

APPELLATE CIVIL

Before Harbans Singh, C.J. and Prem Chand Jain, J.

NACHITTAR SINGH AND OTHERS,—Appellants.

versus

BUDH SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 224 of 1966

December 4, 1970.

Custom (Punjab)—Alienation—Dastur-ul-Amal of Faridkot State (1893), Chapter 2, Section 11, Adna Malik—Whether was a full owner—Abolition of Ala Malkiat rights—Ancestral nature of the land held by Adna Malik on such abolition—Whether changed.

Held, that from the entries in the Dastur-ul-Amal of Faridkot State in section 11 of Chapter 2, dealing with the powers of alienation it is clear that the Adna Malik has been given a right to sell or mortgage and not a right to make a gift or will, which right, subject to certain conditions, has been specifically given to the occupancy tenants. If an Adna Malik had full rights of an owner, then his right of alienation could not have been limited to sale and mortgage and it would have been clearly mentioned that he (Adna Malik) had unlimited and unrestricted power of alienation. It can, therefore, be safely inferred from the entries in Dastur-ul-Amal that the Adna Malik was not considered full owner and was treated, more or less, in the same manner as an occupancy tenant. (Para 9).

Held, that two words 'Ala Malik' and 'Adna Malik' clearly indicate the distinct rights of the two and it would not be correct to say that the right of the Ala Malik was only a burden on the land held by the Adna Malik and did not, in any manner, affect or curtail his rights of full ownership. By abolition of the Ala Malkiat rights, the right of the Ala Malik to recover certain percentage of revenue and his title as Ala Malik had been extinguished and the Adna Malik rights in the land had been enlarged and ripened into full ownership. Even if the effect of the abolition of the Ala Malkiat rights was that the burden had been cleared off, it would not make any difference as after the abolition, all rights, title and interest of an Ala Malik stood extinguished and all such rights, title and interest vested in the Adna Malik free from all encumbrances. It was clearly an enlargement of the rights of an Adna Malik. The moment the Ala Malik's rights were abolished, the institution of Adna Malik also came to an end, and both the estates came to vest in one and the same person. The Adna Malik no more remained as an Adna Malik nor was he required to pay any amount as land revenue. The rights of Adna Malik were enlarged as the institution of inferior rights came to an end. Hence the abolition of Ala Malkiat rights created a new kind of estate in the Adna Malik and altered the nature and character of the land in his hand. The ancestral land in the hand of the Adna

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Malkiat did remain as ancestral after the abolition of Ala Malkiat rights. (Paras 8 and 12).

Letters Patent Appeal under Clause X of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice D. K. Mahajan dated the 15th day of April, 1966 passed in R.S.A. 1100 of 1965 reversing that of Shri Diali Ram, Additional District Judge, Bhatinda dated the 17th April, 1965, (which affirmed with costs the decree of Shri V. P. Aggarwal, Sub-Judge 1st Class Faridkot dated the 4th June, 1964 dismissing the plaintiffs suit with costs) and remanding the case to the trial court for fresh decision.

J. N. KAUSHAL, ADVOCATE WITH S. P. GOYAL, ASHOK BHAN, ADVOCATES, for the appellants.

K. C. PURI, AND S. K. GOYAL, ADVOCATES, for the respondents.

JUDGMENT

The judgment of this Court was delivered by :—

P. C. JAIN, J.—This judgment and order of ours would dispose of Letters Patent Appeals Nos. 224, 228 and 202 of 1966 as common question of law arises in all these appeals.

(2) Briefly the facts of the case involved in Letters Patent Appeals Nos. 224 and 228 of 1966 are that Buta Singh father of Budh Singh and other plaintiff-respondents, sold 378 Kanals and 2 Marlas of land for Rs. 30,000 on June 12, 1957, to Nachhattar Singh and others, defendant appellants, and by another sale deed, sold 99 Kanals and 15 Marlas of land for Rs. 10,500 to Malkiat Singh and others, defendant-appellants on 6th July, 1959. Budh Singh, and others, plaintiff-respondents, who are sons of Buta Singh, brought usual declaratory suits challenging the two alienations on the grounds that the land was ancestral *qua* them and that the alienations in question being without consideration and necessity, would not affect their reversionary rights. Suit No. 190 of 1963 relates to the sale in favour of Nichhatar Singh and others while sale in favour of Malkiat Singh and others is the subject matter of suit No. 226 of 1963. As common questions of law and fact were involved, both the suits were consolidated and tried together. The trial Court went only into the question relating to the nature of the property and finding the same to be non-ancestral, dismissed both the suits. The judgments and decrees of the trial Court were affirmed on appeal by the learned District Judge. The plaintiff-respondents dissatisfied from the decisions of the Courts below, filed two Regular Second Appeals Nos. 1,100 and 1,101 of 1965 in this Court

which came up for hearing before D. K. Mahajan, J. who after considering the entire matter thoroughly, held that the abolition of the Ala Malkiat rights did not, in any manner, alter the character of the property in the hands of the Adna Malik, and that if the land was ancestral in the hands of Adna Malik, it would remain ancestral. In view of this finding, the learned Single Judge allowed the appeals, set aside the judgments and decrees of the Courts below and remanded the case to the trial Court to decide the nature of the suit land and also to decide other issues which may arise on the pleadings of the parties.

(3) On an oral request made by the learned counsel for the defendants, leave under Clause 10 of the Letters Patent, was granted. It is against the said decision of the learned Single Judge that these letters patent appeals have been filed.

(4) The learned Single Judge, after tracing the history of the Ala and Adna Maliks and after considering the various judicial pronouncements, decided the matter thus :

“It is no doubt true, as urged by Mr. Babu Ram Aggarwal, learned counsel for the respondents, that the full proprietary rights are split up into Adna Malkiat rights and Ala Malkiat rights. It is not disputed that the bulk of the proprietary rights remains with the Adna Malik and only a nominal portion goes to the Ala Malik; that is, the right to receive certain percentage of the revenue and in some cases right of reversion to the land on the failure of the line of the Adna Malik. Otherwise, the Adna Malik has the full rights of an owner in as much as he can sell, mortgage or deal with his land as he likes. If the land in his hands is ancestral *qua* his descendants, his descendants can control his alienation. The inheritance devolves on the death of the Adna Malik in accordance with the rules of inheritance known to Customary Law and where the parties are governed by personal law, by the rules of personal law. In the present case, we have noticed that the Ala Malkiat rights were converted into cash and that amount was to be paid along with the revenue. Beyond this, the Ala Malik had no other rights. The escheat in the present case was to the Sarkar which incidentally, in the present case, happened to be the Ruler and I am fortified in this view by the decision of the Punjab High

Court in *Phuman Singh Prem Singh v. State of Patiala* (1). The question that really arises is whether the abolition of the Ala Malkiat rights, in any manner would alter the nature of the property in the hands of the Adna Malik. In other words, whether the Adna Malik rights, which are ancestral, would cease to be ancestral by the abolition of the Ala Malkiat rights. In my view, the abolition does not make any difference in the nature or the character of the land held by the Adna Malik. Ala Malik's rights are merely a burden on the land so far as the Adna Malik is concerned. The abolition of Ala Malik's right merely clears off that burden. In no manner, the rights of the Adna Malik are enlarged. Any analogy from the case of an occupancy tenant becoming proprietor of the land under the Occupancy Tenants (Vesting of Proprietary Rights) Act, 1954 (Pepsu Act No. 18 of 1954) would be wholly misleading. In the case of vesting of proprietary rights in the occupancy tenants, what happens is that the lesser rights, i.e. tenancy rights, merge with the large rights i.e. proprietary rights. After the merger, the lesser rights disappear. Therefore, if the occupancy tenancy was ancestral, by its merger with the larger rights, the occupancy tenancy has ceased to exist as such and what the occupancy tenant has come to possess is the proprietary right or the ownership right, or in other words, a totally new right. The acquisition of the new rights in his hand can, under no circumstances, be held to be ancestral merely because the basis, on which he acquired those rights, was ancestral—the rights being altogether new. Therefore, the larger right in his hand was rightly held by a consistent trend of judicial opinion not to be ancestral in spite of the fact that the occupancy rights were ancestral. This analogy has nothing to do with the present case. It also does not, in any manner, matter whether the Ala Malkiat rights are of one category or the other. The right of escheat is well known. If a proprietor dies without leaving any heir, the ultimate heir is the State. In the case of Ala Malik, if Adna Malik has the right of reversion he intervenes and takes in preference to the

(1) A.I.R. 1961 Pb. 200.

State. But all the same, the right of the Ala Malik in this respect is nothing short of than the right of escheat—the Ala Malik taking precedence over the State. The right of escheat does not, in any manner, affect the nature of the rights in land held by the proprietors. Moreover, the ancestral character of the property has meaning only so long as there are heirs of the maleholder. In the case of escheat or reversion this concept has no meaning whatever. Therefore, whether the ancestral land escheats to the State or it reverts to the Ala Malik, it has nothing to do with the character of the property.

Mr. Babu Ram Aggarwal, learned counsel for the respondents, strongly contended that when there is abolition of Ala Malik's rights, there is also vesting of those rights in the Adna Malik and, therefore, the rights of the Adna Malik stand enlarged and thus the property of the Adna Malik, which was ancestral in his hands, would cease to be ancestral by reason of this vesting. I am, however, unable to agree with this contention. The vesting, in my opinion, does not, in any manner, enlarge the rights. The abolition merely removes a burden and the automatic result of the removal of the burden is that what has to be paid by the Adna Malik to the Ala Malik is no longer to be paid. Nothing more than this happens. The rights in the hands of the Adna Malik remain almost the same as they were before the abolition. I could quite visualize a case where the Ala Malik had been given, by custom, the right to object to an alienation by the Adna Malik. In that contingency, possibly, the argument may be open that the abolition of Ala Malkiat rights would create a new kind of estate in the Adna Malik and, therefore, that new kind of estate would cease to be ancestral. But that is not the case so far as the present case is concerned."

(5) Mr. Jagan Nath Kaushal, learned counsel appearing for the appellants, challenged the correctness of the finding of the learned Single Judge and submitted that the proprietary rights are divided into Ala Malkiat rights and Adna Malkiat rights, that these rights vest in two different persons, that the Adna Malik lacks something which is possessed by Ala Malik, that the Adna Malik is not a full owner, that in the instant case on the death of Adna Malik, the land in his possession

was to revert to Ala Malik and that on the merger of the two rights (by virtue of abolition of the Ala Malkiat rights) something new would come into being in the hands of the Adna Malik. The learned counsel further contended that the finding of the learned Single Judge that the rights of Adna Malik were not enlarged by abolition of Ala Malik's rights, was not correct. On the other hand, it was contended by Mr. Puri, learned counsel for the respondents, that there was no enlargement of the estate as no compensation had been paid or was required to be paid to the Ala Malik, that full ownership rights already existed in the Adna Malik, that the result of abolition of Ala Malik's rights had been that the Adna Malik would not pay now five per cent of the land revenue, and that it was not a case of smaller estate merging into a larger estate.

(6) After giving our thoughtful consideration to the entire matter, we are of the view that there is merit in the contention of the learned counsel for the appellants and these appeals deserve to be allowed.

(7) The learned Single Judge with reference to various judicial pronouncements has examined the rights of the Ala Malik and the Adna Malik; but as agreed to by the learned counsel for the parties, we need not enter into that elaborate discussion as the arguments of the learned counsel have proceeded on the following admitted facts :—

- (a) that Raja was the Ala Malik;
- (b) that Buta Singh was Adna Malik;
- (c) that the right of the Ala Malik was only to receive 5 per cent of the land revenue from the Adna Malik ;
- (d) that by virtue of notification issued on 7th September, 1949, which reads thus:

It is notified for the information of all concerned that out of the following lands situate in erswhile Faridkot State :—

- (1) Brijindra estate, 3,806 Ghumaon 18 Marlas;
- (2) Harindra estate, 4,704 Ghumaon 7 Kanals and 14 Marlas;
- (3) Harmindra estate, 6,851 Ghumaons 2 Kanals and 10 Marlas;

- (4) Land in other villages, 348 Ghumaons 3 Kanals and 4 Marlas;

only 12,000 Ghumaons of land which are in His Highness, the Raja Sahib of Faridkot's possession inside the State, have been allotted to his Highness, the Raja Sahib, subject to any third party's rights over these lands; the Ala Malkiyat rights of His Highness the Raja Sahib of Faridkot in any land out of the erstwhile Faridkot State have been extinguished and the landowners will not hereafter have to pay any dues in respect of the said rights." (This notification was not available on the file and has been reproduced from the decision in *Gurdip Kaur v. Ghamand Singh*, (2). The learned counsel for the parties also agreed that this was the notification which was issued resulting in abolition of Ala Malkiat rights).

The Pepsu State extinguished the Ala Malkiat rights of lands other than those which remained with His Highness; and

- (e) that the land in dispute is the one which did not remain with the Raja and after the notification, Buta Singh, the Adna Malik became its full proprietor.

It was also not disputed that the inheritance of the Adna Malik was not governed in accordance with the rules of inheritance known to Customary Law and where the parties were governed by personal law, by the rules of personal law, but by the rules laid down in Dastur-ul-Amal, 1893.

(8) The learned Single Judge has found that the Adna Malik had full rights of an owner, that the abolition of the Ala Malik's rights did not result in the enlargement of the rights of the Adna Malik and that by abolition only a burden has been cleared off. With due deference we do not find ourselves in agreement with these findings. We are clearly of the view that an Adna Malik did not have full rights of an owner. The learned Single Judge himself has accepted that the full proprietary rights were split up into Ala Malkiat rights and Adna Malkiat rights and

that the Ala Malik had a right to receive certain percentage of revenue and that in some cases, had a right of reversion to the land on the failure of the line of Adna Malik. Once it is admitted that the proprietary rights are divided between the Ala Malik (superior owner) and the Adna Malik (inferior owner) and the Ala Malik has a title and right to recover certain percentage of revenue which the Adna Malik is liable to pay, it is difficult to conclude that the Adna Malik, for all intents and purposes, had full rights of an owner. The two words 'Ala Malik' and 'Adna Malik' clearly indicate the distinct rights of the two and it would not be correct to say that the right of the Adna Malik was only a burden on the land held by Adna Malik and did not, in any manner, affect or curtail his rights of full ownership. By abolition of the Ala Malkiat rights, the right of the Ala Malik to recover certain percentage of revenue and his title as Ala Malik had been extinguished and the Adna Malik rights in the land have been enlarged and ripened into full ownership. Even if the effect of the abolition of the Ala Malkiat rights is that the burden has been cleared off, it would not make any difference as after the abolition, all rights, title and interest of an Ala Malik stood extinguished and all such rights, title and interest would vest in the Adna Malik free from all encumbrances. It would clearly be an enlargement of the rights of an Adna Malik. Apparently the moment the Ala Malik's rights are abolished, the institution of Adna Malik also comes to an end, and both the estates come to vest in one and the same person. The Adna Malik no more remains as an Adna Malik nor is he required to pay any amount as land revenue. The rights of Adna Malik are enlarged as the institution of inferior rights comes to an end. To say that the Adna Malik's is not a lesser right than that of a full owner and that after the abolition of the Ala Malik's rights the nature and character of the land in the hands of Adna Malik is not changed, would not be correct.

(9) Further we find from the entries in Dastur-ul-Amal in Dafa 11 of Bab Doem, dealing with the powers of alienation that the Adna Malik has been given a right of sale or mortgage and not a right to make a gift or will, which right, subject to certain conditions, has been specifically given to the occupancy tenants. If an Adna Malik had full rights of an owner, then his right of alienation could not have been limited to sale and mortgage and it would have been

clearly mentioned that he (Adna Maik) had unlimited and unrestricted power of alienation. The learned Single Judge has observed in his judgment that the Adna Malik has the full rights of an owner in as much as he can sell, mortgage or deal with his land as he likes. From the persusal of the Dastur-ul-Amal, it is clear that there are no such words therein that an Adna Malik can deal with his land as he likes. In our opinion, it can be safely inferred from the entries in Dastur-ul-Amal that the Adna Malik was not considered full owner and was treated, more or less, in the same manner as an occupancy tenant.

(10) Again from the entry in Dastur-ul-Amal it can be fairly concluded that in the instant case, an Ala Malik had the right of reversion in the land held by Adna Malik in the absence of all the heirs given in the list of heirs, and that the right of reversion was a contingent interest of the Ala Malik in the land held by the Adna Malik. Existence of such a right and interest further negatives the position of an Adna Malik being that of a full owner. In this respect we are in full agreement with the observations of Chief Justice Mehar Singh in *Gurdip Kaur v. Ghamand Singh*, (2), which appear at page 293 and read as under :—

“If His Highness the Raja of Faridkot was just a Talukdar probably relinquishment of such Talukdari rights—whether in the years 1945-46 by His Highness or later in 1949 by the former Pepsu State — would not affect the nature and character of the land in the hands of the respondent, but I consider that if the Ala Malkiyat (superior proprietorship) rights with His Highness the Raja of Faridkot were of the second class as referred to in the case just cited with a right of reversion to the Ala Malik on the death, without an heir, of the Adna Malik, then the acquisition of such Ala Malkiyat (superior proprietorship) rights would alter the nature and character of the land. The reason for this is that by such acquisition the holder of the land, which was previously ancestral in his hands as Adna Malik, acquires new rights in it, and having become its full proprietor, it then becomes his self-acquisition in the circumstances. If my impression of the former Faridkot State serves me right, I think His

Highness the Raja of Faridkot had the right of reversion. In the case of an Adna Malik succession in the former Faridkot State was governed by the rules in the Dastur-ul-amal of 1893 as appears clear from *Gurbinder Singh v. Lal Singh*, (3), at page 535; a Division Bench of this Court has held so in that case. According to the rules in the Dastur-ul-Amal in Chapter II, rule 14 says that the Ruler of Faridkot State was the Ala Malik of all the villages in that State and the rule then fixes 'Haq Talukdari' or Talukdari dues. But in Chapter I of the same, rule 1 deals with the question of succession and after giving the list of heirs entitled to succeed, it is stated that in case of absence of such heirs the property would pass to the 'Sarkar', which in the days of the former Faridkot State obviously meant the Ruler of Faridkot State. So that my impression is correct that in the former Faridkot State there was a right of reversion, in the event of failure of heirs of an Adna Malik, to the Ala Malik, the Ruler of former Faridkot State. This was a right of reversion somewhat different from a right of escheat, though as both vested in the Ruler of former Faridkot State, there might seem to be some measure of similarity between the two. But as there was the Ala Malik, who was also the Ruler of the State, and on failure of heirs provided in the Dastur-ul-amal, the property rights of the Adna Malik reverted to him, there really could not arise a question of escheat. Acquisition of Ala Malkiyat rights by an Adna Malik before the formation of the Pepsu State would alter the nature and character of the land in the hands of an Adna Malik. Although an Adna Malik held the land as ancestral, he having acquired the Ala Malkiyat rights and become full proprietor of the land would cease to hold the land as ancestral, it then becoming his non-ancestral or self-acquired land."

(11) Reference at this stage may also be made to the Pepsu Abolition of Ala Malkiyat Rights Act, 1954 (Act No. 17 of 1954). Under Section 3 of this Act, it is provided that on the appointed day,

all rights, title and interest (including the contingent interest if any, recognised by any law, custom or usage for the time being in force) of an Ala Malik in the land held under him by an Adna Malik shall be extinguished; and such rights, title and interest shall vest in the Adna Malik free from all encumbrances, if any created in the land by the Ala Malik. It is further provided that the Ala Malik shall cease to have any rights to collect or receive any rent in respect of such land and that he shall be entitled to receive and be paid such compensation as may be determined or deemed to have been determined under this Act. This Act is a clear pointer to show that the Adna Malik could not be termed prior to the abolition of the Ala Malkiat rights as full owner of the land which was possessed by him. He became full proprietor only on the appointed date after the extinction of the Ala Malik rights. It is correct that in the instant case the Ala Malik rights were abolished by virtue of a notification issued in 1949, but the other Ala Malik rights were put to an end by this legislation and the phraseology used in this Act clearly supports the view we have taken that the Adna Malik did not have the full rights of an owner and it was after the abolition of the Ala Malkiat rights that he became the full owner for all intents and purposes. The payment or non-payment of compensation would have no bearing on the determination of the question involved in this case and the contention of the learned counsel for the respondents in this respect has no force.

(12) Thus viewed from any angle, we are of the considered opinion that the abolition of the Ala Malkiat rights has created a new kind of estate in the Adna Malik and has altered the nature and character of the land in his hands. Therefore, the land in dispute cannot be considered to be ancestral *qua* the plaintiff and Buta Singh.

(13) For the reasons recorded above, we allow these appeals, set aside the judgment and decree of the learned Single Judge and restore that of the trial Court, dismissing the suit of the plaintiff. In the circumstances of the case the parties are left to bear their own costs throughout.

K.SK.