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**Partap Singh and Another Vs. Sant Kaur and Another**

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**SooperKanoon Citation** : sooperkanoon.com/945493

**Court** : Privy Council

**Decided On :** Apr-01-1938

**Reported in** : AIR1938PC181

**Judge** : Lord Wright, Lord Romer, Sir Shadi Lal &Amp; Sir George Rankin.

**Appeal No.** : Privy Council Appeals Nos. 1 and 2 of 1937 (From Lahore)

**Appellant** : Partap Singh and Another

**Respondent** : Sant Kaur and Another

**Advocate for Pet/Ap.** : R. Ritson, for Appellants ; J.M. Parikh, for Respondents. Solicitors for Appellants, Nehra and Co., Solicitors for Respondents, Hy. S.L. Polak and Co.

**Judgement** :

Sir Shadi Lal:

On 17th August 1920, Mt. Jiwani, the widow of one Sham Singh died, leaving her surviving two illegitimate daughters, Sant Kaur and Basant Kaur, Mt. Jiwani was the proprietor of four squares of land in the district of Lyallpur in the province of the Punjab. This land was originally in the occupation of her husband as a tenant of Government, but he died in October 1901, without acquiring the proprietary rights by paying the price thereof in compliance with the rules applicable to the acquisition of ownership by a tenant of Government. It was only after his death

that Mt. Jiwani paid the price and became the owner of the land in August, 1910. The question of succession to the land arose shortly after her death. In the course of the proceedings taken by the Revenue Officer for the mutation of names in respect of the estate, the right of the daughters to inherit it on the death of their mother was denied by Sham Singh's collaterals who laid claim to the whole of the property as his heirs. There were three collaterals, namely Gujar Singh, the son of Sham Singh's paternal uncle, and Partap Singh and Kartar Singh, the sons of Gujar Singh's brother, Sarmukh Singh. They claimed to exclude the daughters from the inheritance, but the dispute was settled between them and the daughters by a compromise, the terms of which were embodied in a deed executed on 22nd April 1921. The estate was divided among all the claimants, one square was allotted to each of the daughters, and the remaining two squares were awarded to the collaterals. It was however provided that the girls would have only a life-interest in the land assigned to them, without any right of alienation; and that on the death of each, her square would devolve upon the collaterals.

It is common ground that the younger girl, Basant Kaur, was a minor at that time and was represented by Gujar Singh who purported to act as her guardian in consenting to the distribution of the land. The Revenue Officer, who was dealing with the mutation proceedings, directed that the land should be entered in the revenue record in favour of the various parties in accordance with the settlement arrived at by them. On 15th August 1927, Gujar Singh made a gift of his square to the two girls and executed a deed of gift in their favour. This deed was followed by another document, which he executed on 16th August 1927, by which he relinquished in their favour his right to succeed to their land on their deaths. Thereupon, Partap Singh and Karter Singh brought, on 8th October 1927, an action against the girls and Gujar Singh for a declaration that neither the deed of gift nor the deed of relinquishment should affect their reversionary interest in the property. On 31st October 1927, the girls instituted a suit for possession of the square which had been allotted to Partap Singh and Kartar Singh, and claimed that they (the girls) were entitled to succeed to the whole of the estate belonging to their mother and that they were not bound by the deed of settlement which was entered into during their minority. The trial Judge held the deed of settlement to be binding upon the parties, and while dismissing the girls' suit for possession of one

square, granted a declaratory decree in favour of Partap Singh and Kartar Singh with respect only to the deed of gift impeached by them. The girls appealed to the High Court against both the decrees in so far as they were against them, and their appeals were accepted, with the result that their suit for possession of one square was decreed against the collaterals, and the suit brought by the latter for declaration was dismissed in toto.

From the judgment and the decrees of the High Court, Partap Singh and Kartar Singh have brought to His Majesty in Council two appeals, which have been consolidated. The vital question, which requires determination, is whether the deed of settlement is binding upon the girls. As stated already, it was their mother, Mt. Jiwani, who paid the price for the land to Government, and it was not disputed in the trial Court that she had thereby acquired the rights of ownership in the property. Indeed, it is stated by the High Court in their judgment that the learned counsel for Partap Singh and Kartar Singh conceded before them that "but for the deed of 1921, the daughters were the only rightful heirs of Mt. Jiwani." Does that deed create an obstacle in the way of their right to succeed to the whole of the estate left by their mother? Ex concesso, the younger girl, Basant Kaur, was a minor on the date of the deed of settlement, but Gujar Singh adopted the role of her guardian for entering into the contract on her behalf. It is however clear that he was neither appointed her guardian by any Court, nor could claim that status under the law applicable to her. He himself wanted a share in the estate, and this claim was adverse to her right to succeed with her sister to the whole of the estate. The rule of law is firmly established that a minor is not competent to make a contract, and as Gujar Singh had no authority to enter into a contract on her behalf, the deed of settlement must be held to be a void transaction as against her.

Whether her elder sister, Sant Kaur, also was a minor at that time is a matter in controversy between the parties. The date of her birth cannot be ascertained with any reasonable certainty, but the circumstances mentioned by the High Court justify the inference that she had not attained the age of majority on the date in question. In any case however, the elder sister would not be bound if the transaction was unenforceable as against the younger. Their Lordships, after

examining the relevant material on the record, see no reason to dissent from the conclusion reached by the learned Judges of the High Court. It is not suggested that Gujar Singh or any other person even purported to act on her behalf as her guardian. It is however argued that the transaction should be upheld, because it was a family settlement. Their Lordships cannot assent to the proposition that a party can, by describing a contract as a family settlement, claim for it an exemption from the law governing the capacity of a person to make a valid contract. It is true that if a compromise has been entered into in good faith by the manager of a joint Hindu family, or by a father in such family, a minor member of the family cannot be allowed to disturb it on the ground of inequality of the benefit, unless there was fraud or some other ground which in law vitiates it. This rule proceeds upon the principle that the minor was properly represented by the father or the manager of the family; and he was, therefore, a party to the compromise. The rule does not offend against any law governing a contract. As regards the transaction for the distribution of squares in the present case, it is not proved that there was any person who had authority either under the law of contract or under the personal law applicable to the minors, to make the compromise on their behalf, surrendering a moiety of their inheritance to persons who were not entitled to it. Their Lordships have no hesitation in holding that the compromise invoked by the appellants cannot bind the daughters of Mt. Jiwani. They will therefore humbly advise His Majesty that the appeals should be dismissed with costs.

Appeals dismissed.

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