

- (ii) that the criteria laid down for determination of merit is not violative of the recommendations of the Medical Council of India;
- (iii) the criteria for admission is not arbitrary discriminatory; and
- (iv) the constitution of the Selection committee is valid.

(17) We further hold and direct that as far as the admission of the candidates for Group II (3 years' course) is concerned, the merit list should be prepared either out of 80 marks or 100 marks as indicated above. Resultantly L.P.A. No. 1098 of 1990 is allowed while L.P.A. No. 1097 of 1990 is partly allowed to the extent indicated above.

(18) Before parting with the judgment, we may observe that the University should take steps to finalise the admissions as expeditiously as possible and make all endeavour to see that a year of the students who get admitted in the Post-graduate courses is not wasted. We leave the parties to bear their own costs.

S.C.K.

Before G. R. Majithia, J.

UTTAM SINGH—Appellant.

versus

PARTAP SINGH (DECEASED) REPRESENTED BY HIS LEGAL HEIRS,—Respondents.

Regular Second Appeal No. 2110 of 1978.

19th December, 1990.

The Punjab Custom (Power to contest) Act, 1920—S. 7—Punjab Custom (Power to contest) Amendment Act, 1973—Alienation of ancestral property challenged—Declaratory decree passed—Amending Act abolishing right to challenge such alienation—Decrees already passed if invalidated by such amendment—Limitation for such suit—right to sue when accrues.

Held, that a declaratory decree already obtained by reversioner would continue to be operative as amending Act does not render such a decree a nullity. Consequently, after such a decree had

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been passed, a suit for possession of property alienated earlier by reversioner is not barred under Section 7 of the Act.

(Para 3)

Held, further, that the settled rule of custom as well as of the Hindu Law prior to the 1956 Act was that whenever a widow succeeded to the property, she succeeded as a representative of the husband and the husband is deemed to die when the widow dies. In other words, the succession in all such cases opens out on the death of the widow. A suit for possession of the land should have been instituted within 3 years of the death of the widow of the alienor's death.

(Para 5)

Regular Second Appeal from the decree of the Court of Shri T. N. Gupta Additional District Judge Amritsar, dated 6th October, 1978 reversing that of the Court of Shri D. S. Sandhu PCS Sub Judge III Class, Amritsar, dated 30th May, 1978 and dismissing the suit of the plaintiff with costs throughout.

Claim : Suit for possession of land measuring 61 Kanals, 5 Marlas, number Khasras 2032, 2098, 2064 min, 2092 min, 2064 min, 2065, 2092 min, 2066, 2064 min. number khewat 644 number Khalauni 880, to 985 of jamabandi 1970-71 situated in village Sultanwind Subarban, Tehsil and District Amritsar.

Claim in Appeal : For reversal of the order of the Lower appellate Court.

H. L. Sarin, Sr. Advocate with Ashish Handa & Hemant Sarin, Advocate, for the Appellants.

R. S. Bindra, Sr. Advocate with Renu Bala, Advocate, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) The plaintiff has come up in second appeal against the judgment and decree of the first appellate Court reversing on appeal those of the trial Judge and dismissing his suit for possession of the suit land.

The facts:—

(2) Gian Singh was the owner of the land in lieu of which the suit land was allotted in consolidation. He sold the same to Moola

Singh father of defendant Nos. 1 and 2 (respondent Nos. 1 and 2) and grand father of defendant Nos. 3 and 4 (respondent Nos. 3 to 5) by four sale deeds dated 29th July, 1918, 12th April, 1918, 28th May, 1918 and 20th March, 1918. The plaintiff challenged the sales through a declaratory suit on the ground that the property sold was ancestral qua him and the vendor and the sales were not effected for legal necessity or otherwise justified as an act of good management. The suit was decreed by judgment and decree dated 7th June, 1926 and the sales were declared invalid and in-effective against the right of the plaintiff. The vendor died on 1st March, 1927 leaving behind Smt. Shanti his widow who died on 30th May, 1977 and the suit for possession was filed on 8th June, 1977. The trial Judge decreed the suit but on appeal, the first appellate Court dismissed the same on the solitary ground that it was filed beyond limitation. The first appellate Court held that the cause of action arose to the plaintiff to bring a suit for possession on the commencement of the Hindu Succession Act and since the suit was not filed within three years from the date when the cause of action arose, it was beyond limitation.

(3) The approach of the first appellate Court to say the least is perverse. Section 7 of the Punjab Custom (Power to Contest) Act, 1920 (for short the Act) provides that no person shall contest any alienation of non-ancestral immovable property on the ground that such alienation is contrary to custom. Meaning thereby, the alienation of ancestral property could be challenged being contrary to custom. This Section was amended by Section 3 of the Punjab Custom (Power to Contest) Amendment Act, 1973 in view of which no challenge could be made to the alienation of any immovable property whether ancestral or non-ancestral on the ground that it is contrary to custom. A declaratory decree already obtained by reversioner would continue to be operative as amending Act does not render such a decree a nullity. Consequently, after such a decree had been passed, a suit for possession of property alienated earlier by reversioner is not barred under Section 7 of the Act.

(4) The only other question which arises for determination is whether succession to the estate of a male owner who is survived by a widow, will open out on the death of the male owner or that of the widow. It is a settled rule of custom as well as of Hindu Law that if a male owner dies leaving a widow the succession to the male owner opens out on the death of the widow. If the male owner does not leave behind widow, the succession opens out at the time of death of the male owner. In *Hafiz and*

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others v. Jiwan and others (1), almost an identical question arose for consideration. One Haidar sold the property. A usual declaratory suit was filed by the reversioner to challenge the sale. The suit ended in compromise to the effect that upon the death of alienor, the reversioner will get back the land on payment of Rs. 820. Haidar i.e. the alienor died on 22nd January, 1916. Under the Punjab Act (1 of 1920), Article 2(b) of the Schedule, a suit for possession of the land should have been instituted within three years of the alienor's death, but by virtue of the saving clause (6) this time was extended to one year after the coming into force of the Act. Interpreting this clause, it was held thus:

“A suit for possession must be filed within three years from the date on which the right to sue accrues. The right to sue in this case accrued when Haidar died. It would have been different if his widow had been alive. It would then have accrued on her death.”

In *Subedar Jiwan Singh v. Ram Kishan and others* (2), similar question arose and it was held thus:

“It is common ground now before us that creation of occupancy rights in ancestral land could only stand if it was justified by necessity. The declaratory decree declared the creation of such a tenancy invalid *vis-a-vis* the plaintiffs and the defendants. The plaintiffs could only take the benefit of the decree at the time when the succession would open out and if they were the heirs at law to the subject matter of the declaratory decree. It is a settled rule of custom as well as of Hindu Law that a male owner lives so long his widow lives and the succession only opens out on the death of the widow. But if there is no widow left by the last male-holder, the succession does open out at the time of the death of the last male-holder. In the present case, the succession opened out on death of Gurdevi. The defendants interest in land had become merely contingent i.e. on the death of Gurdevi they will lose that interest. As soon as Gurdevi died, they were left with no interest in the land.”

(1) A.I.R. 1926 Lahore 599.

(2) 1966(68) P.L.R. 626.

The ratio of this judgment was reiterated by a Full Bench of this Court in *Rattan Singh and another v. Ram Parkash and others* (3).

(5) The counsel for the defendant-respondents urged that the concept of Hindu women's limited estate has been abolished after the commencement of the Hindu Succession Act, 1956 (for short the 1956 Act) and the restraints and limitations on her power ceased to exist after the commencement of the 1956 Act. Thus, the cause of action to bring a suit for possession accrued to the plaintiff on the date of commencement of the 1956 Act. The submission is devoid of merit. It cannot be disputed that all the rules of Hindu Law, which are contrary to the rules laid down in the 1956 Act have been abrogated by the 1956 Act. So far as the succession is concerned, the Act is a complete code and all rules of succession known to Hindu Law have been abrogated. In all other respects, the rules of Hindu Law will prevail. The settled rule of custom as well as of the Hindu Law prior to the 1956 Act was that whenever a widow succeeded to the property, she succeeded as a representative of the husband and the husband is deemed to die when the widow dies. In other words, the succession in all such cases opens out on the death of the widow. In support of these observations, reliance can usefully be made to *Lala Duni Chand and others v. Mt. Anar Kali and others* (4), wherein it was held thus:

“There is no vesting as at the date of the husband's death, and it follows that the question of who is the nearest reversionary heir or what is the class of reversionary heirs, fall to be settled at the date of the expiry of the ownership for life or lives. The death of a Hindu female owner opens the inheritance to the reversioners, and the one most nearly related at the time to the last full owner becomes entitled to possession. In her lifetime, however, the reversionary right is a mere possibility, or *spes successionis*, but this possibility is common to them all for, it cannot be predicted who would be the nearest reversioner at the time of her death.”

The conclusion of the first appellate Court that the cause of action accrued to the plaintiff accrued to the plaintiff on the commencement of the 1956 Act is not known to law and cannot be sustained.

(3) 1985 P.L.J. 353.

(4) A.I.R. (33) 1946 Privy Council, 173.

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(6) For the reasons aforesaid, the appeal succeeds, the judgment and decree of the first appellate Court are reversed and those of the trial Court are restored, but with no order as to costs.

S.C.K.

Before S. S. Sodhi and Amarjeet Chaudhary, JJ.

H. K. CHOPRA,—Petitioner.

versus

THE POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH, CHANDIGARH AND OTHERS,—Respondents.

Civil Writ Petition No. 14764 of 1990.

21st January, 1991.

Constitution of India, 1950—Art. 226—Punjab Medical Registration Act, 1916—S. 13—Public interest litigation—Person questioning eligibility of a reputed Doctor to be registered as Medical Practitioner on the ground that he was registered under the British Medical Act—Registration in London accepted by the Punjab Medical College—Petition used as a device to block candidature of the Doctor for promotion—Vexatious proceedings—Malicious intent—Petition liable to be dismissed with punitive costs of Rs. 5,000.

Held, that according to S. 13 of the Punjab Medical Registration Act, 1916, every person who is registered or qualified to be registered under the British Medical Act is also entitled to be registered under the Punjab Act. The certificate from the General Medical Council, London, registers Dr. Dilawari with the British Medical Council. This has also been so accepted by the Punjab Medical College in their communication to the Medical Council of India. Such being the situation, no exception can indeed be taken to the registration of Dr. J. B. Dilawari as a Medical Practitioner under the Punjab Medical Registration Act, 1916.

(Para 4 & 5)

Held, that the conduct of the petitioner and other material on record lend credence to the fact that in the garb of public interest litigation, the petition was designed to help the interest of Dr. Dilawari's rivals for the post of Professor, by seeking to block his candidature by this device. Hence the present proceedings cannot be branded as vexatious and accordingly the petitioner is liable to be dismissed with punitive costs of Rs. 5,000.

(Paras 6 & 7)