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Dua, J.

wrote the judgment, that it would be absurd that each successive reversioner should have twelve years for a suit for possession from the date of the death of the preceding reversioner. This observation, in my view, goes dead against the appellants' contention, and indeed the plaintiffs' suit must, according to the ratio of this case and the principle underlying this decision, be held to be out of time.

For the reasons given above, this appeal fails and is hereby dismissed with costs.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree

B. R. T.

APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

MST. TARO.—*Appellant.*

versus

DARSHAN SINGH AND OTHERS.—*Respondents.*

1959

July 23rd

Regular Second Appeal No. 771 of 1952 with Cross-Objections.

Hindu Succession Act (XXX of 1956)—Sections 2 and 4—Scope of—Provisions of the Act—Whether apply to Hindu Jats who were governed by Punjab agricultural custom in matters of succession prior to the enforcement of the Act—Last male holder dying succeeded by his widow—Determination of the next heir—Law applicable—Whether as in force at the time of the death of the last male-holder or of his widow.

Held, that prior to the coming into force of the Hindu Succession Act, 1956, every person was governed by his personal law, which, in the case of Hindus and Sikhs, was the Hindu law as modified by custom. Thus, custom including agricultural custom modified the Hindu law so far as the Hindu Jats were concerned to the extent to which it went counter to the provisions of strict Hindu

Law. Thus Punjab agricultural custom must be treated to be part of Hindu Law as it was in force in this State. In any case Punjab agricultural custom is a "law" dealing with Succession, which would cease to be operative under clause (b) of sub-section (1) of section 4 of the Act. From the date of the enforcement of the Hindu Succession Act, therefore, Punjab agricultural custom, so far as it was applicable to Hindus is no longer in force so far as the matters of succession etc. are concerned which are now governed by the provisions of the Hindu Succession Act.

Held, that it is not correct to say that the next heir of the last male-holder should be determined according to law in force at the time of the demise of the last male-holder because the succession opened out at that time. Succession really opens on the demise of the intervening female heir and not on the death of the last male-holder. Under Hindu law prior to Hindu Succession Act widow or other limited heir was the owner of the property inherited by her subject to certain restrictions on alienation, and subject to its devolving upon the next heir of the last full owner upon her death. The whole estate was for the time vested in her and she represented it completely.

Held further, that the next heir to her husband is to be determined in accordance with the law prevailing on the date of the death of the widow and not in accordance with the law prevailing at the time of the death of her husband. The daughter, according to the Hindu Succession Act, would be the next heir both to her father as well as to her mother (the widow).

Second Appeal from the decree of the Court of Shri Jowala Singh, District Judge, Hoshiarpur, dated the 5th day of June, 1952 modifying that of Shri Raghbir Singh Sub-Judge, II Class, Phagwara, dated the 31st day of March, 1951 (granting the plaintiffs a decree in respect of the houses in dispute and the land measuring 13 kanals 2 marlas comprise in Khata No. 29/47 of the settlement of 1963 B and the land measuring 261 kanals 12 marlas comprising Khata No. 6/31 of the settlement of 193 B against the defendants and further ordering that the will dated 29-9-97 in so far as it affected that property

and the mutation effected on the basis thereof would be null and void as against the reversionary rights of the plaintiffs after the death of Mst. Achhari, defendant No. 1, and dismising the plaintiffs' suit with regard to the remaining land and leaving the parties to bear their own costs) to the extent of holding the plaintiffs not entitled to a decree for a declaration in respect of Khata No. 29/47 measuring 13 kanals 2 marlas, and further ordering that the plaintiffs would not be bound by the will, dated 29-9-97B in respect of Khata No. 6/33 of 1983 B and the houses in dispute standing on fields Nos. 19, 21, 23 and 26, and dismissing their suit in respect of the rest of the property and making no order as to costs.

N. S. KEER & D. S. KEER, for Appellant.

P. C. PANDIT & K. S. THAPAR, for Respondents.

JUDGMENT

HARBANS SINGH, J.—Ganga Singh, the last male-holder of the property in dispute, died in 1941, leaving behind him his widow Mst. Achhari and daughters including Mst. Taro. By his will dated the 12th of January, 1941, he had bequeathed the landed property now in dispute to Mst. Taro and by virtue of the aforesaid will, a mutation of the land was sanctioned in her favour on 11th of July, 1941. The suit, out of which the present appeal has arisen, was filed on 29th of April, 1948, by the reversioners seeking the usual declaration that after the demise of Mst. Achhari, widow of Ganga Singh, the alienation made by the aforesaid will would not affect their reversionary rights. It was claimed by them that the entire property was ancestral and that neither Ganga Singh nor Mst. Achhari was competent to alienate the property. The suit was defended by Mst. Taro who challenged the ancestral nature of the property and urged that Ganga Singh had full power to alienate the property in any manner he liked. The trial Court came to the conclusion that some of the disputed

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property was ancestral *qua* the plaintiffs while the remaining property was non-ancestral and that Ganga Singh was competent to make the will with regard to the non-ancestral property but not with regard to the ancestral property and the plaintiffs were granted the decree prayed for in respect of the property found to be ancestral *qua* them. Both parties went in appeal but the decree in main was confirmed by the learned lower appellate Court except for the fact that some parcels of the land which had been found to be ancestral by the trial Court were held to be non-ancestral and the suit of the plaintiffs *qua* these *khasra* numbers was dismissed. Mst. Taro has filed this second appeal.

In view of the provisions of the Hindu Succession Act and the further fact that both Mst. Achhari and Mst. Taro are alive, the reversioners have no *locus standi* to bring the present suit because, whether there be a will or not Mst. Taro is the next heir after the demise of Mst. Achhari and the reversioners do not come in till the entire line of Mst. Taro becomes extinct. On behalf of the plaintiffs-respondents it was urged in the first instance that the Hindu Succession Act (hereinafter referred to as the Act) does not apply to the Jats who are primarily governed by the Punjab Agricultural Custom in matters of succession. Section 2 of the Act makes the Act applicable to all persons who are not Muslims, Christians, Parsis or Jews by religion, and, in particular, sub-clause (b) of sub-section (1) of section 2 specifically provides that the Act is applicable to Sikhs and it was not denied that the parties either belong to this religion or are otherwise Hindus and "are not Muslims, Christians, Parsis or Jews". Section 4 of the Act makes the provisions of this Act applicable to all persons governed by the Act to the exclusion of "any other law in force immediately before the

commencement of this Act". According to sub-clause (a) of sub-section (1) of section 4, *inter alia*, "any custom or usage as part of Hindu law in force immediately before the commencement of this Act ceases to have effect with respect to any matter for which provision is made in this Act". Prior to the coming into force of the Act, every person was governed by his personal law, which, in the case of Hindus and Sikhs, was the Hindu law as modified by custom. Thus, custom including agricultural custom modified the Hindu law so far as the Hindu Jats were concerned to the extent to which it went counter to the provisions of strict Hindu law. Thus, Punjab Agricultural Custom must be treated to be part of Hindu law as it was in force in this State. From the date of the enforcement of the Hindu Succession Act, Hindu law, as modified by custom, is no longer applicable, *qua* matters relating to succession. Sub-clause (b) of sub-section (1) of section 4 further makes it clear by providing that "any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act". Agricultural custom is certainly "a law" governing succession amongst Jats. Thus, we have no doubt that by virtue of sections 2 and 4 of the Hindu Succession Act, Punjab agricultural custom, so far as it was applicable to Hindus, is no longer in force so far as the matters of succession, etc., are concerned which are now governed by the provisions of the Hindu Succession Act.

The other question raised by the learned counsel for the respondents was that after the demise of Mst. Achhari, the next heir of the last male-holder should be determined according to the law that was in force at the time of the demise

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of the last male-holder because the succession opened out at that time, and that at the time of the demise of Ganga Singh in the year 1941, the Hindu Succession Act was not in force and, according to the law by which the parties were governed, reversioners were preferential heirs *qua* the ancestral property as against the daughter. We, however, cannot agree with this argument. Succession really opens on the demise of the intervening female heir and it is wrong to say that the succession opens out on the death of the last male-holder. As is stated in paragraph 176 of Mulla's Hindu Law "a widow or other limited heir * * * is owner of the property inherited by her subject to certain restrictions on alienation, and subject to its devolving upon the next heir of the last full owner upon her death. The whole estate is for the time vested in her and she represents it completely". It is only on the demise of the widow that we have to look for the next heir and not prior to that. The only difference is that on the demise of the widow, the property is to devolve upon the next heir of the last full owner and not on the next heir of the widow. It is, however, obvious that the next heir of the last male-holder is to be determined at the time of the demise of the widow because till then she fully represents the estate of the last male-holder. It is the case of the reversioners themselves that if there had been no will, the property would have been inherited by the widow, Mst. Achhari who is still alive, and leaving out the effect of section 14 of the Hindu Succession Act as regard the enlargement of her estate to an absolute estate, the next heir to her husband is to be determined in accordance with the law prevailing on the date of the death of the widow and not in accordance with the law prevailing at the time of the death of her husband. It was not denied that if this be so, the daughter, ac-

cording to the Hindu Succession Act, is a preferential heir. Even if Mst. Achhari had inherited the property in the absence of any will, Mst. Taro would be the next heir both to her husband Ganga Singh as well as to the widow herself.

Harbans Singh, J.

For the reasons given above, therefore, the reversioners have no *locus standi* to challenge the will made by Ganga Singh irrespective of the fact whether the property is ancestral or otherwise and we consequently accept this appeal, set aside the decree of the Courts below and dismissed the suit of the plaintiffs. In view, however, of the fact that change in the law had taken place during the pendency of this appeal, we leave the parties to bear their own costs throughout. Cross-objections by the plaintiffs *ipso facto* fail and are dismissed.

GOSAIN, J.—I agree.

Gosain, J.

B. R. T.

APPELLATE CIVIL

Before D. K. Mahajan, J.

CUSTODIAN EVACUEE PROPERTY, PUNJAB, JULLUNDUR,—*Appellant.*

versus

PRABHU DAYAL AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1119 of 1958.

1959

July, 24th.

Code of Civil Procedure (V of 1908)—Order 42 Rule 1—Second Appeal—Copy of the trial Court's judgment not filed—Presentation of appeal—Whether valid—Trial Court's jujdgment not stamped—Effect of—Administration of Evacuee Property Act (XXXI of 1950)—Section 46—Jurisdiction of the Custodian under—Extent of—Custodian—Whether has the power to decide if a property is under mortgage or that the suit for redemption is barred by time.