

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.660 OF 2003

INDER SINGH (D) THR. LRS. & ANR. . . APPELLANT(S)

VERSUS

KEHAR SINGH (D) THR. LRS. & ORS. . . RESPONDENT(S)

J U D G M E N T

ARUN MISHRA, J.

Heard learned counsel for the parties.

The only question raised in this appeal is with respect to the effect of amendment of Section 13 of the Rajasthan Colonization Act, 1954 (for short, "the Act of 1954"). Prior to the amendment, permission of State Government was required, as per provisions contained in Section 13 of the Act of 1954 to transfer any property rights which were held by a non-khatedar, by way of will, sale, mortgage, exchange, gift etc. In case the property was transferred without permission of State Government by any of the modes, the said provision provided that it shall be void. The provisions of Section 13 was amended and the disposition by Will was deleted in 1984 by Rajasthan Colonization (Amendment) Act, 1984 (Act No.19 of 1984), with effect from 4<sup>th</sup> May, 1984.

It was urged by learned senior counsel appearing for the appellant, that the said provision has to be given retrospective effect. It was in the form of a clarificatory provision. Thus, retrospective effect has to be given to the said amended provision. Consequently, it was not necessary to obtain permission under Section 13(A) (1) of the Act of 1954. Learned counsel has relied upon the decision of this Court in *Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited* [(2015) 1 SCC 1].

*Per contra*, learned counsel appearing for the respondent contended that no case for interference was made out, as the amendment could not be said retrospective; permission was necessary to transfer as land was not held on khatedari rights.

Thus, in the instant case, rights that had accrued to the two brothers by way of intestate succession, could not have been taken away by execution of void Will, when Will did not become effective on death of executant being void as no permission had been obtained for executing it. No *ex-post facto* permission also had been obtained.

This Court in *Vatika Township Private Limited*

(*supra*) has observed thus:

"We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In *Govt. of India v. Indian Tobacco Assn.* [(1994) 1 AC 486], the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in *Vijay v. State of Maharashtra* [(2005) 7 SCC 396]. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.

In view of the aforesaid dictum, and having regard to the nature of rights accrued to other brothers of appellant, the provisions of the amendment Act could not be said to be retrospective as they would validate an instrument, which was otherwise void to the detriment of other incumbents, who succeeded to the estate by way of

inheritance. Thus, it was necessary to obtain the permission under the provisions of Section 13 of the Act of 1954.

We find no ground to interfere with the impugned judgment and order passed by the High Court.

The appeal is, accordingly, dismissed.

.....J.  
(ARUN MISHRA)

.....J.  
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI,  
NOVEMBER 9, 2017.

ITEM NO.101

COURT NO.10

SECTION XV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).660/2003

INDER SINGH (D) THR. LRS. &amp; ANR.

Appellant(s)

VERSUS

KEHAR SINGH (D) THR. LRS. &amp; ORS.

Respondent(s)

Date : 09-11-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s)

Mr.S.K.Jain, Sr.Adv.  
Mr.Puneet Jain, Adv.  
Mr.Abhinav Gupta, Adv.  
Mr.Ashwin V. Kotemath, Adv.  
Mr.Harsh Jain, Adv.  
Ms.Priyal Jain, Adv.  
Mrs.Pratibha Jain, AOR

For Respondent(s)

Mr.Subramonium Prasad, Sr.Adv.  
Mr.Abhay Kumar, Adv.  
Mr.Saurabh Mishra, Adv.  
Mr.Himanshu, Adv.  
  
Mr.Anish Maheshwari, Adv.  
Ms.Farha Malik, Adv.  
Mr.Milind Kumar, AOR  
  
Mr.L.C. Agrawala, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

(Ashok Raj Singh)

Court Master

(Signed Order is placed in the file)

(Jagdish Chander)

Court Master