



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-7121-2023 (O&M)

Date of decision: 09.04.2026

Subbey Khan @ Subba

...Petitioner(s)

Vs.

Rukseena and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vishal Garg Narwana, Advocate and
Ms. Chetna Rao, Advocate
for the petitioner.

Mr. Akash Yadav, Advocate
for respondent No.2.

NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by the plaintiff against the order dated 05.02.2021 (Annexure P-3) passed by learned Civil Judge (Junior Division), Camp Court, Punhana; whereby relief of ad interim injunction has been declined to the petitioner; **and** order dated 07.10.2023 (Annexure P-7) passed by learned Additional District Judge, Nuh; whereby appeal filed by the petitioner against the order dated 05.02.2021 has been dismissed.

2. Brief facts of the case in chronological order are as follows: -

01.02.2021: Petitioner/plaintiff had filed a Civil Suit dated 01.02.2021 (Annexure P-1) for declaration and permanent injunction. Alongwith the



same, petitioner has also filed application under Order 39 rules 1 and 2 CPC (Annexure P-2).

05.02.2021: Vide order dated 05.02.2021, the learned Civil Judge (Junior Division), Camp Court, Punhana had declined relief of ad interim injunction to the petitioner. Petitioner had then filed an Appeal against the order dated 05.02.2021.

26.02.2021: The petitioner had also filed application dated 26.02.2021 (Annexure P-5) for issuing ad interim injunction.

01.03.2021: Vide order dated 01.03.2021 (Annexure P-6), Id. Additional District Judge, Mewat had directed the parties to main status quo.

07.10.2023: Vide impugned order dated 07.10.2023 (Annexure P-7), appeal of the petitioner has been dismissed.

3. It is *inter alia* submitted by learned counsel for the petitioner that petitioner is the brother-in-law/brother of Wajid, who is husband of respondent/defendant No.1. It is submitted that Wajid had expired on 07.11.2015. Thus, as per Muslim Law, the estate of Wajid would devolve upon the petitioner and not upon his wife/respondent No.1. However, despite that, in a clandestine and fraudulent manner, defendant No.1 had executed Sale Deed No. 1217 dated 24.09.2020 in favour of defendant/respondent No.2. Accordingly, petitioner had filed the instant suit seeking declaration that the said Sale Deed is illegal, null and void.

4. Learned counsel for the petitioner submits that the petitioner and performa respondent No. 3, who is another brother of Wajid are the



real nearest collateral of the deceased Wajid and respondent No.1. The suit land is ancestral property of the petitioner and the other legal heirs in the hands of respondent No.1 and previously in the hands of Wajid. Wajid had died issueless. As such, as per Muslim Law, the petitioner and the perma respondent No.3 being the nearest collateral of Wajid are successors to the estate of Wajid. It is submitted that the parties to the suit are Meos by caste and do agriculture by their own hands, which is the main source of income and are governed by agricultural custom of Punjab and Haryana and of District Gurgaon now Mewat in the matters of succession, alienation and adoption etc. As per the said agricultural custom, the property in the hands of meo proprietor is inherited by his son(s) and in the absence of son(s), by the nearest collateral(s) of the said proprietor. Daughters have no right of succession in the property either ancestral or non-ancestral in the hands of said meo proprietor. It is further submitted that the property of the said proprietor is inherited by his widow, in the absence of son(s), as limited owner or life estate and she can only enjoy the same during her life time for her maintenance and survival and on her death, it is inherited by the nearest collateral of said proprietor. The widow, during her life time, has no right to alienate or transfer the land inherited by her from her husband either ancestral or non-ancestral in any manner and cannot appoint any heir by way of adoption without the consent of the nearest collaterals of her husband who have legal right to inherit the property on her death.



5. It is submitted that therefore, respondent No.1 had no right to alienate any part of the estate of the deceased Wajid, and petitioner and perform respondent No.3 have inheritance rights over the same. It is submitted that respondent No.1 is bent upon to alienate the remaining estate of Wajid. As such, denial of ad interim injunction to the petitioner has caused grave harm, injustice, prejudice and loss to the petitioner.

6. It is further submitted by learned counsel for the petitioner that as per agricultural custom when a male dies sonless, leaving behind a widow, mother and full brother then the succession of the immoveable property will be as follows: -

(a) Wife will get 1/4th share.

(b) Mother will get 1/3rd share.

(c) Full brother will get 5/12th share.

7. In the present case, the deceased - Wajid was owner of 10 Kanal 5 Marlas of agricultural land, which was ancestral land. After the death of Wajid, instead of dividing the land as per above shares, the entire land was illegally transferred in the name of respondent no. 1/Smt. Rukseena; which could not have been done.

8. It is accordingly prayed that the present Revision Petition be allowed; and the impugned orders be set aside.

9. *Per contra*, learned counsel appearing on behalf of respondent No.2 vehemently opposes submissions advanced on behalf of the petitioner and submits that the case is still at the stage of ad



interim injunction. Contention of the petitioner that suit land is ancestor is yet to be proved. In fact, application of the petitioner for grant of interim injunction is yet pending consideration. As such, the present Revision Petition be dismissed.

10. No other argument is raised by learned counsel for the parties. I have heard Id. counsel and perused the file. I find merit in the submissions advanced on behalf of Id. counsel for respondent No.2.

11. Perusal of the record of the case shows that the submission of the petitioner that the issue in the present hand pertains to the Muslim Personal Law is misleading as a bare perusal of the pleadings would show that the case is based on an alleged 'customary' law pertaining to Meo Tribe in the region of Nuh. It is trite law that 'Personal Law' and 'Customary Law' are two separate fields. The former is based upon scripture and codified law which is applicable to all the denominations of the faith; whereas customary law is an aberration from the general personal law.

12. The issue at hand is the order declining ad interim injunction to the Petitioner-Plaintiff. A bare perusal of the impugned orders reveals that the same are well-reasoned orders passed on account of the fact that the Petitioner was relying upon an alleged customary law which would firstly have to be proven strictly.

13. This is on account of the fact that the alleged custom seeks to completely deprive the widow from the property of her husband and the said custom is founded upon the recordings made in the Riwaaz-i-



Aam at the time of settlement which were prepared when women, being marginalised, were not able to have a say in the matters of property. The said custom has been applied by various judgments of this Court on very strict proof of its application; as well as absence of legal necessity for alienation of land has been held to be required to be proven by the male collaterals in a strict manner.

14. Reliance in this regard is placed upon the judgments of this Court in **Kanwar Khan and Ors. Vs. Khatoni & Ors., Law Finder Doc Id # 83223; Ismail and another Vs. Hajra, Law Finder Doc Id # 203863.**

Further, in **Mohd. Ashraf v. Sadiq (Since Deceased), (Punjab And Haryana) : Law Finder Doc Id # 2843007**; this Court has held as under: -

“A. Customary Law - Alienation of property by widow - Suit land held to be non-ancestral property - Restriction on widow's right to alienate non-ancestral property inherited from her husband without consent of collaterals, found to be discriminatory and violative of Article 14 of the Constitution of India - Held, any customary restriction limiting widow's right to deal with non-ancestral property independently is legally impermissible and not binding.

B. Constitution of India - Article 14 - Rights of women - Alienation of non-ancestral property - Custom or restriction curtailing right of a female to alienate property inherited by her from her husband, when such property is non-ancestral, held to be inherently discriminatory and unconstitutional.

The relevant paras of **Mohd. Ashraf (supra)** read as under:-

“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 Riwayat-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 v. 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 Riwayat-i-am are in



respect of ancestral property only. Therefore, the presumption sought to be raised by the appellants in terms of Riway-i-am contained in Appendix VII of Rattigan's Digest of Customary Law, Fifteen Edition (1995 reprint) in respect of custom of Gurgaon district would be only in respect of ancestral property. Such Riway-i-am adversely affects the rights of the female, 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 v. 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 Section 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, allurements 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 observe 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 1 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-monetized 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 embodied 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."

15. It is trite law that customary law is also "Law" as appears in Article 13 of The Constitution of India and as such, any customary law such as the present one which seeks to create such discrimination between the male and female legal heirs not to even speak of second class legal heirs and widow of a deceased male cannot be sought to be enforced by any Civil Court post the enforcement of the Constitution of India.

16. Furthermore, it cannot be lost sight of that the Plaintiff in his entire plaint has based his entire claim on an antiquated custom. As such, even if the custom pleaded in question has any application in order to succeed, the Petitioner would firstly have to show that the customary



law was being enforced throughout its inception and even if a few instances of break in custom can be shown by the Defendant in the Civil Suit, the same would lose its entire validity.

17. Secondly, even if the custom is shown to exist then it would have to be shown that the property in question would be ancestral one and that thirdly, the sale was in the absence of a legal necessity.

18. On a prospectus of the facts and legal position noted above, it is clear that the case of the Petitioner-Plaintiff is predicated on a very weak legal ground for which the onus upon the Petitioner is very strict and which is rebuttable by the Respondent when the case comes to the stage of evidence. The Ld. Courts below had specifically noted that the sale deed in question was to meet the expenses with regards to the necessities and expenses. Hence, the case of the Petitioner, notwithstanding the prima facie unconstitutionality of the alleged custom, cannot be stated to be prima facie proven.

19. In any case, the Petitioner is seeking to get an ad interim injunction which is reserved for a pre-appearance stage. When the Respondent is appearing before the Court and contesting the suit, an application for ad interim injunction would lose its efficacy and the remedy would now be to press the main application under Order 39 Rules 1 and 2 which is pending even as on date.

20. Furthermore, Petitioner/plaintiff is yet to establish the ancestral nature of the suit property. Thus, there is no prima facie case or balance of convenience in favour of the petitioner.



21. Relevant findings of learned Civil Judge (Junior Division),
Camp Court, Punhana in his order dated 05.02.2021 read as under: -

“Having examined records and hearing the contentions, the issue whether the suit property was ancestral in the hands of the husband of the defendant No. 1 and he has been shown as a co-sharer in the suit property requires consideration on merits and have to proved through cogent evidence. There is also no denying the fact that the plaintiffs and the defendant No. 1 hail from Meo tribe of District Gurgaon (now Nuh) and according to the customary law, the defendant No.1 could not alienate the suit property without legal necessity, but the customs appears to have strengthened the hands of widow in order to save her from passing through the life of a beggar, destitute and other adverse circumstances, at the death of her husband and to look at the hands of reversioner for her survival. The status of widow in the agricultural tribe of Meos in the State of Punjab is not lower than that of Karta of joint Hindu family property, who could also sell the joint coparcenary Hindu family property for legal necessity. In the light of the fact that the person was competent to sell the property for legal necessity, the other reversioner could not come to contend that the defendant had no right to alienate the same though they could challenge the alienation on the ground that the same was act of waste and was not for legal necessity. Even a coparcener who does any act which is either illegal or improper and prejudicial to the joint interests and enjoyment can be restrained from such act by an injunction at the instance of the other coparceners, but the court's jurisdiction has been limited to the acts of waste, illegitimate use of the family property or acts amounting to ouster. Reliance can be placed upon Ismail and Another Vs. Hajra,



(2010) 1 RCR (CIVIL) 441. Accordingly, the defendant No.1 could be prohibited from wasting, damaging any property but she could not be prohibited from alienating the same for legal necessity and better management of the property.”

22. I find no error in the aforesaid reasoning of learned Civil Judge (Junior Division), Camp Court, Punhana.

23. In view of the above, I find no ground is made out to interfere in the impugned orders dated 05.02.2021 (Annexure P-3) and 07.10.2023 (Annexure P-7). The present Civil Revision Petition is accordingly **dismissed**.

24.. Pending application(s), if any, also stand(s) disposed of.

09.04.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No