

(1996) 10 SC CK 0200

In the Supreme Court Of India

Case No : Civil Appeal No's. 8567 and 8568 of 1983

Surain Singh and Others

APPELLANT

Vs

Lakhmira Singh and Others

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Citation : (2001) 9 SCC 330

Hon'ble Judges : Sujata V. Manohar, J; M. M. Punchhi, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Mr Mahajan, learned counsel appearing for the appellants contends that these appeals are covered in his favour by the decision of this Court in Kesar Singh v. Sadhu¹. We have gone through that decision. We have also sent for the file of that case in order to see the orders precedent which led to the said decision. In our view the ratio in that decision requires reconsideration. Our reasons are as follows:

In the matter of succession and alienation qua agricultural lands in Punjab, customary law was applicable to agricultural communities putting fetters on the right to alienate lands and correspondingly preserving rights of the reversioners. Here the property in dispute was allotted in India in lieu of land left behind in Lyalpur District, now in Pakistan. The corresponding land in Pakistan was sold on 21-8-1940 by its owner Avtar Singh. His reversioners brought a suit for declaration to the effect that the sale effected by Avtar Singh was not for legal necessity and was ineffective on their reversionary rights. That suit was decreed on 12-4-1944 and its decision became final. The vendees as a result could remain in possession of the land upto the death of the vendor for the alienation was valid in law during his lifetime. Avtar Singh migrated to India and so did vendees of the land. The vendees were allotted the land in dispute which, thereafter, changed many hands. About 30 years later from the date of the decree, Avtar Singh, vendor died on 8-12-1974. Then cause of action arose to

the reversioners to seek possession of the land on reversion. Such right could only arise on the death of the vendor and not before. Necessarily then, suit for possession was filed, based as it was on rights accrued under the earlier decree of 1944, which had become final. The suit was decreed by the trial court. Both the courts in the appellate hierarchy have confirmed the judgment and decree of the trial court. That is how these appeals are before us.

2. Kesar Singh case¹ was a case identical on facts with the case in hand. Somehow in the narration thereof, presumably, by an accident or oversight an error seems to have crept in, in observing that the suit for possession was sequally instituted (misdescribed as an execution proceeding), and the same was not maintainable in view of Darshan Singh v. Ram Pal Singh² in which the effect of the amendment caused by the Punjab Amending Act, 1973 in the Punjab Custom (Power to Contest) Act, 1920 was considered. That judgment holds the amending Act of 1973 being retrospective in operation affecting pending suits in which alienations made had been contested and proceedings were at the original or appellate stages. Here, as also in Kesar Singh case, (1996) 2 Scale 177 proceedings instituted under the said Act stood finalised years ago much before the Punjab Amending Act of 1973 came about, in the Kesar Singh case, (1996) 2 Scale 177 in the year 1924 and in the present case in the year 1944. Those decrees for declaration had become final. Their validity was nowhere affected. To the suits for possession filed by the respective parties the rule of Darshan Singh case, AIR 1991 SC 1654 did not and could not apply. Be that as it may, we cannot comment any further on the merit of the matter in Kesar Singh case¹ but we are certainly of the view that that case requires reconsideration as its ratio is pressed into service in this appeal. We, therefore, refer these matters to a three-member Bench for the purpose. Papers may be laid before Hon"ble the Chief Justice of India for placing this matter before an appropriate Bench. There are two applications for substitution which may also be dealt with by the larger Bench.

3. Ordered accordingly.