Gram Panchayat Act (4 of 1953). The language of section 121 of the Act is identical with the language of section 8 of the Punjab Gram Panchayat Act. The only difference in the two statutes is that under the Punjab Panchayat Samitis and Zila Parishads Act the rules relating to election petitions have been framed and the grounds on the basis of which an election can be set aside have been indicated in the rules, whereas there are no such rules so far as the Punjab Gram Panchayat Act is concerned. It is not necessary in this petition to further examine this matter because I am of the view that in view of the disputed questions of fact arising in this case the proper forum would be either an election petition or a civil suit. It cannot be disputed that if no election petition lies, a suit is certainly competent.

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Mahajan, J.

For the reasons given above this petition fails and is dismissed with costs.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Inder Dev Dua, J.

PRITAM SINGH,—*Appellant*

versus

GURDIAL KAUR AND ANOTHER,—*Respondents*

L.P.A. No. 332 of 1961

1962

March, 27th

Custom—Declaratory decree obtained by reversioner that the gift would not bind his reversionary interest after donor's death—Effect of—Consent by the next heir—Effect of—Letters Patent Appeal—New point—Whether can be raised.

Held, that the effect of the declaratory decree obtained by a reversioner challenging an alienation of ancestral immovable property by a person with restricted power of disposition is by now fairly well-settled and not open to any serious controversy. A declaratory decree obtained by one or more reversioners enures for the benefit of the entire reversionary body and the individual reversioner who

actually happens to be the next heir at the time the succession opens is entitled to take advantage of the decree. The chief or may be sole object of a declaratory suit by reversioner impeaching an alienation of ancestral immovable property is to remove or get rid of a common apprehended injury in the interest of all the reversioners, whether presumptive or contingent. The reversioner actually suing has no personal interest, apart from the interest common with the entire reversionary body; this reversionary interest is a mere responsibility to succeed or *spes successionis,* a possibility common to all the reversioners, it being difficult to predicate as to who would be the actual heir when the succession opens out. The benefit of such a declaratory decree, however, cannot accrue to those reversioners who have already lost their right to challenge the alienation, the reason being that the plaintiff seeking such a declaration cannot be assumed to be representing in the suit the reversioner who has by his conduct lost such a right *inter alia* by ratification or consenting to it. The consenting reversioner being bound by the alienation cannot challenge it.

Held further, that the decree only saves from the operation of the gift the right of the actual reversioner entitled to succeed at the time the succession opens out; it does not, as indeed it cannot, in law completely wipe out the gift by declaring it to be wholly void in the sense of being a nullity or non-existant. Whatever form the decree passed in a suit may be given, in effect and substance it is a decree which declares that the gift is not binding against the inheritance. The individual reversioner who actually succeeds would thus be entitled to ignore the gift. But if he had consented to it, the gift become binding on him as, by consenting to it, he debarred himself from avoiding it. By consenting to the gift he does not remove himself, from the line of inheritance, on the other hand, if he happens to be the actual heir at the time the succession opens, the inehritance would become vested in him but it would be subject to the gift which is binding on him as a result of his consent.

Held, that ordinarily a point not raised before,, and not determined on the merits, by a Single Judge cannot be entertained on Letters Patent Appeal. All the more so

when, it seems to reopen a matter conceded before the learned Single Judge.

Appeal under Clause 10 of the Letters Patent, from the decree of the Hon'ble Mr. Justice Harbans Singh, dated the 15th day of November, 1961, passed in R.S.A. No. 686 of 1961, affirming with costs that of Shri Rameshwar Dial. District Judge, Barnala, dated the 25th April, 1961, by which the decree of Shri Banwari Lal Singla, Subordinate Judge 1st Class, Phul, dated the 28th February, 1961, was affirmed with costs.

D. S. NEHRA, ADVOCATE, for the Appellant.

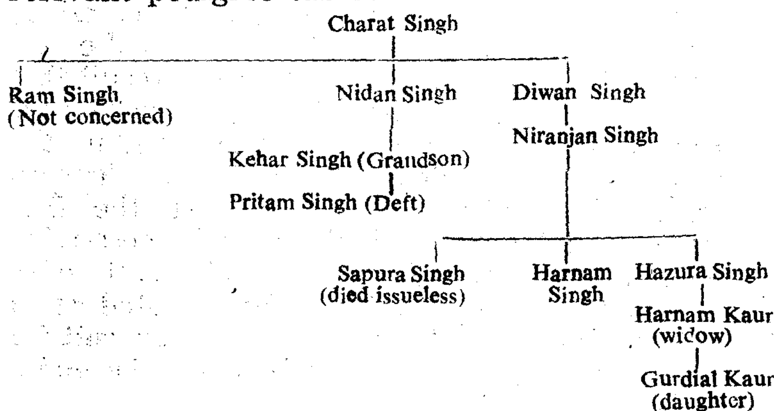
B. R. AGGARWAL, ADVOCATE, for the Respondents.

JUDGMENT

The judgment of the Court was delivered by—

Dua, J.

DUA, J.—Facts giving rise to this Letters Patent Appeal under clause 10 of the Letters Patent from the judgment of a learned Single Judge of this Court may briefly be stated, but before doing so, it is desirable to reproduce the relevant pedigree table:—



The property in question consists of landed property in part of which Harnam Singh and Hazura Singh, two brothers, had only occupancy rights. As observed by the learned Single Judge, the circumstance that Harnam Singh and Hazura Singh had only occupancy rights in a part of the land in question is inconsequential and indeed it

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is not shown if this circumstance has any material effect on the controversy before us. On Hazura Singh's death his widow Harnam Kaur inherited her husband's share in the property. On 19th *Poh* 2001, Harnam Singh and Harnam Kaur made a gift of the property in question in favour of Smt. Gurdial Kaur, the daughter of Hazura Singh. Mutation in her favour was duly sanctioned but Pritam Singh, the present appellant, who is a collateral of Harnam Singh and Hazura Singh, instituted the usual declaratory suit challenging the gift made by Harnam Singh and Harnam Kaur. This suit was ultimately decreed on 31st March, 1951, and it was held that the impugned gift would not affect the plaintiff's reversionary rights after the death of the donors. Harnam Singh died on 11th January, 1954. It appears that Pritam Singh was in possession of the land prior to Harnam Singh's death. On 4th June, 1958, the entire property in dispute was mutated in favour of Pritam Singh. On 26th February, 1959, Smt. Gurdial Kaur instituted a suit for a declaration that she was the owner and in possession of the property in suit through Pritam Singh, who was actually cultivating the land as her tenant. This suit was decreed by the Court of first instance which found Pritam Singh to be in possession of the property as a tenant holding over with the result that Smt. Gurdial Kaur was held to be in constructive possession and, therefore, entitled to maintain the suit for mere declaration. On appeal, the learned District Judge reversed the finding of the first Court and held Pritam Singh to be in possession in his own right after Harnam Singh's death with the result that he could not be treated as a tenant holding over. Smt. Gurdial Kaur's suit for a mere declaration was thus held not to be maintainable.

In June, 1960, the suit out of which the present appeal has arisen was instituted by Smt. Gurdial Kaur and Smt. Harnam Kaur against Pritam Singh. Smt. Gurdial Kaur based her claim on the gift as well as on her right as a next heir both to Harnam Singh and Smt. Harnam Kaur. In the alternative,

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Smt. Harnam Kaur based her claim on her ownership. Smt. Harnam Kaur's claim was negatived but Smt. Gurdial Kaur's suit was decreed by the Court of first instance and affirmed on appeal by the learned District Judge as also on further appeal by a learned Single Judge of this Court.

On second appeal, according to the observations of the learned Single Judge, the learned counsel for the appellant urged only two points namely (1) that on the death of Harnam Singh his share devolved on Pritam Singh according to the customary rule because Smt. Harnam Kaur had by consenting to the gift made in favour of Smt. Gurdial Kaur precluded herself from inheriting Harnam Singh's estate, with the result that Pritam Singh being the next heir was entitled to inherit the property and (2) that in any case Smt. Gurdial Kaur's suit was barred by time as she had not been proved to be in possession within twelve years of the date of the suit. On both these points the learned Single Judge gave his decision against the appellant and it is in these circumstances that the present Letters Patent Appeal has been preferred.

On behalf of the appellant, it has been urged that by virtue of the declaratory decree obtained by Pritam Singh in March, 1951, the gift made by Harnam Singh and Harnam Kaur was determined to be void with the result that Smt. Gurdial Kaur cannot base any title on the said gift. It has further been contended that Smt. Harnam Kaur, having consented to the gift made in favour of Gurdial Kaur, has precluded herself from succeeding to the estate of Harnam Singh with the result that the appellant should be considered to be the only heir left, who is entitled to succeed to Harnam Singh's estate. A further point sought to be made by the counsel is based on the dismissal of Harnam Kaur's suit by the trial Court against which no appeal has been preferred by her.

The effect of the declaratory decree obtained by a reversioner challenging an alienation of ancestral immovable property by a person with

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restricted power of disposition is by now fairly well-settled and not open to any serious controversy. A declaratory decree obtained by one or more reversioners enures for the benefit of the entire reversionary body and the individual reversioner who actually happens to be the next heir at the time the succession opens is entitled to take advantage of the decree. The chief or may be the sole object of a declaratory suit by a reversioner impeaching an alienation of ancestral immovable property is to remove or get rid of a common apprehended injury in the interest of all the reversioners, whether presumptive or contingent. The reversioner actually suing has no personal interest, apart from the interest common with the entire reversionary body; this reversionary interest is a mere possibility to succeed or *spes successionis*, a possibility common to all the reversioners, it being difficult to predicate as to who would be the actual heir when the succession opens out. The benefit of such a declaratory decree, however, cannot accrue to those reversioners, who have already lost their right to challenge the alienation, the reason being that the plaintiff seeking such a declaration cannot be assumed to be representing in the suit the reversioner, who has by his conduct lost such a right *inter-alia* by ratification or consenting to it. The consenting reversioner being bound by the alienation cannot challenge it. Having stated the broad effect of a declaratory decree I shall now deal with the appellant's contentions.

The argument that by virtue of the declaratory decree obtained by the appellant the gift made by Harnam Singh and Harnam Kaur has become void and that Smt. Gurdial Kaur cannot base her title on the said gift is without merit and unsustainable. The decree only saved from the operation of the gift the right of the actual reversioner entitled to succeed at the time the succession opens out; it did not, as indeed it could not, in law completely wipe out the gift by declaring it to be wholly void in the sense of being a nullity or non-existant. Whatever form the decree passed in a suit may be given, in effect and substance it is a decree which declares that the gift is not binding against the inheritance.

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The individual reversioner, who actually succeeds would thus be entitled to ignore the gift. The gift being void only as against the reversioner, who actually happens to be entitled to inherit when succession opens out the question at once arises if the appellant can take benefit of the decree.

Shri Nehra has submitted that by consenting to the gift Harnam Kaur, has deprived herself of the right to succeed to Harnam Singh at the time of the succession opening out. Thus eliminating Harnam Kaur, according to the counsel, the appellant is the only person entitled to succeed and to ignore the gift. The contention is, in my opinion, based on a misapprehension. By consenting to the gift, Harnam Kaur only debarred herself from avoiding the gift if she were to happen to be the actual heir at the time of the succession opening out; in other words by virtue of her consent the gift became binding on her. By consenting to the gift she did not remove herself from the line of inheritance; on the other hand if she happens to be the actual heir at the time the succession opens, the inheritance would become vested in her but it would be subject to the gift which is binding on her as a result of her consent. The appellant's counsel has in support of his contention drawn our attention to an unreported decision of a Division Bench (of which I was a member) in *Bishna*, etc., v. *Sohna etc.*, Letters Patent Appeal No. 132 of 1958 (1) in which the judgment of a learned Single Judge was slightly modified on appeal, but the ratio of that decision, as I read it, does not lend any support to the appellant's contention.

Stress has, however, been laid by Shri Nehra on the contention that Harnam Singh, having died before the enforcement of the Hindu Succession Act Pritam Singh appellant must be considered to be a preferential heir in respect of Harnam Singh's estate with the result that under custom he is the person actually entitled to succeed. I am unable to sustain this contention. Before the learned Single Judge it appears to have been admitted that the next heir on the demise of Harnam Singh is Harnam Kaur, and, that, if there had been no gift

(1) I.L.R. 1958 Punj. 1688.

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by Harnam Singh, in favour of Gurdial Kaur, Harnam Kaur would have inherited the estate of the deceased. The contention now urged on behalf of the appellant was not raised before the learned Single Judge with the result that he did not express any considered opinion on the precise point. Having admitted before the learned Single Judge that Harnam Kaur is the next heir the appellant cannot be heard to raise a new and inconsistent plea on Letters Patent Appeal.

Shri Nehra has drawn our attention to the judgment of the learned District Judge where he has observed that Harnam Singh's interest in the property had devolved on Pritam Singh and Harnam Kaur having consented to the gift made by Harnam Singh could not succeed to the estate of the deceased and the next reversionary heir Pritam Singh would be the obvious person entitled to succeed. The learned District Judge considered the effect of Harnam Kaur's consent to be analogous to the case of a murderer, who is debarred from succeeding to the estate of his victim. I have already expressed my opinion that by consenting to the gift Harnam Kaur did no more than estop herself from challenging the gift and the consent did not have the effect of removing her name from the line of inheritance so as to improve the appellant's status as a reversioner and make him a preferential heir. The analogy of a murderer is clearly misconceived and it merely serves to betray a misunderstanding of the effect of consent by a reversioner to an alienation by a holder with restricted power of disposition. And then in the Court of first instance it had been conceded that under custom a widow succeeds collaterally, on the basis of which Harnam Kaur was held by the learned Subordinate Judge to be the preferential heir of Harnam Singh on his death. This conclusion was unsuccessfully sought to be dislodged only on the plea of Harnam Kaur's consent to the gift made by Harnam Singh, and reference was made to *Bishna, etc.* v. *Sohna*, etc. (1), the judgment of Gosain J. which was slightly modified on appeal in

Letters Patent Appeal No. 132 of 1958.The ratio of this case, however, lends no assistance whatsoever to the appellant's contention; strictly speaking the facts of that case were peculiar and the observations made therein should be confined to its own facts, and, indeed the learned Subordinate Judge also did not find this decision helpful. In the light of the foregoing discussion I do not think the appellant can be permitted to raise on Letters Patent Appeal the point that independently of the plea of Harnam Kaur having lost her right as an heir by consenting to the gift, he is a better heir than Harnam Kaur, under custom. There is ample authority for the view that ordinarily a point not raised before, and not determined on the merits by, a Single Judge cannot be entertained on Letters Patent Appeal. All the more so when, as is the case here, it seems to reopen a matter conceded before the learned Single Judge.

This brings me to the contention that Harnam Kaur's suit having been dismissed by the Court of first instance, Gurdial Kaur's suit could not be decreed and should also have been dismissed. Now Harnam Kaur being bound by the gift could not avail of the declaratory decree and, therefore, was not entitled to claim possession in the presence of Gurdial Kaur. But Gurdial Kaur's right could obviously not be defeated by the appellant Pritam Singh. Harnam Kaur has been found to be the next heir entitled to succeed to Harnam Singh's estate. Now if the appellant is not entitled to claim a superior right than Harnam Kaur and if Gurdial Kaur is the donee it is not understood how and in what capacity it is possible for the appellant to defeat Gurdial Kaur's right to possess the property in question.

At this stage, I may also notice another aspect of the matter. The gift in question which was voidable and defeasible at the instance of the reversionary body and to which Harnam Kaur had consented might well be considered to have become indefeasible on the inheritance having become vested in Harnam Kaur, who has outlived

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Harnam Singh. Under the existing law Harnam Kaur would be an absolute owner and the declaratory decree might legitimately be considered to have become infructuous and inoperative. This view would seem to find support from the fourth conclusion in the judgment of M.C. Mahajan J. (as he then was) in *Ali Mohammad Mt. Mughlani* (2). But since this aspect was not debated at the bar, I need say nothing more on it.

The last contention that Gurdial Kaur's suit is barred by time, though faintly suggested, was not seriously pressed before us and indeed the observations of the learned Single Judge more than amply justify the conclusion that within twelve years of the date of the suit the appellant was admittedly holding possession as a tenant of Harnam Singh and it was only after Harnam Singh's demise that he thought of putting forth his claim to ownership of the property. Harnam Singh having died in 1954, the present suit filed in 1960 is clearly within time.

The result is that this appeal fails and is hereby dismissed but without costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

NARINJAN SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1121 of 1961.

1962

March, 29th

Punjab Control of Bricks Supplies Order, 1956—Clause 4(iii)—District Magistrate—Whether can refuse to grant or renew a licence on the ground that the applicant had been indulging in anti-national activities, etc.

Held, that there is no provision in the Punjab Control of Bricks Supplies Order, 1956, or in the rules made thereunder authorising the District Magistrate to refuse the

(2) A.I.R. 1946 Lah. 180 (F.B.) at page 193.