

(2006) 09 P&H CK 0338

High Court Of Punjab And Haryana At Chandigarh**Case No:** Appeal No. 99 of 2003

Gurdev Singh and another

APPELLANT

Vs

Mt. Chinto and others

RESPONDENT

Date of Decision: Sept. 16, 2006**Citation:** AIR 2006 P&H 6**Hon'ble Judges:** Passey, J**Bench:** Single Bench**Advocate:** Anant Ram, for the Appellant; Sundar Lal, for the Respondent**Final Decision:** Dismissed

Judgement

Passey, J.

This is an appeal by Gurdev Singh and Tulsa Singh, sons of Man Singh vendee against the decree of the District Judge, Patiala dated 25-2-2003 affirming that of the trial Court passed in favour of the respondents. Man Singh had died during the course of the suit and the appellants were substituted in his place. Mt. Gurdevi Kaur, on the death of her husband Indar Singh, succeeded to his estate and out of it she mortgaged 50 bighas 14 biswas to Pritam Singh on 11.7.2000 and on the same day she also sold to him 29 bighas 14 biswas. Both these alienations were, by two different suits, challenged by Mt. Chinto and Mt. Chandi, widow and mother respectively of Ajmer Singh who was related to Indar Singh in the sixth degree and declaratory decrees in both the suits were passed on 22.1.2001. On 9-7-2000 she sold 189 bighas 7 biswas and a vacant site for Rs. 5500 to Man Singh for going on a pilgrimage, for buying land in the village of her parents in the Naraingarh Tehsil of the Ambala District and for getting herself medically treated. This sale is the subject of the present suit by Mt. Chinto and Chandi and both the Courts below have held it to be ineffective so far as their reversionary interests are concerned. Mr. Anant Ram contends that the plaintiffs being females have no right to contest the alienation in question by another female with a limited interest as Mt. Gurdevi was and has cited AIR 1939 20 (Lahore) in support of his argument. The answer to the question raised

by the learned counsel depends upon the right of the contesting plaintiffs to succeed to the property alienated. The customary law of the Punjab and well recognised rules of agricultural custom in the Patiala State do not oust a cognate howsoever distantly related to the last male owner from succession subject to the condition that the line of his agnate has become extinct. In the presence of his agnates, a cognate has no right to succeed to his property or to object to alienations made by females who have succeeded to his property, but where the agnates have died out, a cognate has according to custom the right to succeed to his property left by him but which had devolved upon a limited owner, as against strangers or the Crown. The facts on which AIR 1939 20 (Lahore) , was decided were entirely different. That was a case in which a daughter, who according to the customary law of Rohtak District had no right to inherit her father's estate, and was not, therefore, an heir was held to have no locus standi to challenge the alienation by her female relations who had already succeeded to certain property. The agnatic heirs of the female alienor were alive and it was further found that she was not a limited but a full owner. In those circumstances it was laid down that a female has no right to contest an alienation by another female unless she is an immediate heir and the alienor possesses a limited estate. The decision in AIR 1939 20 (Lahore) would rather go to help the respondents as the principle that a female who is an immediate heir has the right to succeed and to challenge the alienation effected by a person possessing a limited estate, was recognized in that case. Mr. Sundar Lal on the other hand, has referred to several rulings of the Lahore high Court in which it was laid down that a female who is the next heir can challenge an alienation by a limited owner if it was effected without legal necessity. In *Imam Din v. Khamandin*, A. I. R. 1927 Lab. 366 : (100 I. C. 1014), it was held after examining a number of authorities, that where it is a question of an alienation by a widow holding a life-estate, it is wholly immaterial whether the next heir is a male collateral or a female as the right to challenge arises out of succession and is not derived from the common ancestor or any principle of agnatic succession. This view was approved in AIR 1931 677 (Lahore) , and followed in AIR 1932 473 (Lahore) , and it was observed by Abdul Qadir J., that the latest decision of the Lahore High Court supported the right of a female heir to challenge the alienation by another female with a limited interest. *Tara Singh v. Mt. Nikho*, 34 P. L. R. 332, is a Division Bench judgment in which it was held that a daughter was entitled to impeach an alienation made by her mother holding a life-estate. What is necessary to give a female the right to impeach an alienation by another female is that she must be the next immediate heir. In the case before me, it is not denied by Mr. Anant Ram that all the agnates of Indar Singh have died and that Mt. Chinto and Chandi are besides Mt. Gurdevi the only survivors in the family. On the death of Mt. Gurdevi the property which came to her hands from her husband must devolve upon the plaintiffs; as no other person with a preferential right is alive and since the plaintiffs are the next heirs of Mt. Gurdevi they are fully competent to have the unnecessary alienation effected by her declared invalid qua their rights of succession. A Division Bench of this Court

consisting of Sardar Raja Singh C. J., and S. Kartar Singh J., held in civil Appeal no. 484 of 22-12-2004, Pritam Singh v. Mt. Chinto and Chandi, for a declaration that the sale of 29 bighas 14 biswas by Mt. Gurdevi in favour of Pritam Singh would not affect their interest as reversioners of her husband, that in the absence of any other living heir, the plaintiffs (Mt. Chinto and Mt. Chandi) were competent to bring that suit. There is thus preponderance of Judicial decisions in favour of the competency of the immediate female heir to contest an alienation by another female with limited interest. So far as legal necessity for the alienation is concerned, the learned counsel for the appellants has frankly admitted that there is no satisfactory evidence that any expenses for medical treatment were incurred by Mt. Gurdevi or that she was actually in the clutches of some serious disease requiring expensive treatment. The evidence on the record does not show that Mt. Gurdevi had any difficulty in managing the land in village Kapuri or that the income from it was not sufficient to maintain her. No land has been acquired by her any where and there is no proof that any piece of land was actually intended to be purchased by her. She has abandoned Kapuri and has taken up residence at Nagla in the Ambala District where her parents live and she is apparently under their influence. A female in possession of property left by her husband has no right to alienate it for buying land elsewhere, unless it can be shown that the alienated property was not profitable or that there was extreme difficulty in supervising and managing it. Mt. Gurdevi had inherited over 260 bighas of land from Indar Singh, the income from which must have been more than enough for her maintenance. The vendee has again failed to lead any evidence that Mt. Gurdevi did actually proceed on pilgrimage or that she had intended to do so. I, therefore, uphold the conclusion of the Courts below that the vendee has failed to prove necessity for the sale, and dismiss the appeal with costs.