2026:PHHC:009960

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1499-1996 (O&M)
Reserved on :-**12.01.2026**
Date of Pronouncement:-**22.01.2026**
Uploaded on:-23.01.2026

Mohd. Ashraf and Another

… Appellants

Versus

Sadiq (Since Deceased) through his LRs and Others

... Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Vishan Pundir, Advocate for the appellants.

Mr. M.L. Sarin, Senior Advocate with
Ms. Heman Sarin, Advocate
for respondents No.1 and 2.

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VIRINDER AGGARWAL, J.

1. This Regular Second Appeal (hereinafter referred to as “RSA”) has been preferred by the appellants/defendants, assailing the concurrent judgments and decrees rendered by the learned Courts below, whereby the suit instituted by the respondents/plaintiff was decreed. The appellants challenge the legality, propriety, and correctness of the impugned judgments, contending that the findings recorded by the learned trial Court and affirmed by the First Appellate Court are perverse, suffer from mis-appreciation of evidence. he appellants seek this Court’s interference to rectify the manifest

errors in law and fact apparent on the record, and to restore their lawful rights over the property in question.

2. Briefly stated, the respondent/plaintiff instituted the present suit seeking a decree for declaration and possession, *inter alia*, on the grounds that the suit land measuring 42 Kanals 19 Marlas originally belonged to Akkal, the uncle of the plaintiff, who was Meo by caste and whose succession and alienation rights were governed by the customary laws prevailing within the community. In accordance with such customs, a Meo widow is entitled only to a life interest in the property inherited from her father, irrespective of the nature of the estate. Akkal having died issueless, his widow, Smt. Rehmani, acquired only a life-estate in the suit land, and the plaintiff, being a collateral relative of Akkal, stood entitled to succeed to the property upon the demise of Rehmani.

2.1. It is the case of the plaintiff that Smt. Rehmani, in complete disregard of these rights and without lawful necessity or consideration, executed a registered sale-deed dated 04.01.1982 in favour of defendants No.2 and 3. The purported consideration of ₹28,000/- mentioned in the sale-deed is alleged to be entirely fictitious. The plaintiff contends that the said sale was effected without his knowledge or consent and in contravention of his lawful expectancy, and that the transaction is consequently void and inoperative against his pre-existing rights to succeed to the property upon the death of Smt. Rehmani. Accordingly, the plaintiff seeks a declaration that the sale-deed is null and void and that the plaintiff is entitled to possession of the suit land, together with consequential reliefs as deemed just and proper by this Court.

3. The defendants vigorously contested the suit, categorically denying that the suit land formed part of any ancestral estate of the Akkal or that the customs alleged by the plaintiff governed succession or alienation of the property. The very relationship of the plaintiff with Akkal was called into question, and it was asserted by Smt. Rehmani that the sale of the suit land was effected out of genuine legal necessity, including for her own maintenance, the construction of a house for her daughter, and the marriage of her granddaughter. In addition, the defendants raised several legal objections, contending that the suit was barred by limitation, that the plaintiff lacked the requisite locus standi, and that the claim was otherwise not maintainable in law. The defendants, therefore, sought dismissal of the suit on both factual and legal grounds, asserting that the sale-deed executed in their favour was valid, lawful, and enforceable.

4. Subsequently, the respondents–plaintiffs filed a detailed replication, in which they systematically and emphatically refuted each of the contentions, objections, and legal pleas advanced in the written statement of the defendants. In their replication, the plaintiffs concurrently reaffirmed, with utmost clarity and precision, the substantive allegations and claims articulated in the plaint, reiterating their entitlement to the reliefs sought. Upon a thorough and painstaking examination of the pleadings of both parties, coupled with an analytical consideration of their respective positions, it became imperative for the Court to delineate the precise points of divergence and controversy between the parties. In order to facilitate a structured, methodical, and legally coherent adjudication, and to ensure that the trial would proceed on clearly defined lines, the Court, after due

deliberation, was pleased to frame the following issues for determination, which would form the guiding framework for resolution of the dispute:-

1. *Whether the plaintiff is the collateral and nearest reversioner of the deceased defendant No.1 Akkal, as alleged in the plaint? OPP*
2. *Whether the deceased Akkal was governed by the custom as alleged in the plaint? OPP*
3. *Whether the land in dispute is the ancestral property to Akkal qua the plaintiff?OPD*
4. *Whether the defendants are the bonafide purchaser of the land in dispute as alleged in the written statement?OPD*
5. *Whether the defendants are the bonafide purchaser of land in dispute and it was sold by deceased Akkal defendant No.1 for consideration and legal necessity?OPD*
6. *Whether the present suit is not maintainable in the present form? OPD*
7. *Whether the plaintiff has no locus standi to file the present suit? OPD*
8. *Whether the suit is bad for mis-joinder and non- joinder of necessary parties? OPD*
9. *Whether the suit is barred by limitation? OPD*
10. *Whether the suit is not valued properly for the purposes of court fee and jurisdiction?OPD*
11. *Relief.*

5. During the pendency of the suit, on 22.08.1984, an application was filed by Smt. Janbi seeking to be brought on record as the legal representative of defendant No. 1, Smt. Rehmani, on the ground that the latter had allegedly expired during the course of the proceedings. In response, the plaintiff, Ghamandi, filed an application dated 26.09.1984, seeking amendment of the plaint to include a claim for possession of the suit land, asserting that the succession to the property had arisen upon the death

of defendant No. 1. After due consideration of the rival contentions, the learned Trial Court, by order dated 14.12.1984, allowed the amendment of the plaint, thereby permitting the plaintiff to pursue the additional claim. Simultaneously, the application for substitution of Smt. Janbi as the legal representative of the deceased defendant No. 1 was also allowed, subject to all just exceptions and without prejudice to the rights of the opposite party. Pursuant to the said order, an amended plaint was filed, in which Smt. Janbi was duly arrayed as a defendant, thereby regularizing her status in the proceedings and ensuring the proper representation of the estate of the deceased defendant.

5.1 Thereafter, Defendants No. 2 and 3 filed a comprehensive joint written statement, vehemently contesting the claims of the plaintiff. They averred that the plaintiff, with an ulterior and mala fide motive of unlawfully usurping the suit land, had engaged in a sustained course of harassment against Smt. Rehmani, including attempts to forcibly dispossess her and create a hostile environment compelling her to leave the ancestral residence. As a result of such intimidation, Smt. Rehmani took temporary residence with her daughter in village Ali Meo. It was further pleaded that, driven by legitimate personal and familial obligations, Smt. Rehmani had executed transactions providing financial assistance to her daughter for the marriage of her granddaughters (daughters of Smt. Janbi) and for the improvement of her daughter’s residence. The defendants averred that all transactions were carried out bona fide, with due regard to legal necessity and proper management of the suit property. In her separate written statement, Defendant No. 4 adopted a congruent stand, unequivocally denying all allegations advanced by the plaintiff. The plaintiff, in replication, reiterated

his claims, disputing the bona fides of the defendants' conduct and asserting his rights over the property. In light of the above pleadings and to ensure a precise and legally coherent adjudication of the additional points of contention, the Court framed the following supplementary issues on 13.02.1985, which read as under:-

10-A Whether the defendant No.4 is the daughter and heir of Akkal deceased? OPD

10.B Whether the judgment and decree dated 7.8.81 in zivil suit No. 167/81 was final between the parties? OPD

10-C Whether the plaintiff is estopped by his own admission, acquiescence, Iaches, conduct from filling the present suit?OPD

11. Relief.

Learned Trial Court re-rame issue No.5 as under vide order dated 04.02.1988.

"Whether the vendees-defendants are the bonafide purchasers of the suit land and that the same was sold by defendant No.1 Rahimi for consideration and legal necessity? OPD

6. Upon the settlement and framing of issues, both parties were afforded a full, fair, and adequate opportunity to adduce their respective oral and documentary evidence in support of their claims and defenses. After an exhaustive and meticulous appraisal of the entire evidentiary record, coupled with a careful consideration of the submissions advanced by learned counsel for the parties, the learned Sub-Judge Ist Class decreed the suit in favor of the plaintiff/respondent, recording detailed findings on both facts and law. Aggrieved by the same, the defendants/appellants preferred an appeal before the learned Additional District Judge, Gurgaon, who, upon re-examining the evidence and submissions, affirmed the findings of the trial Court and

dismissed the appeal, thereby upholding the judgment and decree rendered by the Court below.

7. The appellants have invoked the jurisdiction of this Hon'ble Court by way of the instant Regular Second Appeal (hereinafter referred to as "RSA"), assailing the concurrent judgments and decrees of the Courts below. Upon preliminary scrutiny, the appeal was prima facie found to raise substantial and arguable questions of law and fact, warranting detailed adjudication. Consequently, the appeal was admitted for regular hearing, and notice was duly issued to the respondents. Respondents No. 1 and 2 entered appearance through their learned counsel and actively opposed the appeal, advancing their contentions with considerable diligence during the stage of final arguments.

8. For the purpose of a comprehensive, methodical, and judicious adjudication of the issues raised in the present appeal, the entirety of the lower Court record, including pleadings, evidence, orders, and ancillary proceedings, was duly summoned and placed before this Hon'ble Court. The record has been examined with painstaking care, ensuring that each material aspect, evidentiary item, and judicial finding rendered by the Courts below is meticulously scrutinized, in order to assess the correctness, legality, and propriety of the concurrent judgments and decrees impugned in this RSA.

9. I have heard learned counsel for the parties at considerable length and have bestowed my anxious, deliberate, and careful consideration upon the submissions advanced, in the backdrop of the pleadings, the entirety of the evidence adduced, and the concurrent findings recorded by the Courts below. The entire record of the lower Courts, encompassing pleadings, documents, oral evidence, and orders, has been perused with painstaking

scrutiny to assess '*whether the impugned judgments and decrees are vitiated by any jurisdictional infirmity, patent illegality, material irregularity, manifest perversity, or any misappreciation or non-appreciation of evidence, such as would justify intervention by this Hon'ble Court in the exercise of its appellate and supervisory jurisdiction*'?

10. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

11. Learned counsel for the appellant contended that both the Courts below, notwithstanding having considered the fact that the suit land is non-ancestral, committed a manifest legal error in holding that the widow had no authority to alienate the property without the consent of her collaterals. It was further urged that the Courts failed to take cognizance of the historical context and operation of the Wajib-ul-Arz, which, when complied, was heavily tilted in favour of male heirs, systematically marginalizing the rights of females, who, at that time, did not participate publicly in matters of property. Learned counsel emphasized that the traditional interpretation of Wajib-ul-Arz, as relied upon, generally pertained to ancestral property and not to self-acquired property; moreover, in the agrarian context of the period,

the concept of self-acquisition was widespread, yet often overlooked in adjudications. It was submitted that such an approach, which derogates from the rights of females, stands in direct conflict with the post-Independence constitutional dispensation, wherein the Constitution of India guarantees fundamental equality to all citizens irrespective of sex, rendering any discriminatory restriction based solely on gender violative of Article 14 of the Constitution.

12. Whereas learned counsel for the respondent contended that the impugned findings recorded by both the Courts below are unimpeachable, free from any legal infirmity or jurisdictional error. It was submitted that both the Courts have rightly concluded that the widow had no authority to alienate the suit land without obtaining the consent of the collaterals of Akkal. Learned counsel emphasized that the conclusions reached by the lower Courts are consistent with the established principles governing succession and alienation of ancestral and non-ancestral property under the prevailing customs and statutory framework. In view of the above, it was contended that the concurrent findings of the Courts below ought to be affirmed, and consequently, the appeal filed by the appellant deserves to be dismissed in its entirety.

13. The learned Additional District Judge, while adjudicating the appeal, placed reliance upon the authoritative pronouncement of this Court in ***Smt. Hussain Bai vs. Kalu and Others, 1969 PLR 819***. In that decision, it was held that, in accordance with the *Riwaj-i-am* of Gurgaon District, the powers of alienation vested in a widow are inherently restricted, both in respect of ancestral and non-ancestral property, and such alienation can only be effected with the consent of the husband’s collateral relatives. The learned

Additional District Judge further noted that the suit land in the present matter was held to be non-ancestral, as determined in Civil Suit No. 167 of 1987. It was also observed that Janvi, purportedly the daughter of Akkal, was not established to be so, thereby rendering the asserted need of Smt. Rahimi for her daughter's or granddaughter's marriage unproven. Accordingly, the sale in question could not be justified on the ground of legal necessity. Rather, the Court concluded that the sale was executed for consideration, and that consideration was in fact paid.

13.1. The *Riwaj-i-am* of Gurgaon District, as codified by Wilson, contains explicit rules of customary law delineating the scope of a widow's power of alienation, which are reproduced as follows:-

> *"The widow's interest is a life interest only. But she is owner of the property for the time being, and she can, with the consent of her husband's relatives, alienate by sale, gift or mortgage the immovable property which has developed on her from her husband. No distinction is made between the ancestral and self-acquired property."*

14. Learned counsel for the respondents contended that the judgment of the Division Bench in ***Smt. Jaituni and Another vs. Rahim Khan, 1987 SimLJ 425***, is clearly distinguishable from the facts of the present case. In the said decision, the issue pertained to the purported gift made by a mother in respect of non-ancestral property in favour of her daughter. The Division Bench held that there was no evidence of any custom among the Meo community recognizing the validity of such a gift, whether the property was inherited by the mother as a widow or otherwise. Consequently, the principles enunciated therein do not govern the present dispute, as the legal and factual matrix in this case concerns the powers of

alienation of a widow vis-à-vis the consent of collateral heirs under customary law, rather than a gratuitous transfer to a daughter.

15. Whereas learned counsel for the appellants relied upon the law laid down by this Court in ***Umar Khan vs. Sheodan and Others, 2010 (3) RCR (Civil) 226***, wherein it was held that, in consonance with the observations of the Division Bench in ***Smt. Jaituni and Another*** (supra) and the judgment of this Court in ***Kanwar Khan and Others 2005(3) RCR(Civil) 243,*** the entries in the *Riwaj-i-am* are primarily applicable to ancestral property. The Court further held that such customary provisions would govern non-ancestral property only if there exists a clear and unambiguous intention to the contrary. Consequently, mere reliance upon the *Riwaj-i-am* in the absence of such demonstrable intention cannot operate to restrict the alienation of non-ancestral property by the widow.

16. Learned counsel for the respondents contended that the learned Single Judge of this Court ought not to have adopted a view contrary to that previously rendered by a co-equal Bench in ***Smt. Hussaini Bai vs. Kalu and Others*****, 1969 PLR 819**. It was submitted that such a course undermines the principles of judicial discipline and comity, as a co-ordinate Bench of the same High Court is generally expected to respect and not sit in review of the judgment of another co-equal Bench, except where compelling reasons exist to depart from it, then it be referred to Larger Bench. In support of this proposition, reliance was placed upon the law laid down by the Hon'ble Apex Court in ***Sr. Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Co. vs. The State of Andhra Pradesh and Others, AIR 1972 SC 51***, wherein it was held that the judgments of co-equal Benches are to be given due regard, and any deviation therefrom must be founded upon

substantial and cogent reasons to prevent disruption of judicial propriety and institutional discipline, relevant extract is as under:-

> *"It is strange that a co-ordinate Bench of the same High Court should have tried to sit on judgment over a decision of another Bench of that court. It is regrettable that the learned Judges who decided the latter case over looked the fact that they were bound by the earlier decision. If they wanted that the earlier decision should be reconsidered, they should referred the question in issue to a larger Bench and not ignore the earlier decision"*

17. There can be no quarrel with the settled proposition that judicial propriety mandates adherence to earlier decisions rendered by co-ordinate Benches of the same Court, save in circumstances where a reference to a Larger Bench becomes warranted. However, the present matter stands on a distinct and nuanced footing. The controversy herein pertains to the existence, scope, and applicability of a custom prevailing among the Meo community of the erstwhile Gurgaon District, and more specifically, to the proper interpretation of the *Wajib-ul-arz* when its recitals appear to run counter to the general principles of customary law. In such a situation, the rule of automatic deference to a previous judgment of a co-equal Bench does not operate with the same rigidity, for the inquiry is essentially one into the correctness of the recognition or interpretation of a custom an inquiry that must be undertaken with reference to authoritative precedents of the Hon'ble Supreme Court governing proof, continuity, and applicability of custom.

18. In this regard, the Hon'ble Apex Court in ***Jai Kaur and Others vs. Sher Singh and Others, AIR 1960 SC 1118***, has categorically held as under:

"11. In our opinion, the view taken by the Full Bench in Mt. Hurmate v. Hoshiaru (1) is consonant with reasons and consistent with probability. The fact that the great majority of judges, who brought to bear on the question, an intimate knowledge of the ways and habits of the Punjab peasantry thought that when tribesmen were asked about succession to property, they would ordinarily think that they were being asked about succession to ancestral property, is entitled to great weight. It cannot, we think, be seriously disputed that at least in the early years (1) A.I.R. 1944 Lah 21. when the Riwaj-i-am was in course of preparation most of the property in the countryside was ancestral property, and "self-acquisitions " were few and far between. This fact, it is reasonable to think, had the consequence of concentrating the attention of the tribesmen on the importance of having the tribal custom correctly recorded by the Settlement Officers and their agents, as regards succession to ancestral property, and of attracting little attention, if any, to matters regarding non-ancestral property. Unless the questions put to these simple folk, were so framed as to draw pointed attention to the fact that the enquiries were in respect of non-ancestral property also, they could not reasonably be expected to understand from the mere fact of user of general words in the questions that these referred to both ancestral and non-ancestral property. As Din Mohammad, J., said in his judgment in the Full Bench, even the fact that on some occasions, the questioner had drawn some distinction between ancestral and nonancestral property, could not have put them-(i.e., the persons questioned)-on their guard in every case, considering their lack of intelligence in general. Their minds being obsessed with the idea that such enquiries would only refer to ancestral property, they would direct their answers to matters in respect of ancestral property only, and in using forceful terms like "

in no case " and " under no circumstances these persons were really saying that " in no case would ancestral property devolve in a particular way and have a particular incidence; and under no " circumstances " would ancestral property devolve in a particular way, and have a particular incidence.

12. These considerations, we think, outweigh the statement made by Mr. Gordon Walker that no distinction between self-acquired and inherited property in land appeared to be recognised, and the rules of succession, restriction on alienation, etc., applied to both alike.

13. We think, therefore,, that the view taken by the Full Bench, and the many previous cases mentioned in the judgment of the Full Bench, that questions and answers in the Riwaj-i-am refer ordinarily to ancestral property, unless there is clear indication to the contrary, is correct. Question No. 43 in the Ludhiana district, appears to be the same for all the tribes. There is not the slightest indication there that the questioner wanted information about nonancestral property also. The answer given by the Grewal Jats to this question also gives no reason to think that the persons questioned were thinking in giving the answers of both ancestral and non-ancestral property."

19. It thus emerges with unmistakable clarity that any reference to "property" in the *Wajib-ul-arz* is, by necessary implication, to be construed as a reference to ancestral property alone, and not to property of a non-ancestral character. In the present case, the nature of the suit land is no longer *res integra*. The issue already stood conclusively determined in the earlier civil litigation between the parties, namely Civil Suit No. 167 of 1981 instituted by Smt. Rehmani against Ghamandi, wherein the Civil Court categorically held the suit property to be non-ancestral. That finding, having

attained finality between the parties, was rightly relied upon by the learned First Appellate Court, and the suit land was correctly treated as non-ancestral in nature.

19.1. Once the property in question is held to be **non-ancestral**, the legal position becomes inescapable. In view of the authoritative enunciation of law by the Hon'ble Supreme Court in ***Jai Kaur's case* (supra)**, any recital in the *Wajib-ul-arz* must be confined in its applicability to ancestral property alone. Consequently, reliance upon the *Wajib-ul-arz* to restrict the widow's powers of alienation in respect of non-ancestral property is legally impermissible.

19.2. It is further evident that in ***Hussain Bai's case* (supra)**, the binding dictum of the Hon'ble Apex Court in ***Jai Kaur* (supra)** was not brought to the notice of the Court, with the result that the *Riwaj-i-am* compiled by Wilson was applied in a literal and unqualified manner, without appreciating that such customary restrictions operate only in relation to ancestral property. This interpretative caution was later reaffirmed by this Court in ***Kanwar Khan and Others vs. Khatoni and Others (supra)***, wherein, in paragraph 7, the Court concluded as under:-

> *"Keeping in view the principles of law enunciated by judgments referred to above, it is apparent that entries in Riwaj-i-am are in respect of ancestral property only. Therefore, the presumption sought to be raised by the appellants in terms of Riwaj-i-am contained in Appendix VII of Rattigan's Digest of Customary Law, Fifteen Edication (1995 reprint) in respect of custom of Gurgaon district would be only in respect of ancestral property. Such Riwaj- i-am adversely affects the rights of the famel, who had no opportunity whatever appearing before the Revenue Authorities, the presumption even in respect of ancestral land is weak. But in the*

absence of any instance of respective right of female in respect of non-ancestral land, the presumption of general custom cannot be deemed to have been rebutted."

20. Furthermore, this Court has consistently adopted a pragmatic, progressive, and constitutionally aligned approach while examining customary restrictions on the rights of women in matters of alienation of property. It has been unequivocally held that any custom which seeks to curtail, dilute, or abrogate the proprietary rights of a female exclusively on the basis of religion, gender, or sex-based classification is inherently vulnerable to challenge and cannot withstand the constitutional mandate of equality enshrined under Articles 14 and 15 of the Constitution of India. This position stands fortified by the judgment of this Court in ***Mohammad Yunis vs. Malooki*, 2004 (1) RCR (Civil) 476**, wherein it was held as under:-

"8. Although I have not found any merit in this appeal in view of the pleadings of the plaintiff-appellant to the effect that custom was applicable to ancestral property and in view of concurrent findings of both the courts below that the suit property was non-ancestral, there is another angle which requires reference. Custom restricting rights of a woman existing in pre-Constitution era cannot be recognised by the court unless it can meet the approval of equality clause of the Constitution. In recent decision in John Vallamattom v. Union of India, (2003)6 S.C.C. 611, the Apex Court struck down 118 of the Indian Succession Act, 1925 restricting bequeathing of property for religious or charitable use except in the manner provided therein. It was observed as under:-

"The world has witnessed a sea change. The right of equality of women vis-a-vis their male counterparts is accepted world-wide. It will be immoral to discriminate a woman on the ground of sex. It is

forbidden both in our domestic law as also international law. Even right of women to derive interest in a property by way of inheritance, gift or bequeath is statutorily accepted by reason of the Hindu Succession Act, 1956 and other enactments. This court, therefore, while considering constitutionality of Section 118 of the Indian Succession Act, is entitled to take those facts also into consideration."

"Before I part with the case, I would like to state that Article 44 provides that the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India. The aforesaid provision is based on the premise that there is no necessary connection between religious and personal law in a civilized society. Article 25 of the Constitution confers freedom of conscience and free profession, practice and propagation of religion. The aforesaid two provisions viz. Articles 25 and 44 show that the former guarantees religious freedom whereas the latter divests religion from social relations and personal law. It is no matter of doubt that marriage, succession and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is a suspect legislation, although it is doubtful whether the American doctrine of suspect legislation is followed in this country. In Sarla Mudgal v. Union of India, (1995)3 S.C.C. 635, it was held that marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the

country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies."

In Hussain Bai's case (supra), it was observed that custom relating to restriction on alienation applied to ancestral as well as non-ancestral property. In the present case, plaintiff himself has mentioned that the custom was applicable to ancestral property. Thus, judgment relied on by the learned counsel for the appellant is distinguishable. Learned counsel for the appellants stated that the said judgment refers to the Supreme Court judgment in Ujjagar Singh v. Mst. Jeo, A.I.R. 1959 S.C. 1341. Reference to the Supreme Court judgment is only for holding that Riwaj-i-Am could be referred to for holding that there was a particular custom. Thus, with regard to applicability of custom about non-ancestral property, this judgment is not reiteration of the judgment of the Supreme Court. In the judgment of the Supreme Court, question involved is different i.e. right of a sister to inherit and it was held that custom is a matter of pleading and evidence, unless general custom is duly recognised by some judicial precedent.

In Preman v. Union of India and Ors., A.I.R. 1999 Kerala 93, Section 118 of the Indian Succession Act, 1925 was held to be violative of Article 14 of the Constitution on the ground that the said section:-

"a) discriminates against ,1 Christian vis-a-vis non-Christian

b) discriminates against testamentary disposition by a Christian vis-a-vis non-testamentary disposition;

c) discriminates against religious and charitable use of property vis-a-vis all other uses including not so desirable purposes.

d) discriminates against a Christian who has a nephew, niece or nearest relative vis-a-vis Christian who has no relative at all and

e) discriminates against a Christian who dies within 12 months of execution of the will, of which he has no control."

In Atam Prakash v. State of Haryana and Ors., A.I.R. 1986 S.C. 859, while considering validity of Punjab Pre-emption Act, 1913 to the extent it conferred right of pre-emption on certain relations of a vendor, it was observed as under:-

The real question is whether a classification in favour of the kinsfolk of the vendor can be considered reasonable so as to justify a right of pre-emption in their favour for the purpose of preserving the integrity of the village community or implementing the agnatic theory of succession or preserving the unity and integrity of the family. We do not think that the classification can be considered reasonable in the circumstances prevailing today whatever justification there might have been for the classification in 1960 when the legislature amended Section 15 of the Punjab Pre-emption Act. Apart from the Courts characterising the right as 'archaic', 'feudal', 'piratical' 'outmoded' and so on, the Punjab Legislatures recognised the incongruity of the right in modern times and repealed it in 1972. We find it difficult to uphold the classification on the basis of unity and integrity of either the village community or the family or on the basis of the agnatic theory of succession which is again in a way connected with the integrity of the family. It is well known and, we may take judicial notice of it, that not only has there been a green and a white revolution in Haryana, this State is also in the process of an industrial revolution. Industries have sprung up throughout the State and the population has been in a state of constant flux and movement. The traditional integrity of the village and the family have now become old wives' tales. Tribal loyalties have disappeared and family ties have weakened. Such is the effect of the march of history and the consequences of industrialisation, mechanisation of

agriculture, development of marketing and trade, allurement of professions and office, employment opportunity elsewhere and so on. The processes of history cannot be reversed and we cannot hark back to the traditional rural-family-oriented society.

In C. Masilamani Mudaliar and Ors. v. The Idol of Sri Swaminathaswami Swaminathaswami Thirukoli and Ors. A.I.R. 1996 S.C. 1697, it was held by the Apex Court as under:-

"The personal laws conferring inferior status on women is anathema to equality. Personal laws are derived not from the Constitution but from the religious scriptures. The laws thus derived must be consistent with the Constitution lest they became void under Article 13 if they violated fundamental rights." It was further observed as under:-

The General Assembly of the United Nations adopted a declaration on December 4, 1986 on 'The Development or the Right to Development' to which India played a crusading role for its adoption and ratified the same, its preamble cognises that all human rights and fundamental freedoms are indivisible and interdependent. All nation States are concerned at the existence of serious obstacles to development and complete fulfilment of human beings, denial of civil, political, economic, social and cultural rights. In order to promote development, equal attention should be given to the implementation, promotion and protection of civil, political economic, social and political rights.

Article 1(1) assures right to development an inalienable human right, by virtue of which every person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised. Article 6(1) obligates the state to observance of all human right and fundamental freedom

for all without any discrimination as to race, sex language or religion. Sub-article(2) enjoins that....equal attention and urgent consideration should be given to implement, promotion and protection of civil, political economic, social and political rights. Sub article (3) thereof enjoins that 'state should take steps to eliminate obstacle to development, resulting from failure to observer civil and political rights as well as economic, social and economic rights. Article 8 casts duty on the State to undertake development and ensure, inter alia, equality of opportunity for all in their access to basic resources....and distribution of income'. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicate all social injustice.

Human Rights are derived from the dignity and worth inherent in the human person. Human Rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedom are inter-dependent and have mutual reinforcement. The human rights for woman, including girl child, are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic, and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights.

Vienna declaration on the elimination of all forms of discrimination against women for short 'CEDAW" was ratified by the UNO on December 18, 1979. The Government of India who was an active participant to CEDAW ratified it on June 19, 1993 and acceded to

CEDAW on August 8, 1993 with reservation on Articles 5(e), 16(1), 16(2) *and 29 of CEDAW. The Preamble of CEDAW reiterates that discrimination against women, violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation on equal terms with men in the political, social economic and cultural life of their country; hampers the growth of the personality from society and family and makes more difficult for the full development of potentialities of women in the service of their countries and of humanity. Poverty of women is a handicap. Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article I defines discrimination against women to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Article 2(b) enjoins the State parties while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting appropriate legislative and other measures including sanctions where appropriate prohibiting all discriminations against women," to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause C enjoins to ensure legal protection of the rights of women on equal basis with, men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins State parties that it shall take,*

in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that "the state parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women", in particular.....Article 14 laid emphasis to eliminate discrimination on the problems faced by rural women so as to enable them to play "in the economic survival of their families including their work in the non-mometized sectors of the economy and shall take.....all appropriate measures....." Participation in and benefit from rural development and, in particular, shall ensure to such women the right to participate in the development programme to organize self groups and co-operatives to obtain equal access to economic opportunities through employment or self-employment etc. Article 15(2) enjoins to accord to women an equality with men before the law, in particular, to administer property.

The Parliament made the Protection of Human Rights Act, 1993. Section 2(b) defines human rights means "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international conventions and enforceable by Courts in India." Thereby the principles embodies in CEDAW and the concomitant right to development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section 12 of Protection of Human Rights Act charges the commission with duty for proper implementation as well

as prevention of violation of the human rights and fundamental freedoms.

Article 5(a) of CEDAW to which the Government of India expressed reservation does not stand in its way and in fact Article 2(f) denudes its effect and enjoin to implement Article 2(f) read with its obligation undertaken under Articles 3, 14 *and 15 of the Convention vis-a-vis* Articles 1, 3, 6 *and 8 of the Convention of Right to Development. The directive principles and fundamental rights, though provided the matrix for development of human personality and elimination of discrimination, these conventions add urgently and teeth for immediate implementation. It is, therefore, imperative of the State to eliminate obstacles, prohibit all gender based discriminations as mandated by Article 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should take all appropriate measures including legislation to modify or abolish gender based discrimination in the existing laws, regulation, customs and practices which constitute discrimination against women.*

Article 15(3) of the Constitution of India positively protects such Acts or actions. Article 21 of the Constitution of India reinforces "right to life". Equality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that give meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfilment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development, women to enjoy economic, social, cultural and political rights without discrimination and on footing of equality. Equally in order to effectuate fundamental duty to develop scientific

temper, humanism and the spirit of enquiry and to strive towards excellence in all spheres of individual and collective activities as enjoined in Article 51A(h) and (J) of the Constitution of India, facilities and opportunities not only are to be provided for, but also all forms of gender based discrimination should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. Therefore, the State should create conditions and facilities conducive for women to realise the right to economic development including social and cultural rights.

Bharat Ratna Dr. B.R. Ambedkar stated, on the floor of the Constituent Assembly that in future both the legislature and the executive should not pay mere lip service to the directive principles but they should be made the bastion of all executive and legislative action. Legislative and executive actions must be conformable to and effectuation of the fundamental rights guaranteed in Part III and the directive principles enshrined in Part-IV and the Preamble of the Constitution which constitutes conscience of the Constitution. Covenants of the United Nation add impetus and urgency to eliminate gender based obstacles and discrimination. Legislative action should be devised suitably to constellate economic empowerment of women in socio-economic restructure for establishing egalitarian social order. Law is an instrument of social change as well as the defender for social change. Article 2(e) of CEDAW enjoins that this Court to breath life into the dry bones of the Constitution, international convictions and the Protection of Human Rights Act and the Act to prevent gender based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights to women.

As per the U.N. Report 1980 "women constitute half the world population, perform nearly two thirds of work hours, receive one tenth of the world's income and own less than one hundredth per cent of world's property". Half of the Indian population too are women. Women have always been discriminated and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities inequality and discrimination. Articles 13, 14, 15 *and 16 of the Constitution of India and other related articles prohibit discrimination on the ground of sex. Social and economic democracy is the cornerstone for success of political democracy.*

In Mrs. Valsamma Paul v. Cochin University and others, J.T. 1996(1) S.C. 571 this Court has held thus:

"Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the University Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth-cultural, social and economical. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Convention for Elimination of all forms of Discrimination Against Women (for short "CEDAW") was ratified by the U.N.O. on December 18, 1979 and the Government of India had ratified as an active participant on

June 19, 1993 acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity.

Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article 1 defines "discrimination against women" to mean "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Article 2(b) enjoins upon the State parties, while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women; to take all appropriate measures including legislations, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause C enjoins upon the State to ensue legal protection of the rights of women on equal basis with men, through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 enjoins upon the State parties that it

shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women.

The Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(b) defines "human rights" to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international convictions and enforceable by Courts in India." Thereby, the principles embodied in CEDAW and the concomitant right to development became integral part of the Constitution of India and the Human Rights Act and became enforceable. Section 12 of the Protection of Human Rights Act charges the commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.

In view of the march of the society as recognized in decisions of the Apex Court and having regard to the position of rights of a woman under the Constitution, the restriction on right of a woman to transfer non-ancestral property inherited by her from her husband, has become quite doubtful."

21. Considered in the light of the constitutional guarantees, the principles enunciated by the Hon'ble Supreme Court, and the consistent judicial exposition rendered by this Court, the legal position stands crystallised beyond ambiguity that any custom or restriction which curtails the right of a female to alienate property inherited by her from her husband

when such property is non-ancestral in nature is inherently discriminatory. A limitation founded solely upon gender or marital status cannot withstand the scrutiny of Article 14 of the Constitution of India, which mandates equality before law and prohibits arbitrary or unreasonable classifications. Consequently, any such fetter on a woman's right to deal with her independently inherited property must be held to be constitutionally impermissible, legally unsustainable, and devoid of binding effect.

22. In the considered view of this Court, and in the light of the foregoing analysis, it becomes manifest that both the Courts below failed to appreciate the material evidence in its correct legal perspective. Though Janvi was not proved to be the biological daughter of Akkal, the record unmistakably establishes that she was indeed the daughter of Smt. Rehmani. The impugned alienation was, thus, effected not for purposes relatable to the estate of the deceased husband but solely for the *bona fide* and pressing needs of Smt. Rehmani herself, particularly for meeting the marriage expenses of her granddaughter, the daughter of Janvi a fact duly proved on record. Once the property is held to be non-ancestral, and the sale is shown to be for a legally recognized necessity of the owner, the transaction cannot be declared void merely for want of the consent of the collateral.

22.1. Consequently, the conclusion recorded by the Courts below that the impugned sale was without legal necessity is also found to be legally untenable and unsupported by the evidentiary matrix. Resultantly, the appeal filed by the appellants deserves to be, and is hereby, allowed. The judgments and decrees passed by the learned Courts below are set aside, and the suit instituted by the respondent–plaintiff stands dismissed.

23. Consequent upon the final adjudication of the principal lis, all pending miscellaneous applications howsoever titled or described shall, by necessary implication, also stand disposed of. In view of the findings and conclusions recorded herein, no separate or substantive orders are required to be passed on any such applications, their further consideration having been rendered entirely otiose, infructuous, and academically sterile. The disposal of the main appeal, therefore, exhausts all ancillary proceedings arising therefrom.

(VIRINDER AGGARWAL)
JUDGE

22.01.2026
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No