APPELLATE CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Agha Haidar.

1927

June 29.

RAJ MAL (PLAINTIFF) Appellant

versus

HARNAM SINGH AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2038 of 1923.

Custom—Alienation—Suit by collateral of donor of ancestral land to contest sale of it by donee—locus standi *of plaintiff—Statutes—interpretation of—Punjab Custom (Power to Contest) Act, II of 1920, section 6—Preamble and operative part—Conflict between.*

In 1893 M. S. gifted a portion of his ancestral land to his *pichhlag* son H. S., who in 1920 sold the gifted land to defendants 2-4. The plaintiff, a collateral of M. S. (the donor), brought the present suit for a declaration that the sale should not affect his reversionary rights on the donee's line becoming extinct.

Held, that under section 6 of the Punjab Custom (Power to Contest) Act, II of 1920, the right to contest an alienation of ancestral land is limited to those persons only who are descended in the direct male line from the great-great-grandfather of the *alienor* and consequently the plaintiff had no *locus standi* to bring the suit.

Held also, that where (as in Act II of 1920) the enacting part of a Statute is not exactly co-extensive with the preamble, the former, if expressed in clear and unequivocal terms, will override the latter.

Mills v. *Wilkins* (1), *Coke 4 Inst. 330* (2) *Doe* v. *Brandling* (3), and *Fellows* v. *Clay* (4), referred to.

Sussex Peerage Case (5), *Powell* v. *Kempton Park Racecourse Co.* (6), *Secretary of State* v. *Maharaja Bobbili* (7), and *Mani Lal Singh* v. *Trustees for the Improvement of Calcutta* (8), followed.

(1) (1704) 6 Mod. 62.
(2) Coke 4 Inst. 330.
(3) (1823) 7 B. and C. 660.
(4) (1843) 4 Q. B. 349.
(5) (1844) 11 Cl. and Fin. 85, 143.
(6) 1899 A. C. 143, 157.
(7) (1919) I. L. R. 43 Mad. 529, 536 (P.C.).
(8) (1917) I. L. R. 45 Cal. 343 (F.B.).

1927

RAJ MAL
v.
HARNAM SINGH.

Held further, that it is not within the province of a Court to look to the Statement of Objects and Reasons or to the proceedings of the Legislative Council with a view to discover whether the words used mean something above and beyond what they say.

The Administrator-General of Bengal v. *Prem Lal Mullick* (1), *Krishna Ayyangar* v. *Nallaperumal Pillai* (2), and *Rup Kishore* v. *Bhagat Govind Das* (3), followed.

Second appeal from the decree of Rai Sahib Lala *Shibbu Mal, District Judge, Jullundur, dated the 1st June 1923, reversing that of* Lala *Kishan Chand, Munsif, 1st Class, Jullundur, dated 13th November 1922, and dismissing the plaintiff's suit.*

H. D. BHALLA, for Appellant.

JAGAN NATH BHANDARI, for Respondents.

JUDGMENT.

TEK CHAND J.—The suit out of which this second appeal has arisen, relates to land which originally belonged to one Mala Singh, who on the 6th April 1893 gifted it to his *pichhlag* son Hazara Singh, defendant No. 1. This gift was not challenged by the collaterals of Mala Singh, donor. On the 27th of August 1920, by a registered sale-deed, the donee Hazara Singh sold the gifted land to Harnam Singh, Basant Singh and Chhajju, defendants Nos. 2 to 4. On the 29th July 1921 Raj Mal, who is a collateral of Mala Singh, donor, in the third degree, instituted the present suit, alleging that the land was ancestral of himself and Mala Singh, that on Hazara Singh donee's line becoming extinct it would revert to the plaintiff and that the alienation by Hazara Singh had been made without consideration and necessity. He accordingly prayed for (*i*) a declaration that the sale

TEK CHAND J.

(1) (1895) I.L.R. 22 Cal. 788 (P.C.). (2) (1919) I.L.R. 43 Mad. 550 (P.C.).
(3) (1922) 69 I. C. 748.

1927

RAJ MAL
v.
HARNAM SINGH.

TEK CHAND J.

by Hazara Singh, donee, in favour of Harnam Singh and others should not affect his reversionary rights after the death of Hazara Singh, *or in the alternative*, (*ii*) a decree for possession by way of pre-emption.

The defendants *inter alia* pleaded that the plaintiff had no *locus standi* to maintain the suit for declaration and that the sale was for consideration and necessity.

The trial Court, finding the land to be ancestral of Raj Mal, plaintiff, and the donor Mala Singh, held that he was competent to contest the alienation by Hazara Singh, donee, and that the sale was without necessity. It accordingly decreed the claim for declaration, but gave no decision on the alternative claim for pre-emption. On appeal by the vendees, the learned District Judge held that the plaintiff had no *locus standi* to contest the sale under section 6 of the Punjab Custom (Power to Contest) Act, II of 1920 and that, therefore, the plaintiff's claim for declaration was not maintainable. He accordingly accepted the appeal and remanded the case to the trial Court for decision of the claim for pre-emption. Against this order of remand the plaintiff has preferred a miscellaneous appeal to this Court.

It will be seen from the statement of facts given above that the alienation in question was made by Hazara Singh, donee, to whom the plaintiff is not in any way directly related. The plaintiff is a collateral of Mala Singh, donor, and he claims to contest the alienation on the ground that under the customary rule of reversion he has a residuary right to succeed to the gifted property on the line of the donee becoming extinct. The defendants resist the claim on the ground that the right to contest alienations of im-

moveable property is now by statute restricted only to the male lineal descendants of the great-great-grandfather of the *alienor* and even if it be assumed that the land is ancestral of the donor and the plaintiff and that it would, on extinction of the donee's line, revert to the plaintiff, he has no right to contest the alienation. They contended that the power to control alienations which could formerly be exercised under the rules of Punjab Customary Law by persons having a residuary right to succeed to ancestral property, has been materially cut down by Act II of 1920, and as the plaintiff is not among the persons to whom alone the right to sue is reserved under section 6 of that Act, he has no right to question the alienation. The plaintiff rejoins, that the preamble of the Act indicates that it was intended only to restrict the power of descendants and collaterals *of the alienor* to contest his alienations and as the plaintiff is not a descendant or collateral of the alienor, therefore, the Act does not in terms apply to him, and that the power to control alienations by the person in possession, which the plaintiff had under the general Customary Law, has not in any way been affected by the Act and can still be exercised by him.

In order to appreciate the legal position properly it is necessary to examine carefully the wording of the preamble and the operative parts of the Act. The preamble runs as follows :—

" Whereas it is expedient to enact certain restrictions on the power of *descendants or collaterals* to contest an alienation of immoveable property or the appointment of an heir on the ground that such alienation or appointment is contrary to custom; And whereas the previous sanction of the Governor-

1927

RAJ MAL
v.
HARNAM SINGH.

TEK CHAND J.

General has been accorded under section 79 (2) of the Government of India Act, 1915, to the passing of this Act, it is hereby enacted as follows;"

It is clear that the preamble describes the Act as laying down restrictions on the power of *descendants and collaterals of the alienor* only and not on that of the other reversionary heirs.

Section 1 gives the short title of the Act as the Punjab Custom (Power to Contest) Act, 1920, and states that it extends to the Punjab. Section 2 defines certain words, and Sections 3, 4 and 5, contain provisions, which are not material for our present purposes. Then comes Section 6, which is worded as follows :—

" Subject to the provisions contained in section 4 and *notwithstanding anything to the contrary contained in section 5*, Punjab Laws Act, 1872, *no person* shall contest *any* alienation of ancestral immoveable property or any appointment of an heir to such property on the ground that such alienation or appointment is contrary to custom, unless such person is descended in male lineal descent from the great-great-grandfather of the person making the alienation or appointment."

It will be noticed that this section distinctly lays down that notwithstanding any rule of custom, which the Courts were bound to give effect to under section 5 of the Punjab Laws Act, *no person* is now entitled to contest an alienation of ancestral immoveable property unless he is descended in the male line from the great-great-grandfather of the alienor. The words used in section 6 are clear and explicit and there is no ambiguity about them. The legislature has used language, the plain meaning and effect of which is to

take away the right to contest alienations of ancestral property from all persons (whether agnatically related to the alienor or not) who had heretofore the right to contest alienations, and to limit it only to the descendants of the great-great-grandfather of the alienor.

There is thus an apparent conflict between the preamble of the Act and section 6. The plaintiff in this case is, as already pointed out, a collateral of the original donor Mala Singh and not a descendant of the great-great-grandfather of the donee Hazara Singh, who is the person whose alienation is in dispute. If section 6 is to be literally interpreted, the plaintiff has obviously no *locus standi* to sue. If, on the other hand, that section is controlled and qualified by the preamble, then the Act is inapplicable to the plaintiff and whatever rights he possessed under the Customary Law, they are still left intact. The question to be decided, is, which of these two conflicting provisions is to prevail.

In order to find an answer to this question, it is necessary to ascertain the true place of the preamble in a statute. In England different opinions have been held at different times on the subject. There have been distinguished Jurists who have maintained that the preamble is not an integral part of the Act, but that it is something outside it. No less an authority than Lord Holt is reported to have said that "a preamble of a statute is no part of it, but contains generally the motives or inducement thereof." *Mills* v. *Wilkins* (1). On the other hand, equally eminent lawyers have considered "the preamble as undoubtedly a part of the Act; a key to open the meaning of the makers of the Act and the mischiefs

(1) (1704) 6 Mod. 62.

1927

RAJ MAL v. HARNAM SINGH.

TEK CHAND J.

it was intended to remedy." Coke 4, Inst. 330 (1) In modern times neither of these extreme views is accepted as correct in its entirety. The prevailing rule of construction which seeks to reconcile these conflicting *dicta* may be thus expressed:—Where the enacting part is explicit and unambiguous, the preamble cannot be resorted to to control, qualify or restrict it; but where the enacting part is ambiguous, the preamble can be referred to to explain and elucidate it. It was laid down by Lord Tenterdon in *Doe* v. *Brandling* (2). "If on a review of the whole Act a wider intention than that expressed in the preamble appears to be the real one, effect is to be given to it notwithstanding the less extensive import of the preamble." This position was further explained by Lord Denman in *Fellows* v. *Clay* (3). "The preamble is often no more than a recital of some of the inconveniences, and does not exclude any others for which a remedy is given by the statute. The evil recited is but the motive for the legislation; the remedy may both consistently and wisely be extended beyond the cure of that evil." Similarly Tindal C. J. observed in the well-known *Sussex Peerage Case* (4). "If the words of the statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which according to

(1) Coke 4 Inst. 330.
(2) (1828) 7 B. & C. 660.
(3) (1843) 4 Q. B. 349.
(4) (1844) 11 Cl. & Fin. 85, 143.

Chief Justice Dyer is a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress." The latest authoritative pronouncement on the subject is by Lord Halsbury L. C. in *Powell* v. *Kempton Park Racecourse Co.* (1) where his Lordship expressed himself as follows:—Two propositions are quite clear, one that a preamble may afford useful light as to what a statute intends to reach, and another that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment."

This rule has been applied in the interpretation of several Acts of the Indian and Provincial Legislatures. In *The Secretary of State for India* v. *Maharaja Bobbili* (2), their Lordships interpreted the plain meaning of the Madras Irrigation Cess Act, regardless of the restrictive provisions of the preamble thereof. Lord Shaw in delivering the judgment of the Judicial Committee remarked that as the section of the Act made operative provisions in excess of the apparent ambit of the preamble, "it is the section that must govern" and not the preamble. A Full Bench of the Calcutta High Court in the well-known case of *Mani Lal Singh* v. *Trustees for the Improvement of Calcutta* (3) followed the same rule and held that the preamble of the Calcutta Improvement Act did not restrict or control its enacting provisions.

It may, therefore, be taken as settled law that where (as in Act II of 1920) the enacting part of a statute is not exactly co-extensive with the preamble, the former, if expressed in clear and unequivocal terms, will over-ride the latter, but if ambiguous or

(1) 1899 A. C. 143, 157. (2) (1919) I. L. R. 43 Mad. 529, 536 (P.C.).
(3) (1917) I. L. R. 45 Cal. 343 (F.B.).

1927

RAJ MAL
v.
KARNAM SINGH.

SEK CHAND J.

doubtful phraseology is used in the body of the Act, the preamble may be referred to to resolve the ambiguity.

Now the wording of section 6 of the Punjab Act II of 1920 is, to my mind, absolutely clear and unambiguous. I can find no doubt or ambiguity in it, and following the rule enunciated above, I feel bound to ignore the restrictive provisions of the preamble and to hold that the Act has the effect of limiting the right to contest an alienation of ancestral land only to those persons who are descended in the direct male line from the great-great-grandfather of the alienor. As the plaintiff does not fulfil this description, the learned District Judge came to a correct conclusion in deciding that he had no *locus standi* to sue.

I wish, however, to point out that the learned District Judge has, in construing the Act, fallen into an error in relying upon "the Statement of Objects and Reasons attached to the Bill, which ultimately passed into Act II of 1920, the report of the Select Committee and the controversy which raged before the passing of Act." It is well settled that in construing an Act of the Legislature where the words are absolutely clear and unambiguous it is not within the province of a Court to look to the Statement of the Objects and Reasons or refer to the proceedings of the Legislative Council with a view to discover whether the words used mean something above and beyond what they say. *The Administrator General of Bengal* v. *Prem Lal Mullick* (1), *Krishna Ayyangar* v. *Nallaperumal Pillai* (2) and *Rup Kishore* v. *Bhagat Govind Das* (3).

(1) (1895) I. L. R. 22 Cal. 788 (P.C.).
(2) (1919) I. L. R. 43 Mad. 550 (P.C.). (3) (1922) 69 I. C. 748

The appeal fails and I would dismiss it with costs.

AGHA HAIDER J.—I agree. AGHA HAIDER J.

N. F. E.

Appeal dismissed.

MISCELLANEOUS CRIMINAL.

Before Mr. Justice Tek Chand.

1927

July 12.

In the matter of H. DALY AND OTHERS and the judgment of *Diwan* Sita Ram, Magistrate, 1st class, Jhelum, in Criminal Case No. 20/15 of 1925, EMPEROR *v.* RAM LAL, etc., dated 17th November 1926.

Criminal Miscellaneous No. 162 of 1927.
(Criminal Revision No. 373 of 1927.)

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), section 561 A—Inherent power—of High Court—to expunge passages from judgments of Subordinate Courts—principles applicable in the exercise of this power.

Held, that the High Court has power to expunge passages from judgments delivered by itself or by Subordinate Courts and its power has been put beyond controversy by the enactment of section 561 A in the Code of Criminal Procedure.

Panchanan Banerji v. *Upendra Nath* (1), *Amar Nath* v. *Crown* (2), and *Benarsi Das* v. *Crown* (3), referred to.

But this jurisdiction is of an extraordinary nature and has to be exercised with great care and caution.

Mohammad Qasam v. *Anwar Khan* (4), followed.

It is of the utmost importance to the administration of justice that Courts should be allowed to perform their functions freely and fearlessly and without interference by the

(1) 1927 A. I. R. (All.) 193.
(2) (1924) I. L. R. 5 Lah. 476, 479.
(3) (1925) I. L. R. 6 Lah. 166.
(4) 1926 A. I. R. (Lah.) 382.