by her mother (after her death in 1968) in favour of the defendants in the year 1936 as void ab initio is governed by the provisions of the Act or Limitation Act, 1963. The facts that are not disputed or found established are the following.

Disputed lands were inherited by Sinhu and Nainu from their father. After their death, the said lands were inherited by Basanti, widow of Sinhu (the mother of the plaintiff). Since there were no reversioners or collateral available, Basanti executed an oral gift of two-third share in Khata no. 7 and one-fourth share in Khata no. 8 in favour of Ramditta and Khazan on 20.2.1968. Surtu filed the suit for possession of the property as sole successor of Basanti who died on

2.9.1968 and, therefore, she had inherited entire estate of Basanti because the gift of 20.2.1936 was void as Basanti had only a life estate with no right of alienation. Basanti could not alienate the property by way of oral gift dated 20.2.1936 under prevailing custom. The gift was held illegal and plaintiff Surtu was the only successor of Basanti after her death. Defendants are not reversioners in respect of disputed property and but for the gift they had no right in the lands. Findings of fact recorded by the trial court and the first appellate court were not challenged before the High Court. Once the gift was held illegal and void ab initio, the plaintiff being the only person in law of succession who would inherit the suit property from her mother. The trial court as well as the first appellate court referred to and fully relied on full bench decision of five Judges in Narotam Chand and another vs. Mst. Durga Devi [AIR 1949 East Punjab 109] in holding that the suit filed by the plaintiffs was not barred by time as the Act had no application to the suit filed by the plaintiffs in the light of the undisputed or established facts. The High Court in the impugned judgment, as already noticed above, found fault with the finding recorded by the courts below on the question of limitation observing that the aforementioned full bench decision was not properly understood and applied. Under these circumstances, it is necessary to have a closer look of the judgment in Narotam Chand case (supra).

Two questions were referred to a full bench of five Judges. They were (1) whether Punjab Act governs the suits brought by female heirs or other cognate relations to challenge alienations made by a widow who is in possession of the property of her husband and who had descended from his ancestors, (2) whether the property of a maternal grandfather in the hands of the grandson can be treated ancestral qua his son and can be regarded as such while it is in the hands of the daughter; in other words, whether any property in the hands of a female heir can be regarded as ancestral immovable property within the meaning of the term as usually understood in Customary Law. The facts of the case were that Mt. Durga Devi, daughter of one Kalu challenged two gifts made by her mother in favour of one Mangtu, daughter's son of same Kalu from his second wife Mt. Kauri and sought for possession by filing a suit on 12.4.1943. After the death of her mother, Mt. Kauri on 17.8.1942 filed a suit for recovery of one-half share in the gifted property on the allegation that her mother had no power to make the gift and deprived one of her daughters of the inheritance of her father. The suit was resisted by donees on various pleas one such plea being the suit was barred by limitation. The trial court dismissed the suit on finding that it was governed by Punjab Act, the property alienated being ancestral of Kalu. This decision was reversed on appeal by the learned Single Judge who took the view that qua the daughter i.e. the plaintiff in the case, the property could not be held ancestral as it had not descended to her in the male line of descent from the common ancestor, so the suit was decreed in respect of the half of the property in suit. Against this decision, donee's son Narotam Chand and his other Mt. Kauri preferred a second appeal to the High Court. In the first instance, the second

appeal was heard by learned Single Judge who felt that the question involved was of considerable importance and referred the appeal to a Division Bench. Before the Division Bench, correctness of the two full bench decisions was challenged. In those circumstances, the matter was submitted to Hon'ble the Chief Justice for constituting a larger bench for the decision of the appeal and for an authoritative pronouncement on the abovestated questions.

Having exhaustively considered various factual and legal aspects, the full bench answered the two questions in para 17 of the judgment stating thus:-

"17. For the reasons given above, I am of the opinion that the decisions in *Lehna v. Mt. Thakri* 32 P.R. 1895 (F.B.) and in *Mt. Attar Kaur v. Nikkoo*, 5 Lah. 356 : (A.I.R. (11) 1924 Lah 538 (F.B.) should be held as not laying down a correct rule of law, and it should be held that property of a maternal grandfather in the hands of a daughter or of a grandson is not ancestral qua his descendants and therefore Act I of 1920 has no application to suits brought by such persons to challenge alienations by female owners. I am further of the opinion that the scope of Act I of 1920 is limited only to those kinds of suits which are brought to safeguard rights by collaterals in respects of ancestral immovable property on the rule laid down in Art. 59 of Rattigan's Digest of Customary Law and that the definition of "ancestral property" given in Explanation 1 of Art. 59 of Rattigan's Digest of Customary Law is the definition in which that expression is used in Act I of 1920. It now remains to consider the decision in *Ram Sarup v. Mt. Jai Devi*, A.I.R. (33) 1946 Lah 272: (222 I.C. 162) where it was held that the word "ancestral property" has not been defined in Act I of 1920 and in the absence of any definition, the ordinary dictionary meaning is to be given to it and if the rights on the basis of which the plaintiff was claiming the property happened to belong to his father, it would be ancestral qua him and would, therefore, come within the ambit of col. 1 of Art. 6. With great deference to the learned Judge, I am bound to observe that this decision is not very intelligible. The facts of the case were that the plaintiff sued the landlords of a certain tenancy claiming that as an adopted son under Hindu law he was a male lineal descendant of the last occupancy tenant and was entitled to succeed to the tenancy in view of the provisions of S. 59, Punjab Tenancy Act. On those allegations I fail to understand how could Act 1 of 1920 be made applicable to that suit, the claim being based under Hindu law. Moreover,

the Act would have no application to such a suit brought against the landlords of a tenancy under the provisions of the Punjab Tenancy Act. In view of the observations made above, it is not necessary to consider this decision at any great length. In my view, it does not help any of the contentions raised by Mr. Puri. It may be observed that the dictionary meaning of ancestral immovable property cannot legitimately be considered in determining the meaning of that term in a statute which regulates the period of limitation for suits permitted by Punjab custom. Under custom, the term 'ancestral immovable property' has been understood in the sense in which it has been defined in explanation 1 to Art. 59 of Rattigan's Digest of Customary Law and under all canons of construction of statutes it will not be permissible to resort to the dictionary in preference to this definition. The term has a technical meaning in Hindu law and any use of the dictionary meaning of the term in construing statutes dealing with Hindu law subjects will be questionable. The same is the case where a statute regulates limitation for suits under custom."

Dealing with the principle on which suits of the description mentioned in Punjab Act are governed, as regards limitation, on similar facts with which were are concerned in the present case, in para 5 of the judgment, while explaining the meaning of ancestral property, it is held that the property not being ancestral qua the plaintiff, the article has no application.

It is clear from paras 1 to 5 of the judgment in Narotam Chand (supra) that the Act does not govern suits brought by female heirs or other cognate relations to challenge alienations made by a widow who is in possession of the property of her husband which had descended to him from his ancestors. Further the aforementioned Full Bench decision in Narotam Chand case has been holding the field all along since 1949, which in our opinion, supports the case of the plaintiffs fully.

This Court in Raj Narain Pandey and others vs. Sant Prasad Tewari and others [(1973) 2 SCC 35], dealing with the decision of long standing in the matter of interpretation of a local statute has held that such a decision should not be lightly disturbed. In para 10 of the said judgment it is stated, thus: - "In the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the

faith of those decisions. The doctrine of stare decisis can be aptly invoked in such a situation. As observed by Lord Evershed M.R. in the case of Brownsea Haven Properties v. Poole Corpn. [1958 Ch 574 (CA)], there is well established authority for the view that a decision of long-standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision."

Again, to the same effect, in the judgment of this Court in Jagdish Lal vs. Parma Nand [JT 2000 (3) SC 580], in para 18 it is observed that "where local laws provide a specific prohibition in respect of the use of the premises under the Rent Legislation and that provision has been interpreted in a particular manner by the High Court consistently, it would not be proper to disturb the course of decisions by interpreting that provision differently".

We do not find any good ground or a valid reason to differ with the conclusions arrived at in the Full Bench decision aforementioned on the two questions. The analysis made on facts and the legal position explained in the aforementioned full bench judgment, having regard to custom prevailing then and legislative history and background of the Act, in our view, fully support the case of the plaintiffs-appellants to hold that the suit was not barred by time as the Act did not apply. It was the Limitation Act, 1963 that is applicable as held by the trial court as well as the first appellate court. Under these circumstances, the impugned judgment and decree cannot be sustained. Consequently, the same are set aside. The judgment and decree passed by the trial court as affirmed by the first appellate court stand restored. The appeal is allowed accordingly. No costs.