

## Jaswant Etc. Vs Shrimati Basanti Devi

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** April 20, 1970

**Acts Referred:** Hindu Succession Act, 1956 " Section 22, 22(2)

**Citation:** (1972) 2 ILR (P&H) 26

**Hon'ble Judges:** D.K. Mdhajan, J; Bhupinder Singh Dhillon, J

**Bench:** Division Bench

**Advocate:** J.V. Gupta and G.C. Garg, for the Appellant; Roop Chand, for the Respondent

**Final Decision:** Allowed

### Judgement

D.K. Mahajan, J.

In pursuance of my order, dated February 21, 1969, with the concurrence of my Lord the Chief Justice, this case was referred to a larger Bench and that is how it has been placed before us.

(2) The facts of this case are set out in the referring order and I am reproducing the same from that order:

On facts there is No. dispute. Ranjit was the last male holder of the property in dispute. On his death which took place after the coming into force

of the Hindu Succession Act, his two daughters Murti Devi and BasantiDevi succeeded to him.Murti Devi sold the property in dispute and the sale

was sought to be pre-empted by Basanti Devi. At the trial, a preliminary issue was framed on the plea of the vendees that Basanti Devi's plaint did

not disclose any Cause of action. The basis for this contention was that u/s 15(2) of the Punjab Pre-emption Act, as amended by Punjab

Preemption (Amendment) Act X of 1960, a sister of Murti Devi, the pre-emptar, had No. right of pre-emption Basanti Devi, however, placed

reliance on Section 22 of the Hindu Succession Act which is reproduced below:

22. (1) Where after the commencement of this Act, an interest in any immovable property of an intestate, or any business carried on by him or her,

whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs

proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to

be transferred.

2. The consideration for which any interest in the property of the deceased may be transferred under this Section shall, in the absence of any

agreement between the parties, be determined by the Court on application being made to it in this behalf, and if any person proposing to acquire

the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the

application.

3. If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this Section, that heir who offers the

highest consideration for the transfer shall be preferred.

The trial Court negated the contention of Basanti Devi that Section 22 will come into play. The reasons recorded by the trial Court were that

Section 22 comes into play only where there is a proposal to transfer property and not where there is a completed transfer of property. On appeal

by Basanti Devi, the Lower appellate Court has taken the view that Section 22 does come into play and the reason that has prevailed with the

lower appellate Court is that Section 22 really confers a right of preemption. It has also been stated that this rule of preemption is not abrogated by

Punjab Pre-emption Act. Against this decision the present second appeal has been preferred to this Court.

3. It is the interpretation of Section 22 of the Hindu Succession Act with which we are concerned in this case. Two questions arise:

(1) Whether this provision applies to completed transfers; and (2) whether it applies to agricultural land. So far as the first question is concerned, to

say the least, this Section is very unhappily worded. However, one thing is clear that there is indication in the Section itself of the intention of the

Legislature. This provision has been enacted to keep out strangers coming into the heirs of class I of the Schedule after the coming into force of the

Act. Mr. J.V. Gupta, Learned Counsel for the Appellant-vendees, contends that in terms Section 22 does not apply because it only covers the

case of proposed transfers of property and not cases where the property has been actually transferred. Mainly reliance is placed upon the phrase

proposes to transfer" in Sub-section (1) and stress is again laid on Sub-section (2) of Section 22 wherein again the expression used is "may be

transferred under this Section" coupled with the further use of the expression "if any person proposing to acquire the interest is not willing to

acquire it". Similar language has been used in Sub-section (3).

4. If this Section is literally interpreted, these difficulties do crop up, but then this provision will become otiose and its very purpose will be defeated

by a surreptitious transfer or an open transfer before a decision to transfer it is known. In my opinion, the words "proposes to transfer" include a

completed transfer. Once this interpretation is placed, Section 22 would work and become operative. When this was pointed out to the Learned

Counsel for the Appellants, he contended that Sub-section (2) of Section 22 will become otiose because in the case of a completed transfer, there

would be no, question of the Court stepping in and fixing the price of the property in case there is an honest and a valid contract. This would not be

so. If proper market value has been paid No. question to determine the price will arise. In any case, there is nothing in the Sub-section which

prevents the co-heir to accept the stipulated price. But in case the price fixed is fictitious, the Courts will determine the price under the Sub-section.

There are other types of transfers such as gifts and exchanges. In such types of transfers, even if complete, the Sub-section will come into play.

Therefore, it is idle to suggest that in every case Sub-section (2) will present difficulty when it is being sought to be applied to a completed transfer.

5. In my opinion, the correct way to interpret the Section and to give its meaning is to hold that a completed transfer also falls within the ambit of

Sub-section (1) and the words "proposes to transfer" would thus include a completed transfer as well. As already said, otherwise this Section

would become wholly unworkable. It is well known canon of construction that Courts must give meaning to a legislative provision unless the Court

is forced to a conclusion that it will in fact be legislating and not interpreting the same.

6. The second question presents No. difficulty. It is necessary to advert to entry No. 18 in List II and entries Nos. 5 and 6 in List III of the VII-

Schedule. For facility of reference, those entries are reproduced below:

List II--Entry No. 18... Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of

rents; transfer and alienation of agricultural land improvement and agricultural loans; colonization.

List III--Entry No. 5... Marriage and divorce; infants and minors; adoption; wills; intestacy and succession; joint family and partition; all matters in

respect of which parties in judicial proceedings were immediately before the commencement of, this Constitution subject to their personal law.

Entry No. 6... Transfer of property other than agricultural land; registration of deeds and documents.

7. I had an occasion to deal with the question of the applicability of the Hindu Succession Act to agricultural lands in the matter of succession and I

compared the language of entry No. 18 of List II of the Constitution of India with its counter-part in the Government of India Act, 1935, namely,

entry No. 21. I pointed out that there were material differences in the language of these two entries because devolution had been taken out from

the said entry and put in the concurrent entry No. 5 of List III which enabled the Central Parliament to legislate regarding succession. But that is

not so in the case of agricultural land. Entry No. 6 of List III, when read, points out that the Central Parliament has No. jurisdiction to legislate over

agricultural lands beyond the power it has under entry No. 5 of List III, that is, regarding devolution. It is, therefore, clear that Section 22 will not

cover the case of agricultural lands.

8. Mr. Roop Chand, the Learned Counsel for the Respondent, stressed that the words "immovable property" used in Section 32 will include

agricultural lands. Undoubtedly, they do. But one cannot lose sight of the fact that when the Central Legislature used these words it did so knowing

fully well that it had No. power to legislate regarding agricultural lands excepting for the purposes of devolution. Section 22 does not provide for

devolution of agricultural lands. It merely gives a sort of right of pre-emption. In fact, as already pointed out, entry No. 6 in List III, clearly takes

out agricultural lands from the ambit of the concurrent list. Agricultural land is specifically dealt with in entry No. 18 of List II. The only exception

being in the case of devolution. Therefore, it must be held that Section 22 does not embrace agricultural lands.

9. The last argument of Mr. Roop Chand, the Learned Counsel for the Respondent, was that Section 22 is ultra vires the Constitution as the

Central Legislature had No. right to pass such a law regarding agricultural lands. This argument cannot be accepted because it cannot be presumed

that the Legislature was passing law regarding matters which it had No. power to pass particularly when with regard to immovable property other

than agricultural land, it has the power to enact such a law. This view finds support from the decision of the Federal Court in re Hindu Women's

Rights to Property Act, (1), wherein in a similar situation their Lordships of the Federal Court refused to strike down the provisions of the Hindu

Women's Rights to Property Act, 1937, on the precise arguments.

10. For the reasons recorded above, we allow this appeal, set aside the judgment and decree of the learned lower Appellate Court and restore

that of the learned trial Court though on totally different grounds. In the circumstances of the case, there will be No. order as to costs.