Devi Singh and ors. Vs. Mt. Phulma and ors.

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Court : Himachal Pradesh

Decided On : Sep-13-1960

Reported in : AIR1961HP10

Judge : C.B. Capoor, J.C.

Acts : Hindu Law; ;Evidence Act, 1872 - Section 32(2); ;Hindu Succession Act, 1950 - Section 14

Appeal No. : First Appeal No. 12 of 1959

Appellant : Devi Singh and ors.

Respondent : Mt. Phulma and ors.

Advocate for Def. : B. Sita Ram, Adv.,; Rati Ram and; Kedar Ishwar, Advs

Advocate for Pet/Ap. : Thakar Dass and; D.R. Manchanda, Advs.

Judgement :

C.B. Capoor, J.C.

1. This is a plaintiffs' appeal and arises out of a suit filed by them for a declaration that the gift-deed dated 16-3-1955 executed by Mt. Phulma, defendant No. 1, in respect of a one-half share of land measuring 245 bighas 6 biswas and five houses situated in village Malheri and some other property, described in the heading of the plaint, in favour of Jit Singh, the since deceased defendant No. 2,

and Rati Rain, defendant No. 3, was void and ineffective.

2. The main allegations were that the plaintiffs, Mehar Singh, the husband of Mt. Phulma, and Jit Singh and Rati Ram were members of a joint Hindu family governed by the Mitakshara branch of the Hindu Law, that the property comprised in the deed of gift, referred to above, was coparcenary property and was not in possession of Mt. Phulma and as such she was not competent to transfer the same. In the alternative, it was alleged that even if the aforesaid property is held to have been the self-acquired property of Mehar Singh, his wife Mt. Phulma could have had a limited interest only therein and the gift made by her would not enure beyond her life time.

3. According to the pedigree table, proved in the case, Rattan the father of Mehar Singh and Gosain, the great grandfather of the plaintiffs, were own, brothers, being the sons of Narpat. Gosain had two sons named Dass and Sidhia. Dass had three sons named Shibu, Lagnu and Harshu. Jit Singh and Ratti Ram were the sons of Shibu, Durga, Tulsi Ram, Harinand and Kahan Singh were the sons of Lagnu; Narain Singh was the son of Harshu. Devi Singh, Daulat Ram and Dhyan Singh were the sons of Harichand. The sons of Langu, Harshu and Harichand figured as plaintiffs to the suit.

4. The suit was resisted by the defendants 1 to 3 mainly on the allegations that about 52 years back Mehar Singh separated from, other members of the family except the father and grandfather of the donees with whom he continued to remain joint, that after the death of Mehar Singh, the names of his widows Mt. Phulma and Mt. Rajjo were entered in the revenue papers as against his one-half share, that at the time of the making of the gift Mt. Phulma was in possession of the donated property and that under the Hindu Succession Act of 1956 her estate was enlarged and she became the full owner of the property left behind by her husband. Mt. Begamu, the widow of Harshu, was impleaded as defendant No. 4, who did not contest the suit.

5. The learned Senior Subordinate Judge framed as many as 9 issues some of which overlapped inter se and one, namely Issue No. 8, was quite unnecessary. The conclusions reached by the learned Senior Subordinate Judge inter alia were

that (i) Mehar Singh had separated from the other members of the family, was in possession of his one-half share, the property comprised in the deed of gift was not coparcenary property and the plaintiffs did not have any interest therein; (ii) as Mt. Phulma was not in possession of the disputed property at the time when the Hindu Succession Act of 1956 came into force she did not become the absolute owner thereof and (iii) as the donees were themselves the reversioners to the estate of Mehar Singh, the plaintiffs were not entitled to challenge the deed of gift.

6. Such of the aforesaid findings as were against the plaintiffs have been challenged in appeal. The points for determination are (a) whether Mehar Singh had prior to his death separated from the other members of the family and his one-half share in the family property was inherited by Mt. Phulma. (b) If the answer to the aforesaid point be in the affirmative, whether the plaintiffs were not entitled to maintain the suit for a declaratory relief claimed in-the alternative in view of Section 14 of the Hindu Succession Act, or of the fact that the donees were also the reversioners to the estate of Mehar Singh.

7. Point (a) : The defendants have filed extracts from Register Intkalat Exs. D. W. 3/32 to Ex.. D. W. 3/35. Ex. D. W. 3/32 bears out that in the life time of Mehar Singh his name was entered as against one-half share of land in mauza Malheri and that the entries as against the remaining one-hall: share-were as below:

(i) Shibu, Langu and Harshu sons of Dass in equal shares--one-third share.

(ii) Sidhia son of Gosain--one-third share.

(iii) Mt. Sandralu widow of Arjun--one-third share.

It further appears from the extract that on the death of Mehar Singh the names of his widows, Mts. Phulma and Rajjo were recorded as against his one-half share by virtue of inheritance and that at the time of the attestation of mutation Shibu and Sidhia were present. Exs. D. W. 3/33 to D. W. 3/35 are extracts from Register Intkalat relating to mauzas Malheri, Mahari and Patinal, the villages in which the family had landed property and it transpires therefrom that when Mt. Rajjo remarried her name was expunged and the name of Mt. Phulma was recorded. as

against the whole share of Mehar Singh.

At the time of attestation of mutation relating to mauzas Mahari and Malheri, Shibu, Lagnu, Harshu and Harichand were present and at the time of attestation of mutation relating to mauza. Patinal Harichand was present. It would thus appear that the aforesaid mutations were not effected clandestinely behind the back of the adult male family members. It will have been noticed that the names of Mt. Phulma and Mt. Rajjo were recorded as against one-half share of Mehar Singh as heirs and keeping in view the fact that two of the family members namely Shibu and Sidhia were present at the time of attestation of mutation, it is difficult to accept the allegation made on behalf of the plaintiffs that the names of Mts. Phulma and Rajjo were entered in. the revenue papers in lieu of maintenance. No satisfactory evidence was led on behalf of the plaintiffs in support of that allegation.

8. In order to show that the Khatas were held 'by the parties and their ancestors jointly the plaintiffs filed the history sheets relating to the three villages, referred to above, containing extracts from Misal Haqiat or the Jamabandi for the years 1914, 1914-15, 1918-19, 1922-23, 1930-31, 1934-35, 1938-39, 1942-43, 1944, 1950-51 and 1953-55. I will advert to the aforesaid history sheets later on, but at this stage I would refer to the extracts for the years 1914 and 1914-15. Even from those extracts it appears that in the life time of Mehar Singh his name was recorded as against a one-half share. The shares of Shibu, Lagnu and Harshu, the share of Sidhia and the share of Mt. Sandralu widow of Arjun were defined and specified : vide Exs. P. W. 1/1. P. W. 1/2 and P. W. 1/3.

9. Tke contesting defendants also filed extracts from Register Intkalat Exs. D. W. 3/1 to Ex. D. W. 3/31. Those extracts indicate that the various descendants of Gosain obtained transfers of land separately lor themselves. On behalf of the plaintiffs, it was urged that no inference adverse to them could be deduced on the basis of the aforesaid transfers as under the Hindu law it was permissible for a member of a joint Hindu family to acquire property for Mmself to the exclusion of other members of the joint family. It is of course true that a member of joint Hindu family can own and possess self-acquired property. The fact, however, remains that while so many transfers were obtained by various members in the branch of

Gosain no transfer is shown to have been obtained for the alleged joint Hindu family either in the life time of Mehar Singh or after his death.

10. I have already referred to the history sheets Exs. P. W. 1/1, P. W. 1/2 and P. W. 1/3 which have been filed by the plaintiffs to show that the Khatas were held jointly by the parties. On behalf of the plaintiffs reliance has also been placed upon an application for partition of the Khatas (copy of which is Ex. P. 5) filed by the since deceased Jit Singh in the revenue Court. The contention advanced on behalf of the plaintiffs is that as the Khatas were joint, the status of the family should not be held to have been disrupted.

I, however, do not think that the aforesaid conclusion can necessarily be drawn. It is well established that under the Hindu law physical division oi property is not necessary. Once the shares are defined, there is a severance of joint status. The parties may thereafter make a physical division of the property or they may decide to live together and enjoy the property in common. But the property ceases to be joint immediately the shares are defined and thenceforward the parties hold as tenants in common. The rulings of their Lordships of the Judicial Committee reported in Harkishan Singh v. Partap Singh, AIR 1938 PC 189 and Mt. Inder Kuer v. Mt. Pirthipal Kuer, AIR 1945 PC 128 may usefully be referred to in this connection.

11. On behalf of the plaintiffs, reliance was also placed upon a copy of the post-card (Ex. P. 1) sent by Jit Singh to Devi Singh, copy of statement (Ex. P 2) made by Jit Singh in a complaint under Section 107, Cr. P. C., copy of a complaint (Ex. P. 4) dated 27-9-1952 filed by Jit Singh against Devi Singh and Atma for offences under Sections 451, 454, 380 and892, I. P. C., and under Section 107, Cr. P. C., a notice (Ex. P. 7) dated 8-1-1953 sent by Jit Singh to Devi Singh and it was contended that the aforesaid papers indicated that Jit Singh, Devi Singh and the other members of the family were joint.

The question that falls to be decided in the instant case is as to whether Mehar Singh died as a member of the joint Hindu family and not as to whether the plaintiffs and the donees constituted a joint Hindu family. No inference adverse to the contesting defendants can be drawn merely on the ground that the plaintiffs

and the donees are living as members of joint Hindu family. None of the aforesaid papers indicates that the plaintiffs or their ancestors and Mehar Singh formed a coparcenary at the time of the latter's death.

12. Adverting to the oral evidence adduced on behalf of the defendants on the point under consideration, one finds that it consisted of the testimony of Mt. Phulma, examined on commission, Janki (D. W. 2) and Jit Singh (D. W. 3). Janki (D. W. 2) was not a member of the family and he stated that partition did not take place in his presence. His statement is, therefore, of no help. Mt. Phulma during the course of her cross-examination stated that the factum of partition was narrated to her by her husband and Jit Singh (D. W. 3) alleged that he had come to know of the aforesaid factum from his mother and grandmother.

On the record, there is nothing to show that the mother and grandmother of Jit Singh were dead at the time that his statement was recorded. His statement has, therefore, to be discarded. Mehar Singh, of course, was dead when, the statement of Mt. Phulma was recorded. The question for consideration is as to whether the statement of Mt. Phulma was relevant. The only section of the Indian Evidence Act under which the aforesaid statement could be relevant is sub-section (2) of Section 32 which runs as below:

'When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or ot an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him'.

The question that arises for consideration is as to whether the statement made by Mehar Singh to Mt. Phulma could be said to have been made in the ordinary course of business. It is a matter of common experience that if a partition takes place in the family its details are narrated by the male members to the females if the latter do not participate in the actual deliberations. Indeed, more often than not, it is the development of unhappy relations between the ladies of the family inter se

which is at the root of the disruption of a joint family and the details of a partition in the family are not unknown to them.

The passing of information about the important and chief events in the history of a family by the male members of the family to the women folk on by the elders to the youngers should be held to be in the ordinary course of business and those words should be given a broad and liberal connotation. To hold otherwise would result in the shutting out of proof of facts on which on account of lapse of time direct evidence is not available.

13. In the case of Abdulla v. Ma E Kin, 11 Ind Cas 854 (LB), a question arose as to whether a statement made by a person since deceased, in' a letter, to his wife that the defendants had asked him to lend them money and that he had lent them money on an 'on demand' note was admissible or not. The question was answered in the negative as there was no evidence indicating that the husband was in the habit of consulting his wife before giving loans. It was, however, observed that if it had been proved that he was in the habit of consulting his wife before giving loans, the letter would have been written in the ordinary course of business.

In the case of Ramamurthi v. Subba Rao, AIR 1937 Mad 19, a letter was written by a party to his wife making reference to a settlement and asking her to do certain acts to forward the settlement, such as by telling his uncle that he would execute a mortgage deed in his favour, was filed to prove family settlement and it was held by Horwill, J., that the letter was relevant under Section 32(2) of the Indian Evidence Act. In the course of his judgment, it was also observed by him that the words 'in the course ol business' as used in Section 32(2) of the Indian Evidence Act mean the way the business (which may be of a purely private or even trivial nature) is conducted and have no connection with the course of business suggesting a series of acts of business.

The disruption of the status of a joint family is, in my opinion, a matter with which the ladies of the family not only keep themselves in touch, but usually, if not invariably, have also a say thereon and it might well be presumed that if a lady of the family does not participate in the actual deliberations, she is kept fully conversant with them by her nearest male relative. Thus, an important event in the

history of a family communicated by either the husband to his wife or by an elder to a younger even in the ordinary course of conversation at a time when there is no controversy about it may well be held to be a statement made in the ordinary course of business.

14. The learned trial Court was impressed well with the frank and straightforward manner in which Mt. Phulma made her statement and I see no reason to brush aside that statement with regard to partition.

15. Balak Ram (D. W. 1) during the course of his cross-examination stated that prior to 1952-53 Mt. Phulma lived jointly with the parties to the suit and that partition had not taken place in the family of the parties and on behalf of the plaintiffs much reliance was placed upon the statement. The witness was not produced on behalf of the defendants in proof of the separated status of Mehar Singh. He happened to be the Secretary of the Co-operative Society and was produced as a witness in order to show that the several members of the family used to take their potatoes to the Society separately.

The age of the witness at the time of examination was about 28 years and he had no personal knowledge of the affairs of the family during the life time of Mehar Singh. Reliance, therefore, could not be placed safely on the statement made by him in his cross-examination on the point of the status of the family during the life time of Mehar Singh. In this connection, it is significant to note that Devi Singh, one of the plaintiffs, has stated that Mt. Phulma had a one-half share in the houses belonging to the family situated in village Malheri. Now if Mehar Singh had died in a state of jointness with the othet family members, Mt. Phulma would not have had any share, much less a one-half share in the houses.

16. From the statement made by Kashi Ram (P. W. 2) it appears that the parties have been cultivating the land separately. No reliable evidence has been led on behalf of the plaintiffs in proof of the fact that at the time of the death of Mehar Singh the status of the family was joint.

17. In the written statement, as originally filed, it had been pleaded that partition had tafcen place more than 40 years ago, while in the written statement

subsequently filed, partition was alleged to have been effected about 52 years ago and on behalf of the plaintiffs it was contended that there was an inconsistency in the aforesaid pleas. The subsequent plea is more definite than the earlier one but to my mind there is no inconsistency between them.

18. The state of every Hindu family is presumed to be joint, but the strength of the presumption varies in each case. The presumption of union is stronger in the case of brothers than in the case of cousins, and the farther one goes from the founder of the family, the presumption becomes weaker and weaker and the evidence in the case should be reviewed in the light of the presumption, vide AIR! 1945 PC 128. The plaintiffs are more than three degrees distant from Mehar Singh. Gosain and Dass had predeceased Mehar Singh.

At the time of the death of Mehar Singh, Shibu, Lagnu, Harshu sons of Dass and Sidhia, son of Gosain, were alive. Sidhia was the nephew and Shibu, Lagnu and Harshu were the grand-nephews of Mehar Singh. The presumption that all of them formed a joint Hindu family would, in the circumstances of the case, be a weak one and the presumption that the status of the family has continued to be joint would be still weaker. In order to displace such a weak presumption even slender evidence would suffice.

19. In the instant case what one finds is that the shares of the different members of the family were specified and defined in the revenue papers even in the life time of Mehar Singh, that after his death the names of his widows were entered as against his one-half share as heirs and that at the time of attestation of mutation some of the adult family members were present.

20. Relying upon the rulings of their Lordships of the Judicial Committee, reported in Nageshar Baksh Singh v. Mt. Ganesha, AIR 1920 PC 46 and Jag Prasad Rai v. Mt. Singari, AIR 1925 PC 93(2) it was strenuously urged on behalf of the plaintiffs that the entries in Khewats and other similar village papers indicating that the shares of co-owners have been specific afford by themselves no proof that the owners were members of a joint Mitkashara family or had separated.

In the case of AIR 1945 PC 128, it is interesting to note that the deceased whose status was in question had left behind two widows whose names were mutated on his death and after the death of one oi them the name of the. survivor was recorded in the revenue papers as heir and with reference to the aforesaid mutation orders their Lordships of the Judicial Committee observed as follows:

'An order made in mutation proceedings is, no doubt, not a judicial determination of the title of the parties, but that it has evidentiary value, cannot be disputed. It appears to their Lordships that the true explanation of what happened is this, that when their husband died the two widows succeeded to his estate as they would ordinarily do under the Hindu law, and when one of them died, the other succeeded to the ordinary widow's estate in the whole of it, from which it would follow in the absence of a reasonable explanation that their husband died while separate from Mathura Singh. This is the real evidentiary value of the mutation proceedings in this case, and the learned counsel who has gone through the evidence with great care has not been able to give any satisfactory explanation of them except that the properties were given by way of consolation to the widows which is true neither in law nor in fact. The instances of succession which their Lordships have noticed arc clearly inconsistent with the family being joint.'

21. On behalf of the plaintiffs, it was urged that as in the aforesaid case there was other evidence besides the mutation entries indicating that Mathura Singh had separated from other members of the family, it did not go beyond the rule of law regarding entries in Khewats, etc. laid down in the AIR 1920 PC 46 and AIR 1925 PC 93(2), referred to above. While it is true that in the 1945 Privy Council case there was other evidence besides the mutation orders indicating the separate status of Mathura Singh the evidence furnished by the entries in the revenue papers--in the absence of a reasonable explanation which was wanting in that case--was considered by their Lordships to be sufficient for concluding that at the time of his death Mathura Singh was separate from the other family members. I am, therefore, prone to think that the rule laid down in AIR 1920 PC 46 and AIR 1925 PC 93(2) supra that the entries in the revenue papers indicating that the shares of co-owners have been specific and defined afford by themselves no proof that the owners v/ere members of a separate family has to a certain extent been

modified in AIR 1945 PC 128. The point is, however, not material as in the instant case apart from the entries in the revenue papers indicating a definition of the shares of several members of the family there was also the fact that some adult members of the family had attested the mutation of the names of Mts. Phulma and Rajjo as heirs and that the factum of partition has been deposed to by Mt. Phulma. Even from the statement made by Devi Singh (P. W. 6) it appears that Mt. Phulma had a one-half share in the family houses. This could not have been possible if Mehar Singh had not been a separated member at the time of his death. In conclusion, the point under consideration is answered against the plaintiffs.

22. Point (b) : The first question that arises for consideration is as to whether as a result oi the provisions of the Hindu Succession Act, 1950,hereinafter to be referred as 'the Act', the property comprised in the deed of gift in question became the absolute property of Mt. Phulma. Section 14 of the Act runs as below:

'(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.--In this sub-section 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.'

23. There was a conflict of judicial opinion on the interpretation of the word 'possessed' as used in the aforesaid section. It is, however, not necessary to notice that conflict as the matter has been considered by the Hon'ble Supreme

Court in the case of Kotturuswami v. Veeravva, AIR 1959 SC 577 and it has been held that if a Hindu female who acquired any property prior to the commencement of the Act is not possessed of that property at the! time of the coming into force of the Act, she cannot hold that property as full owner and secondly that the word 'possessed' as used in the aforesaid Section 14 has a very wide connotation and means the state of owning or having in one's hand or power.

24. The gift deed in question was executed prior to the commencement of the Act and the question for consideration is if the donees had, in pursuance of it, entered into possession of the donated property. The validity of the gift deed has not been challenged by the donor and both she and the donees join in saying that the latter have entered into possession of the disputed property. No evidence worth the mention has been led OB behalf of the plaintiffs indicating that the donees did not enter into possession of the donated property. I, therefore, hold that the donees have entered into possession of the property comprised in the deed of gift. Thus, prima facie, Mt. Phulma did not acquire absolute title to the aforesaid property.

25. The plaintiffs' case is that the deed oi gift was invalid and relying upon that allegation and the ruling of their Lordships of the Supreme Court, referred to above, it was argued on behalf of the defendants that their possession should be held to be permissive on behalf of Mt. Phulma and the plaintiffs' suit was liable to be thrown out on their own allegation.

26. The facts of the aforesaid Supreme Court case were as below:--A the last male holder died in 1920. He had by his will authorized his wife B to adopt a son and in compliance therewith Badopted C in 1942. D alleging himself to be the nearest reversioner of A filed a suit for declaration that C's adoption was invalid and not binding upon him. The suit was dismissed and the decision was affirmed by the High Court. D appealed to the Supreme Court when a preliminary objection was raised in view of Section 14 of the Hindu Succession Act, 1956, which had come into force. It was held that if the adoption was invalid the possession of C over the property which prior to adoption was in possession of A would be deemed to be permissive. In the last para of the judgment, their Lordships are reported! to have observed as below :

'In our opinion the appellants' suit was not maintainable having regard to the provisions of section 14 of the Act, even if it be assumed that there was no valid adoption of the second defendant.'

27. It is thus manifest that the appeal was dismissed by the Hon'ble Supreme Court as the plaintiffs were not entitled to any relief even if it be assumed that the adoption was invalid. There is a vital difference between an adoption made by a Hindu female and a transfer by sale or gift by her. If an adoption is held to be invalid, it does not exist in the eye of law whereas a sale or a gift If not challenged by the Hindu female herself, enures during her life time and it is only after her death that the reversioners can recover possession of the property comprised therein.

The aforesaid distinction was clearly brought out in the judgments of Mehar Singh and Gosain, JJ., in the Full Bench case of the Punjab High Court reported in Amar Singh v. Sewa Ram, 1960-62 Pun LR 537: (AIR 1960 Punj 530). Mr. Justice Dulat, the other learned Judge who composed the Full Bench was, however, of the opinion that an invalid gift and an invalid adoption by a Hindu female stand on the same footing. On principle, it is difficult to distinguish between an invalid sale or an invalid gift executed by a Hindu female having limited rights and, if I may say so with respect, the reasoning of Mehar Singh and Gosain, JJ., appears to be more logical.

28. A Division Bench of the Allahabad High Court has in the case of Hanuman Prasad v. Mt. Indrawati, AIR 1958 All 304 held that by virtue of the provisions of Section 15 of the Act reversioners have completely disappeared and that after the passing of the Act nobody can get a decree as reversioner even though the alienation by a Hindu widow before the passing of the Act is such that prior to the enforcement of the Act it could have been successfully challenged at the instance of the reversioners.

The aforesaid Allahabad case was considered in the Full Bench case of the Punjab High Court, referred to above, and in the case of Andhra High Court, reported in R. Somiah v. R. Rattamma, AIR 1959 Andh Pra 244 and it was held that the Court had gone a little too far in laying down the aforesaid proposition of

law; Section 15 of the Act applies to the property of a female Hindu dying intestate. That section does not govern property which prior to the coming into force of the Act had already been transferred by the Hindu female.

It is, however, correct that the reversioners have ceased to exist in respect to the property in which a Hindu female acquires absolute interest after the coming into force of the Act. If an absolute transfer is made by a limited owner such as the Hindu widow prior to the coming into force of the Act and possession is transferred to the alienee such a transfer is vulnerable. It has already been seen that in such a case the property cannot be said to have been held by the limited owner or by the transferee as an absolute owner and there does not appear to be any good reason as to why the next presumptive reversioners should not be held to have a right to challenge such an alienation.

29. The learned senior Subordinate Judge was of the opinion that as the plaintiffs and the donees were reversioners of equal degrees the plaintiffs were not entitled to the declaration prayed for. I find it difficult to uphold the aforesaid conclusion. The crucial question for decision is as to* whether on the death of Mt. Phulma the next presumptive reversioners would be entitled to recover possession of the disputed property to the extent of their share or not and if the answer to this question be in the affirmative, the declaratory relief should not be refused to the plaintiffs. Since the donees did not have any preference as against the other reversioners to the estate of Mehar Singh, it was obvious that the other reversioners may also inherit the disputed property. Thus, if the declaratory decree is granted, it is apparently not likely to be futile.

30. On behalf of the respondents, reliance was placed upon the ruling of the Punjab High Court, reported in Dayal Jawala v. Buja Biru, AIR 1959 Punj 326. In that case a gift was made by the Hindu widow in favour of her 'pichalag' son and a suit was brought by the reversioners to the estate of her husband challenging the aforesaid transfer and it was held by Gurnam Singh, J., that as the gift in favour of the 'pichalag' son was in the nature of acceleration the declaratory relief should be refused even though the plaintffs were entitled to maintain the suit for declaration. With great respect to the learned Judge, I find it rather difficult to follow his

reasoning. If the plaintiffs were entitled to challenge the gift, the declaratory relief claimed should not have been refused simply because the gift though not an acceleration of the estate of the last male holder was in the nature of an acceleration to the estate of the transferor.

31. On behalf of the respondents, it was also contended that the declaratory relief claimed by the plaintiffs should be refused as Mt. Phulma may hereafter acquire the disputed property and become its absolute owner. I do not propose to enter into the question as to whether it would be possible for Mt. Phulma to acquire an absolute estate in the disputed property hereafter and would content myself with saying that the decision in this case is confined to the state of affairs which obtained at the time of the institution of the suit.

32. Thus, differing from the conclusion reached by the learned Senior Subordinate Judge, I hold that the plaintiffs are entitled to a declaration that the gift deed in question shall be void and ineffective against the reversionary rights of the plaintiffs.

33. In conclusion, the appeal is accepted, the decree passed by the Court below is set aside and the plaintiffs' suit is decreed for a declaration thatthe gift deed dated 16-3-1955 executed by Mt. Phulma in favour of Jit Singh and Rati Ram was void and ineffective against the rights of the reversioners to the estate of Mehar Singh and shall not enure beyond the life time of Mt. Phulma.

34. In view of the partial success of the parties,it is further ordered that the plaintiffs shall getfrom the contesting defendants one-half of the costsand shall pay to them one-half of the costs respectively incurred in this Court and in the Courtbelow.