

APPELLATE CIVIL.

Before Young C. J. and Rangī Lal J.

MIHAN SINGH *alias* JAGAT SINGH (PLAINTIFF)

Appellant

versus

SHIV DITT SINGH AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 296 of 1933.

Limitation—Suit for possession—against an alienee of reversionary rights (on remarriage of widow)—Punjab Limitation (Custom) Act, I of 1920, Article 2—whether applicable—Indian Limitation Act, IX of 1908, Article 144—Transfer of reversionary rights—whether a sale.

Plaintiff, S. and R. S. were reversioners *inter se*. R. S. died before 1909 and on his death his widow *Mst.* J. K. succeeded to his whole land on the usual widow's estate. She married S. the plaintiff on 13th April, 1917. S. sold his half share of the reversionary rights in the estate of R. S. on 25th April, 1909, to defendants. On 13th January, 1926, plaintiff brought the present suit for a declaration, subsequently changed to one for possession of the whole land left by R. S. The District Judge in appeal dismissed the plaintiff's suit as time-barred under Article 2 of the Schedule of the Punjab Limitation (Custom) Act, I of 1920.

Held, that a sale of a reversionary right does not effect a transfer of property, but merely gives rise to a right, which the Court will enforce when the inheritance falls into possession, and, therefore, in this case there was no sale of ancestral property on the date on which the widow re-married and Punjab Act I of 1920 did not apply.

Padmun v. Achhar (1), *Malik Ala Bakhsh v. Ghulam* (2), and *Naranjan Singh v. Dharam Singh* (3), followed.

Buta Singh v. Jhandu (4), disapproved.

(1) 1926 A. I. R. (Lah.) 39.

(2) 13 P. R. 1899.

(3) (1931) 129 I. C. 29.

(4) (1921) 61 I. C. 375.

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And, that the present suit was accordingly within time, applying the ordinary period of twelve years applicable to an ordinary title suit against a trespasser.

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Second Appeal from the decree of Lala Devi Dayal Dhawan, District Judge, Ludhiana, dated the 2nd November, 1932, reversing that of Mian Jalal-ud-Din, Subordinate Judge, 2nd Class, Ludhiana, dated the 17th November, 1931, and dismissing the plaintiff's suit.

NAND LAL, for Appellant.

MOHAMMAD DIN JAN, for MOHAMMAD SHAH NAWAZ, for Respondents.

The Order, dated 15th November, 1933, referring the case to a Division Bench, was as follows:—

DALIP SINGH J.—The pedigree-table of the parties **DALIP SINGH J.** is given in the judgment of the learned District Judge. The plaintiff Mihan Singh sues for the entire estate left by Ran Singh on the ground that Ran Singh left a widow *Mussammatt Jai Kaur*, who is now married to Mihan Singh, plaintiff, and has thereby forfeited her rights. The other reversioner Sadda is dead and hence Mihan Singh is entitled to his share. The suit was originally brought as a declaratory suit on the 13th January, 1926, but, as the revenue authorities partitioned this property between Mihan Singh and certain people, who claimed as alienees from Sadda, the plaint was amended into a suit for possession. The plaintiff's case was that Sadda could not transfer his reversionary rights and that the sale, which was made in 1909, was void as *Mussammatt Jai Kaur* was alive at the time. He also impeaches the sale for want of consideration and necessity. The plaintiff stated that Sadda had died in December,

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1924. The defendants denied this. After *Mussammat* Jai Kaur's remarriage which took place on the 13th April, 1917, mutation had taken place on the 25th September, 1920, when the parties to the present litigation were shown as jointly owning the property. Up till 1920 *Mussammat* Jai Kaur continued in possession though she had remarried in April, 1917. The learned District Judge in appeal dismissed the plaintiff's suit holding that it was barred by limitation on the ground that in *Malik Ala Bakhsh v. Ghulam* (1), *Padmun v. Achhar* (2) and *Buta Singh v. Jhandu* (3), it was held that "where a reversioner purports to sell his reversionary rights in an estate during the lifetime of the widow of the last owner, the transaction amounts to no more than a mere agreement to sell, which takes effect immediately on the death of the widow, so that the date of alienation is not the date of the sale by the reversioner but the date of the death of the widow on which the transfer takes effect." He held, therefore, on the authority of these rulings that in the Punjab the sale of reversionary rights is not void. It can be enforced when the estate falls into possession. He held, therefore, that the alienation of reversionary rights by Sadda in 1909 became an alienation of property on the remarriage of *Mussammat* Jai Kaur in 1917. The plaintiff's suit for a declaration was, therefore, barred under article 2 of Punjab Act I of 1920 and the suit for possession was similarly barred. He made a casual reference that the suit was also barred by the rule of *res judicata* but the learned counsel for the respondents very properly did not rely on this, because I do not think the learned District Judge intended to give a decision on

(1) 13 P. R. 1899. (2) 1926 A. I. R. (Lah.) 39.

(3) (1921) 61 I. C. 375.

the point, he having previously stated expressly that he was deciding the appeal on the question of limitation alone.

The question involved in this appeal raises a point of some difficulty. It may be correct that in the Punjab where the Transfer of Property Act is not in force an agreement to sell reversionary rights is not void as an agreement and can be enforced when the succession opens out, but it is a different proposition to hold that where a person has sold his reversionary rights, then *ipso facto*, when the succession opens out, the sale of the reversionary rights becomes the sale of the land which falls to the reversioner on that date. It was held by the Privy Council in *Harnath Kunwar v. Inder Bahadur Singh* (1), that a sale of reversionary rights could not be effected by deed of sale, for the right was not capable of being so transferred. It has been held that a reversionary right is a *spes successionis* and therefore the sale of such rights does not need registration. To my mind it appears to be a totally different question as to whether such an agreement can be enforced when succession opens out against the vendor or his representatives. I find, however, that in *Buta Singh v. Jhandu* (2) where the suit was to set aside the sale on the ground of lack of consideration and necessity it was held that the date of limitation was the date of the widow's death. This would certainly support the position of the learned District Judge. Similarly in *Naranjan Singh v. Dharam Singh* (3), another Division Bench approved of this ruling and allowed a declaratory suit to proceed. On the other hand in *Padmun v. Achhar* (4) the learned Judge held that a suit for

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(1) (1923) I. L. R. 45 All. 179 (P. C.). (3) (1931) 129 I. C. 29.
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specific performance lay to enforce the agreement. I find it difficult to reconcile these rulings. If the sale of reversionary rights *ipso facto* became a sale of land on the succession opening out, the suit should be one for possession and not a suit for specific performance of an agreement to sell. I also find it difficult to reconcile the remarks in *Buta Singh v. Jhandu* (1) with the Privy Council decisions. A suit by a reversioner to set aside a sale of reversionary rights would not lie, for custom only empowers the reversioner to bring a suit to set aside the alienation of ancestral land, and the sale of reversionary rights is not a sale of ancestral land, according to the Privy Council, and therefore, until steps are taken to enforce the alienation, it would remain merely an agreement to sell and there would be no question of any suit by a reversioner to have the sale of reversionary rights set aside. Such a suit obviously could not be brought in the present case in 1909 when the sale itself took place and I am unable to see that the death or remarriage of the widow should somehow or other give the reversioner power to bring a suit to have the sale set aside. In view, however, of the Division Bench authorities I consider that this case should be referred to a Division Bench for a decision on the question of limitation.

The judgment of the Division Bench was delivered by—

YOUNG C. J.—The only question for decision in this case is whether the sale of a reversionary right *ipso facto* becomes a sale of the land which falls to the reversioner when succession opens out. It has been held in *Padman v. Achhar* (2) that a sale of a reversionary right does not effect a transfer of property but merely gives rise to a right which the Court will

(1) (1921) 61 I. C. 375.

(2) 1926 A. I. R. (Lah.) 39.

enforce when the inheritance falls into possession. The same view was taken by a Division Bench of the Chief Court in *Malik Ala Bakhsh v. Ghulam* (1) and by a Division Bench of this Court in *Naranjan Singh v. Dharam Singh* (2). The learned Judge in Chambers, who has referred this case to a Division Bench, found that he could not reconcile the authorities mentioned above with the ruling in *Buta Singh v. Jhandu* (3). In that case it was held that the date of the alienation was not the date of the sale of his reversionary right by the reversioner but the date of the death of the widow on which the transfer takes effect. This decision was based on *Malik Ala Bakhsh v. Ghulam* (1), but in that case all that was held was that the vendee of a reversionary right can enforce the agreement when succession opens out. Anyhow the balance of authority is against the view taken in *Buta Singh v. Jhandu* (3). It cannot by any means be said that in this case there was a sale of ancestral property on the date on which the widow remarried. Punjab Act I of 1920, has, therefore, no application to the case. This being so, the ordinary period of limitation, *i.e.* twelve years, would apply to the case. The nature of the suit is that of an ordinary title suit against a trespasser. We are, therefore, of opinion that the suit was not barred by time. The decree of the learned District Judge is, therefore, set aside and the case is remanded for decision on the merits. Appellant's costs to be paid by the respondents both in this Court and the Court below.

A. N. C.

Appeal accepted;
Case remanded.

(1) 13 P. R. 1899.

(2) (1931) 129 I. C. 29.

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