that notifications, dated August 11, 1967, are illegal and have to be quashed, the effect of which is that item (24) in Schedule 'A' and item 37 in Schedule 'B' shall be deemed to have remained as inserted by notifications, dated July 18, 1967, and the petitioners are not liable to pay sales tax on Indian made foreign liquor.

(3) This petition is, therefore, accepted with costs and the impugned notifications, dated August 11, 1967, copies of which are Annexures 'C' and 'D' to the writ petition are hereby quashed. Counsel's fee Rs. 100.

N.K.S.

APPELLATE CIVIL

Before D. S. Tewatia, J.

DALIP SINGH,—*Appellant*

versus

DHARMAN AND OTHERS,—*Respondents*

Regular Second Appeal No. 1206 of 1966

September 16, 1970

Hindu Adoption and Maintenance Act (LXXVIII of 1956)—Section 13—Whether confers right of alienation on the adoptive father where none exists under the general law governing him.

Held, that section 13 of the Hindu Adoption and Maintenance Act, 1956, does not confer a right of alienation of property where it does not exist under the general law and for that matter it has to be seen whether the parties are governed by Hindu law or Customary law. Where an adoptive father is governed by Customary law which prohibits the alienation of ancestral property, section 13 of the Act does not give him the right to alienate such property. (Para 3)

Regular Second Appeal from the decree of the Court of Shri K. S. Sidhu, Additional District Judge, Rohtak, dated the 25th day of June, 1966, affirming that of Shri Shiv Dass Tyagi, Sub-Judge, 1st Class, Jhajjar, dated the 13th September, 1965, dismissing the plaintiff's suit. Both the Courts left the parties to bear their own costs.

S. P. JAIN, ADVOCATE, for the appellant.

K. L. SACHDEVA, ADVOCATE, for the respondents.

JUDGMENT

(1) This appeal arises out of a suit for a declaration at the instance of the plaintiff-appellant to the effect that the gift made by defendant No. 1, as detailed in the plaint, in favour of defendants Nos. 2 and 3 will not be binding on the plaintiff and that it will not have any effect on his rights as the adopted son of Dharman, defendent No. 1. It has been alleged by the plaintiff-appellant in his plaint that he was adopted about four years before the institution of the present suit by defendant No. 1 and since then had been living with him as his adopted son. It has been further alleged that the parties are Jats and governed by the customary law and the land being ancestral the same cannot be legally alienated by defendant No. 1 and so the alienation in question is illegal and not binding on the rights of the reversioners. The defendants resisted the suit. The gift of the land in favour of defendants Nos. 2 and 3, daughters of defendant No. 1, was admitted, but the fact that the plaintiff was the adopted son of defendant No. 1 or that the property in dispute was ancestral had been controverted. The pleadings of the parties led to the framing of the following issues by the trial Court—

"(1) Whether the plaintiff was taken in adoption by defendant No. 1 and is his adopted son ?

(2) If issue No. 1 is proved, whether the property in dispute is ancestral *qua* the plaintiff ?

(3) Whether the parties are governed by custom in matters of alienations and succession. If so, what is the said custom ?

(4) Whether the gift made by defendant No. 1 in favour of defendants Nos. 2 and 3 is void and not binding on the plaintiff ?

(5) Whether the suit is stipulated. If so, to what effect ?

(6) Whether the plaintiff has *locus standi* to file the suit ?

(7) Relief."

The trial Court held that the parties were governed by the customary law, that the land was non-ancestral and that the plaintiff was adopted as alleged by him. It further held that as the plaintiff had already a son at the time of his adoption, so he could not be validly adopted in accordance with the Riwaj-e-Am of Rohtak District. The suit was, however, dismissed by the trial Court on the ground that the

property being non-ancestral could be alienated and so the gift of the said property was valid and binding on the plaintiff. An appeal at the instance of the plaintiff was dismissed by the lower appellate Court. Hence this second appeal at the instance of the plaintiff.

(2) It may be stated here that the lower appellate Court held that since the adoption in question had been made after the commencement of the Hindu Adoption and Maintenance Act of 1956, hereinafter called the Act, so it shall be deemed to be governed by the provisions of the Act, which make it amply clear that the adoptive father or mother are free to alienate the property held by them either by gift or will.

(3) Learned counsel for the appellant has urged that even if the Act is held to govern the case, provisions of section 13 cannot confer a right of alienation where it does not exist under the general law and since the parties are governed by the customary law, which prohibits the alienation of ancestral property, so the validity of the said alienation has got to be decided with reference to the provisions of the customary law. There is merit in the argument that the provisions of section 13 of the Act cannot confer a right of alienation of property where it does not exist under the general law and for that matter it will have to be seen as to whether the parties, for the purpose of alienation, are governed by the Hindu law or the customary law. In the present case it has been held by both the Courts below that the parties are governed by the customary law and so the validity of the alienation in question shall have to be determined with reference to the provisions of the customary law. In this case even the provisions of the customary law cannot come to the aid of the appellant, because the trial Court has found the property to be non-ancestral and that finding of the trial Court has not been challenged in the lower appellate Court. The learned counsel for the appellant has urged that since the lower appellate Court considered that the application of the provisions of section 13 of the Act concluded the matter, it did not apply its mind to the other aspect of the matter. So the observation that the finding regarding the non-ancestral nature of the property has not been questioned may not be taken to mean that the finding regarding the non-ancestral nature of the property has been conceded by the counsel before the lower appellate Court. He has urged, in the alternative, that even if such a concession had been made by the counsel, no such concession regarding a question of law can be bind-

ing. Without deciding as to whether the concession in question was binding or not on the plaintiff-appellant, I permitted the learned counsel to show as to how the finding of the trial Court regarding the non-ancestral nature of the property is incorrect. The learned counsel challenged the correctness of the finding of the trial Court regarding the non-ancestral nature of the property on the ground that the property in question has been inherited by Dharman from his ancestors as an occupancy tenant, although ownership rights were acquired by him for the first time. It may be stated here that it has been held by this Court that where an occupancy tenant acquires ownership rights in the land possessed by him, then the property in question is considered as his self-acquired property. In this connection, see *Sawan Singh and others* v. *Amar Nath* (1) and *Sangat Singh and another* v. *Ishar Singh and others* (2). Since the land in dispute is held to be non-ancestral, there is no bar even under the customary law for effecting the alienation of such a property.

(4) For the reasons recorded above, this appeal fails and is dismissed. There is, however, no order as to costs.

B. S. G.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

M/s. SARASWATI INDUSTRIAL SYNDICATE LTD.,—*Petitioner*

versus

THE DEPUTY COMMISSIONER ETC.,—*Respondents*

Civil Writ No. 2549 of 1970

September 22, 1970

The Punjab Municipal Act (III of 1911)—Sections 65 and 85—Appeal against imposition of a Tax—Deposit of the impugned tax—Whether a condition precedent to the entertainment of the appeal.

Held, that a plain reading of sub-section (2) of section 85 of Punjab Municipal Act, 1911 makes it abundantly clear that the appeal against imposition of any tax cannot be refused to be entertained unless some tax other than

(1) 1963 P.L.R. 82.
(2) A.I.R. 1927 Lah. 536(1).