

## FULL BENCH

Before S. S. Dulat, Mehar Singh and K. L. Gosain, JJ.

AMAR SINGH AND OTHERS,—Appellants.

versus

BALDEV SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 1074 of 1959

*Hindu Succession Act (XXX of 1956)—S. 14—Whether valid piece of legislation—Legislative field of State—Whether encroached upon—Constitution of India (1950)—Article 246 and Entry 18 in list II and Entry 5 in list III—Effect of.*

1960  
May 25th

*Held per Full Bench—that section 14 of the Hindu Succession Act, 1956 is constitutionally valid piece of legislation.*

*Held, per Mehar Singh, J.—that section 14 of the Hindu Successions Act, 1956, in so far as it enlarges or enhances rights in or over land of Hindu female, is legislation that directly comes within the scope of entry 18 of List II and thus within the exclusive legislative field of a State, and in so far as it enacts law on the matter of special property of females in respect of which parties in judicial proceedings were immediately before the commencement of the Constitution subject to their personal law, the legislation is properly and appropriately within entry 5 of List III and thus within the legislative field of the Parliament. This is a straight case of conflict of legislative powers of the two legislatures. This conflict is resolved by Article 246 of the Constitution according to which the exclusive legislative field of State on matters enumerated in List II being subject to legislative powers of the Parliament on matters enumerated in List III (Concurrent List), when Parliament legislates on a matter enumerated in List III, its legislation is valid and constitutional under this Article.*

*Held, that per Dulat J.*—that section 14 of the Hindu Succession Act, 1956, does not appear to be 'legislation' concerning land or rights in and over land mentioned in item 18 of the State List. The essence of this particular legislation and the whole of the Hindu Succession Act is what appears under item 5 of the Concurrent List and not 'land' mentioned in item 18 of the State List. The intention, therefore, that in enacting section 14 of the Hindu Succession Act Parliament has encroached on the field of legislation reserved for States is not sound and the said section cannot be held invalid.

*Case referred by the Division Bench consisting of Hon'ble Mr. Justice Gosain and Hon'ble Mr. Justice Harbans Singh on 23rd December, 1959... The Full Bench consisting of Hon'ble Mr. Justice Dulat, Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Gosain after deciding the questions of law involved in the case returned the same to the Division Bench on 25th May, 1960 for final decision on merits.*

*Second Appeal from the decree of the Court of Shri Sewa Singh, Additional District Judge, Patiala dated the 18th April, 1959 affirming that of Shri Asa Singh Gill, Sub-Judge 1st Class, Rajpura dated the 3rd November, 1958 dismissing the plaintiffs' suit with costs.*

JAGAN NATH KAUSHAL, DALIP CHAND and J. V. GUPTA,  
Advocates for the Appellants.

PURAN CHAND, Advocate for the Respondents.

#### JUDGMENT.

Mehar Singh, J.

MEHAR SINGH J.—In these two cases the question for consideration of the Full Bench on the validity of section 14 of the Hindu Succession Act, (No. 30) of 1956, (hereinafter referred to as the Act), may be formulated thus—

“Has the Parliament in enacting section 14 of the Act, legislated to any extent in the exclusive legislative field of a State and, if so, are the provisions of the section, on this account, to that extent invalid”?

The first case is *Amar Singh and others*, Plaintiff-appellants, v. *Baldev Singh and others*, defendant-respondents, second Appeal No. 1,074 of 1959. On the death of Balla Singh, his widow Aso defendant, came in possession of his land. On March 10, 1958, she made a gift of the same in favour of Baldev Singh, Harnek Singh, Sewa Singh, Ajaib Singh, and Sarmukh Singh, defendants. The gift has been impugned by the plaintiffs, collaterals of Balla Singh, on the ground that Aso defendant has a widow's limited estate in the land and under custom, she cannot alienate the same to the injury of their reversionary interests in the same, it being claimed that the land is ancestral *qua* them and Balla Singh. The plaintiffs have stated in paragraph No. 2 of the plaint that the Act does not apply to them. The defendants took a preliminary defence, that taking the allegations of the plaintiffs to be true, Also defendant under section 14 of the Act, had become full owner of the land before the date of the gift, and the plaintiffs must fail, because they have no right to control the power of alienation by her over such land. In the Courts below it was argued on behalf of the plaintiff's that section 14 of the Act does not apply to agricultural land for the legislative field of the Parliament under entry 5 of List III in the Seventh Schedule to the Constitution, does not extend to legislation over agricultural land. This was the position under the Government of India Act, 1935, because in the corresponding entry legislation in regard to agricultural land had been specifically left out, but entry 5 of List III, as now worded, differs from the corresponding entry in that Act, in that legislation on agricultural land, on subjects mentioned in the entry, has not been taken out from the ambit and scope of the entry. Similar argument was, on this ground, repelled by the Orissa High Court in *Laxmi Debi v. Surendra Kumar*

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*Panda*, (1), and the Courts below relying on that case have discarded this argument on behalf of the plaintiffs. In this Court in *Sant Ram Dass v. Gurdev Singh*, Regular Second Appeal No. 592 of 1958, decided on October 6, 1959, Mahajan J, has taken the same view. This, on this argument, is the correct position and is no longer challenged by the learned counsel for the plaintiffs at this stage. The argument that has now been urged on behalf of the plaintiffs is in the wake of the question as formulated above. The date of the death of Balla Singh, husband of Aso defendant, is not available from the record, but the argument has proceeded on the assumption, for otherwise the argument would entirely have no basis, that Balla Singh, died before the coming into force of the Act, on June 17, 1956.

The second case has been withdrawn to this Court on an application, Civil Miscellaneous No. 1548 of 1959, under Article 228 of the Constitution, the question, as formulated above having been raised, on the facts of the case, in the trial Court. This case concerns the inheritance of one Deva Singh *jat*, including agricultural land, upon whose death, according to the allegations in the plaint before the coming into force of the Act, his widow Sham Kaur, succeeded to the same holding a widow's limited estate. On January 9, 1958, Sham Kaur made a will of the land in favour of the defendants. She died on April 10, 1958. The will is impugned by the plaintiffs, claiming themselves to be the collaterals of Deva Singh, and on the allegation that the land is ancestral *qua* them, on the ground that Sham Kaur had, under custom, no power by a testamentary disposition to injure their reversionary rights in the land and that that will is not binding upon those rights. The defendants have taken as one of the defences

(1) A. I. R. 1957 Orissa 1.

that Sham Kaur, on the date of the will, had become full owner of the land by virtue of section 14 of the Act. The plaintiffs have then questioned the validity of that section in the manner as the question is stated.

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The provisions of section 14 of the Act are—

[His Lordship read Section 14 and continued:]

It is now settled by the observations of their Lordships of the Supreme Court at page 581 of *Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva* (1), that section 14 of the Act, enlarges Hindu female's limited interest in property inherited or held by her to an absolute owner, provided, she is in possession of the property on the date of the enforcement of the Act. The learned counsel for the collaterals in both the cases contend that thus in enacting section 14 of the Act, the Parliament has legislated on "land, that is to say, rights in or over land,—"within the strict scope of entry 18 in List II of the Seventh Schedule to the Constitution, which List enumerates the subjects within the exclusive legislative field of a State. There can hardly be difference on this that the operative effect of section 14 of the Act on land is to give enlarged or enhanced rights to a Hindu female in land in her possession on the date of the Act. She held before that date rights as a limited owner in the land and from the date of the Act, provided she is in possession of it, she has come to hold full ownership rights in it. This clearly is legislation on the subject of "rights in or over land", and it straightaway falls within the scope of entry 18 of List II and thus within the exclusive legislative field of a State. It is then pointed out by the learned counsel that in this manner enlarging or enhancing the rights of a Hindu female in

(1) A. I. R. 1959 S. C. 577.

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land from those of limited owner to those of a full owner is not a question of succession on the date of the Act, for a Hindu female, who becomes full owner of land on that date, has necessarily already succeeded to the inheritance of her deceased husband sometime before that date. There cannot be a second succession by her. This argument I accepted in *Sucha Singh, v. Baggu Singh*, Regular Second Appeal No. 552 of 1953, decided on December 3, 1958, and it is the correct position that in so far as section 14 of the Act, enacts to give enlarged and enhanced estate of full ownership in land from limited ownership to a Hindu female, from its date, it is not an enactment on the subject of succession and on this score it does not fall within the ambit and scope of entry 5 of List III. The soundness of this position in regard to those two entries is not seriously questioned as far as it goes. In List III entry No. 5 is—

“5. Marriage and divorce; infants and minors; adoption, wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law”.

And in List II entry No. 18 is—

“18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improve-

ment and agricultural loans; colonization  
The learned counsel for the defendants do not now

place reliance on the words "intestacy and succession" in entry 5 of List III, but on the last part of that entry, which is:—

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"all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law".

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and contend that, even though what has been given to a Hindu female under section 14 of the Act, is not within the scope of the subject of "intestacy and succession", but it is a legislation on the subject of special property of females, a matter in respect of which the parties to these cases, in judicial proceedings, were immediately before the commencement of the Constitution subject to their personal law, and, therefore, the Parliament in enacting section 14 of the Act, legislated within the concurrent field of legislation, as the matter directly comes within the scope and ambit of last part, as cited, of entry 5 List III.

The subject of special property of females is referred to in section 5 of the Punjab Laws Act, (No. IV) of 1872, which section reads—

[His Lordship read Section 5 and continued:]  
In interpreting this section of this Act, Plowden J., at page 24, in *Gholam Muhammad v. Muhammad Bakhsh* (1), observes—

"Since that Act, was passed, in certain heads of topics of law, of which succession is one, the first rule of decision is custom, by express enactment; the next rule is the Hindu or Muhammadan Law, as modified by custom: and the last, the strict Hindu and Muhammadan Law".

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(1) 4 P. R. 1891.

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In the case, of a Hindu or a Muhammadan undoubtedly Hindu Law or Muhammadan Law, respectively is the personal law of such a person. In the case of those, in whose case custom, when proved and established, is the first rule of decision by statutory enactment, such custom obviously is their personal law. In section 5 of the Punjab Laws Act, 1872, custom is juxtaposed with Hindu or Muhammadan Law. It is placed statutorily on the same level as Hindu or Muhammadan Law, as the personal law of the persons, who succeed in proving that it applies to them. It is, therefore, the personal law of such persons. On another consideration, the conclusion is the same. Their Lordships of the Supreme Court have in *Ujagar Singh v. Mst. Jeo* (1), again reaffirmed the well-settled proposition that when either party to a suit sets up 'custom' as a rule of decision, it lies upon him to prove the custom, which he seeks to apply. If he fails to do so clause (b) of section 5 of the Punjab Laws Act, 1872, applies and the rule of decision must be the personal law of the parties subject to other provisions of the clause. So that if a party to a suit sets up custom as a rule of decision and fails to prove it, the alternative is recourse to the personal law, but when it succeeds in proving it, then obviously the decision is to be according to such custom and then that is the law applicable to the parties to the suit in judicial proceedings instead of strict Hindu or Muhammadan Law. This alternative also leaves no doubt that where it is proved to apply between the parties, custom is their personal law. In this view in the case of a party to a litigation when it is proved by it that custom is the first rule of decision on the question of special property of females, then such custom is the personal law of the parties and Parliament having legislated on

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(1) A. I. R. 1959 S. C. 1041.



the subject of such personal law, the legislation comes within the ambit and scope of the words—

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“all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law” of entry 5 in List III. The Parliament has then legislated within its legislative competence in the concurrent field.

It comes to this,—that section 14 of the Act, in so far as it enlarges or enhances rights in or over land of a Hindu female, is legislation that directly comes within the scope of entry 18 of List II and thus within the exclusive legislative field of a State, and in so far as it enacts law on the matter of special property of females in respect of which parties in judicial proceedings were immediately before the commencement of the Constitution subject to their personal law, the legislation is properly and appropriately within entry 5 of List III and thus within the legislative field of the Parliament. This is a straight case of conflict of legislative powers of the two legislatures. This conflict is resolved by Article 246 of the Constitution, which Article says—

[His Lordship read Article 246 and continued:]

The exclusive legislative field of a State on matters enumerated in List II being subject to legislative powers of the Parliament on matters enumerated in List III (Concurrent List), when Parliament legislates on a matter enumerated in List III, its legislation is valid and constitutional under this Article.

The Parliament has in enacting section 14 of the Act, by enlarging or enhancing the rights in

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or over land of Hindu females from limited ownership rights to full ownership rights legislated within the ambit and scope of entry 5 in the Concurrent List and thus the legislation is a valid piece of legislation. The answer to the question is that to the extent section 14 of the Act enacts legislation providing enlarged rights over land to Hindu female it entrenches upon entry 18 in List II, the exclusive field of a State, but it still is a valid piece of legislation because it directly comes within the legislative field as spanned in entry 5 of List III, the Concurrent List.

In consequence Regular Second Appeal No. 1074 of 1959 will return for hearing to a Bench of this Court on other matters raised in the grounds of appeal and the case to which Civil Miscellaneous No. 1548 of 1959 concerns will be sent back to the trial Court for disposal according to law. There is no order on costs in proceedings disposed of by this judgment.

DULAT, J.—I agree that section 1 of the Hindu Succession Act, 1956, is a valid piece of legislation and wish to add only this that, as I view the matter, this particular provision does not appear to be legislation concerning land or rights in and over land mentioned in item 18 of the State List. It is true that section 14 affects all property including land, but so do several other provisions of the Hindu Succession Act. The reason is that it is not possible to divide human affairs into watertight compartments, and the division of subjects in the Lists contained in the Seventh Schedule to the Constitution is not intended to be watertight. The various items are only pointers to the kind of legislation that can be undertaken. Item 5 of the Concurrent List provides for legislation concerning succession and several matters connected with it, and arise for legislation concerning matters,

governed by the personal law of the parties, and section 14 of the Hindu Succession Act clearly falls under that description. The circumstance that such legislation incidentally affects land, as it affects other kinds of property, is, to my mind, of no consequence. The essence of this particular legislation and the whole of the Hindu Succession Act is what appears under item 5 of the Concurrent List and not 'land' mentioned in item 18 of the State List. The contention, therefore, that in enacting section 14 of the Hindu Succession Act Parliament has encroached on the field of legislation reserved for States is not, in my opinion, sound and section 14 of the Hindu Succession Act cannot be held invalid.

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Dulat, J.

GOSAIN, J.—I agree with my learned brothers, Dulat, J., and Mehar Singh, J., that section 14 of the Hindu Succession Act is a valid piece of legislation.

Gosain, J.

Since we are all unanimous in finding that the legislation in question does, at any rate, fall under the second part of Entry No. 5 of List III of the Seventh Schedule to the Constitution of India and the Parliament had the power to enact it, it is, in my opinion, not absolutely necessary to decide whether the said legislation, in so far as it enlarges the estates of female heirs, which devolved on them before the commencement of the Act, can also fall under the first part of the aforesaid Entry.

Answer to question formulated in the judgment, which my learned brother Mehar Singh, J., proposes to deliver, should, in my opinion, be in the negative.

#### ORDER OF THE COURT

Answer to the question formulated is that section 14 of the Hindu Succession Act is a constitutionally valid piece of legislation. Regular

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Second Appeal No. 1074 of 1959 will be returned for hearing to the Bench concerned and Civil Miscellaneous No. 1548 of 1959 will be sent back to the trial Court for disposal according to law.

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B.R.T.

APPELLATE CIVIL

Before Tek Chand and Shamsher Bahadur, JJ.

THE STATE OF PUNJAB,—Appellant

versus

THE HINDUSTAN DEVELOPMENT BOARD LTD., AMRIT-

SAR,—Respondent

Regular First Appeal No. 119 of 1954

*Indian Contract Act (IX of 1872)—Section 70—Basis and Principles of—Whether to be restricted by principles of English Law—Conditions for the applicability of—Contractor doing work outside the contract which is accepted by the other party—Whether entitled to reasonable price of such extra work—Contracts—Express, Implied and quasi-contracts—Nature and distinguishing features of—Sections 70 and 73—Respective scope of.*

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*Held*, that the provisions of section 70 of the Indian Contract Act are based on the doctrine of *quantum meruit* of English Common Law but the rule as embodied in the Indian Contract Act admits of liberal interpretation. When a rule of English law receives a statutory recognition by the Indian legislature it is the language of the Act which determines the scope, uninfluenced by the manner in which the analogous provision is construed in the English law. The language of the provisions of the Indian Contract Act cannot be enlarged, or construed narrowly, or otherwise modified, in order to bring the construction in accord with the scope and limitations of the rule governing the English doctrine.

*Held*, that before the provisions of section 70 of the Indian Contract Act can be successfully invoked, the plaintiff has to show, firstly, that the delivery of the articles in