

CASE NO.:
Appeal (civil) 992 of 1975

PETITIONER:
BAKSHI RAM AND ORS.

RESPONDENT:
BRIJ LAL

DATE OF JUDGMENT: 19/07/1994

BENCH:
R.M. SAHA1 & B.L. HANSARIA

JUDGMENT:
JUDGMENT

1994 SUPPL. (1) SCR 795

The Judgment of the Court was delivered by

R.M. SAHAI, J. This appeal is directed against the judgment and order of the High Court of Himachal Pradesh. Even though a certificate' was granted by the High Court under Article 133(1) of the Constitution of India as there was no decision of this Court on the question whether the rights of a reversioner to get a declaratory decree stands frustrated after coming into force of the Hindu Succession Act the real issue is if the appellants who were remote reversioners were competent to sue on the compromise decree obtained by them in lifetime of the female next reversioner who become owner under the Hindu Succession Act.

It has been found by all the Courts below that one Sunder was owner of extensive property which were in nature of a joint family property. He executed a gift in favour of a distant collateral Brij Lal which was challenged by the appellants who were the remote reversions. The suit was compromised between parties that is the appellants, Sunder the alienor and Brij Lal, the alinee, and his brothers. As a result of the compromise 15 Kanals and 15 Marias i.e., 1/8th share of the land which had been the subject of gift by Sunder in favour of Brij Lal was to be given to the appellants after the death of Sunder. Some share was given to the brothers of Brij Lal as well. Other property which was the subject-matter of gift was to go to the share of Brij Lal The compromise entered between the parties was given shape of a decree for declaration in terms of the compromise. Sunder died in 1964. The appellants, thereafter, filed this suit for their share under the compromise decree which was resisted by Brij Lal and one of the pleas raised by him was that Lilan, sister of Sunder being alive, the appellants had no right to sue or recover possession of the land in dispute. All the courts agree that Lilan was a sister of sunder and she was alive on the date when Sunder died. But they differed on the effect in law of her being alive. The Trial Court dismissed the suit whereas the Subordinate Judge decree it It was held that the appellant was entitled to recover possession in terms of the compromise decree arrived between parties. The appellate decree was confirmed by the learned Single Judge. It was held that the appellants were enforcing the right which was given to them as a result of the compromise in the earlier suit. It was further held that Lilan was not a party to the suit and whatever may be her rights, Brij Lal, the defendant, could not raise any objection of non-maintainability of the suit But the order of the learned Single Judge was set aside in further appeal in letters Patent by the Division Bench. It was held that although the decree obtained by the appellants was declaratory which enured even the benefit of Smt. Lilan it did not prevent Brij from taking the objection that the decree being for the benefit for entire body of reversioners and Smt. Lilan being nearer than the appellants, the suit was liable to be dismissed.

A reversioner under customary Hindu Law had a right to challenge the alienation if it was not for legal necessity. Such a right vested in respect of joint family property as well. The appellants, who were remote reversioners, therefore, could file the suit against a stranger. Even the High Court did not dispute that the suit filed by the remote reversioner was maintainable. A decree in such suit against alienation enured for the benefit of the entire body of reversioners and it is only a nearer reversioner who can oust the remote reversioner either in the same suit or in a latter suit. But a third person or the alinee could not claim that the suit was not maintainable as it was filed by a distant reversioner. The appellants had, however, been non-suited as the declaratory decree obtained by them could not be enforced as Lilan the next reversioner was alive.

How far this enunciation of law is correct? Could the respondents raise the plea of incompetency of the suit? What was not disputed was that the rights of the parties flowed from the compromise decree. It was not a declaratory decree as ordinarily understood. The rights acknowledged and declared were not only of the appellants but even of brothers of Brij Lal who were not donees, and, as such, rank outsider. In any case the compromise decree having become final it was binding between the parties. Brij Lal could not wriggle out of its binding effect. In equity a person drawing benefit from a transaction is not permitted to escape from the disadvantage if any flowing from it. The respondent having prevented the appellants from getting a declaration that the entire gift deed was invalid in lieu of which they gave up, because of the compromise, their claim for the property in dispute cannot be permitted to turn rounded now and take the stand "Heads I win, tails you loss". Law has to promote justice. The courts of equity and justice cannot "uphold such an unfair stand. The respondent cannot be permitted to reprobate to his advantage. The binding effect of the compromise decree could not be taken away as it was to operate after death of the donor. May be a person with a better right, for instance Lilan, could sue the appellants and claim the property being nearer but that could not dilute either the effect of the compromise decree, even though in nature of a declaratory decree, not it could clothe the alinee with any right to resist the claim of the remote reversioner for recovery of possession on the ground that the next reversioner being alive the suit was not maintainable. The recovery of possession by the appellants could even be for the benefit of all the reversioners including the next reversioner, but it certainly did not adversely affect the suit filed by them recovery of possession against a third person.

Relying on *Giani Ram & Ors v. Ramji Lal & Ors.*, [1963] 3 SCR 944, it was urged for the respondent that the property could be restored to the estate of the alienor only if it was filed by a reversioner who was competent to sue. The learned counsel urged that since the appellants were remote reversioners they could not be considered to have competent to sue, and so, the decree obtained by them was not enforceable. Support was drawn also from *Ram Chander Dank v. Ganeshdas Rathi & Ors.*, AIR (1984) SC 42 wherein it was held that claim for apportionment of compensation by reversioner of last male owner in respect of acquired property was not maintainable as the widow of the last male owner was alive. No assistance could be drawn from the latter decision as appointment of compensation is between persons who are entitled to claim it. The widow of the last male owner being alive the compensation could not have been paid to any other person. It was not a case where the reversioner was claiming against a third person and if the claim would have succeeded it would have gone to the benefit of all the reversioners. The requirement under the Land Acquisition Act is to pay compensation to the person entitled. Once it was established that the widow of the last male owner was alive and that too after coming into force of Hindu Succession Act it was she and she alone who was entitled to compensation and any other person had not right to it. In *Giani Ram* (supra), it was held by this Court that the effect of such a declaratory decree is that the property is reverted to alienors estate. Therefore, when succession opened on the death of Sunder, the donor, it would have been

governed by the law in force. Lilan being sister and nearer than the appellants could claim by virtue of the decree that the right and interest of alienor devolved on her. But if she did not, it could not recoil against the appellants and in favour of stranger.

Further, Lilan undisputedly died during the pendency of the appeal in this Court. Therefore, the rights of the appellants even if they were dormant due to nearer reversioner being alive got activated after her death and it is appropriate in exercise of power both under Order 41 Rule XXXHI and under Article 142 of the Constitution to grant a decree in favour of appellants. May it be stated that appellants' right flowing from the compromise decree had at no point of time been denied by Ulan during her life time.

In the result the appeal succeeds and is allowed. The order passed by the Division Bench in the Letters Patent is set aside and that of the learned Single Judge is restored.

Parties shall bear their own costs.