

## Surjit Singh and Another Vs Bakhtawar Singh and Another

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Dec. 1, 2004

**Acts Referred:** Hindu Succession Act, 1956 " Section 6

**Citation:** (2005) 140 PLR 640 : (2005) 2 RCR(Civil) 554

**Hon'ble Judges:** Adarsh Kumar Goel, J

**Bench:** Single Bench

**Advocate:** G.S. Punia, for the Appellant; J.S. Toor, for the Respondent

**Final Decision:** Dismissed

### Judgement

Adarsh Kumar Goel, J.

The appellants filed a suit for declaration to the effect that they were owners of the suit land and decree dated

27.10.1976 in favour of Hari Singh, defendant (brother of plaintiffs) was void. The suit property belonged to Niranjn Singh who was brother of

plaintiffs" father and defendant No. 2 father of plaintiffs suffered collusive decree in favour of defendant No. 1 with regard to the said property.

Since the property which came from Niranjn Singh was ancestral property. Bakhtaur Singh had no right to transfer the same to defendant No. 1.

2. Hari Singh, defendant contested the suit and defendant the decree. He set up Will dated 29.7.1974, which was duly recognised by Amar Kaur,

daughter of Niranjn Singh in compromise dated 17.8.1974. Bakhtaur Singh recognised this right of Hari Singh by way of decree dated

27.10.1976.

3. The trial Court dismissed the suit. It was held that the property of Niranjn Singh in the hands of Bakhtaur Singh was not ancestral property and,

therefore, the plaintiffs had no right therein. It was held that only the property which is inherited from father, father"s father or father"s father"s

father was ancestral and not the property which came from a collateral. It was also held that Bakhtaur Singh entered into a family settlement with

Hari Singh and Amar Kaur, daughter of Niranjn Singh and plaintiffs were bound by the said compromise.

4. The lower appellate Court affirmed the said decree. Hence this appeal.

5. Learned counsel for the appellants submitted that following substantial questions of law arose for consideration:-

1. Whether undivided coparcenary interest of deceased coparcenary can pass by succession or by survivorship on other coparceners?
2. Whether Hari Singh, defendant can take a different stand than taken in Exs.D-1 and D-5?
3. Whether judgments of Courts below suffer from perversity?
4. Whether adverse inference is to be drawn in case best evidence is withheld?
5. Whether the judgment of appellate Court is vitiated as it failed to decide issue Nos. 6 and 7 under wrong impression that the same are decided against defendant?

6. Whether admission which is proved to be wrong can be relied upon?

6. Learned counsel for the respondents submitted that the above questions do not arise for consideration in view of concurrent findings recorded

by the Courts below. He submitted that share of Niranjn Singh is to be inherited by Amar Kaur, daughter of Niranjn Singh as found by the

Courts below, in view of provisions of Section 6 of the Hindu Succession Act, 1956 and in any case, any part of property left by Niranjn Singh

will not be ancestral property in the hands of Bakhtaur Singh.

7. Learned counsel for the appellants relied upon paras 216, 219, 223, 229 and 233 of the Mulla's Hindu Law, Eighteenth Edition, 2001. He also

relied upon a judgment of the Apex Court in Kalyani (Dead) by Lrs. Vs. Narayanan and Others, , para 10 to submit that till partition, the status of

joint family property continues to be joint.

8. Learned counsel for the respondents relied upon para 223(3) of Mulla's Hindu Law, Eighteenth Edition, to the effect that property inherited

from a collateral does not remain ancestral property. The said para reads as under :-

223(3) Property inherited from collaterals.- Property inherited from females -Excluding the case of property inherited from maternal grandfather, it

may be said that the only property that can be called ancestral property is property inherited by a person from his father, father's father or father's

father's father. Property inherited by a person from any other relation is his separate property and his male issues do not take any interest in it by

birth. Thus, property inherited by a person from collaterals, such as a brother, uncle, etc. or property inherited by him from a female e.g. his

mother, is his separate property.

9. Learned counsel for the respondents also relied upon judgment of the Lahore High Court in Raj Kishore v. Madan Gopal and Ors. AIR 1932

Lah 636.

10. I have considered the rival submissions and perused the record of the case.

11. In para 9 of its judgment, the lower appellate Court observed that Niranjn Singh was survived by his daughter Amar Kaur while Hari Singh

had a Will from Niranjn Singh in his favour. In these circumstances, the plaintiffs could not be held to have any right in their favour in the said

property. In view of the fact that suit property was inherited by Amar Kaur or came to Hari Singh by Will, the plaintiffs could not claim any right

therein. Even otherwise, in view of para 223(3) of Mulla's Hindu Law quoted above, the property coming from a collateral could not be ancestral

property, wherein plaintiffs may have a right by birth. The Courts below were, thus, fully justified in dismissing the suit of plaintiffs.

No substantial question of law arises.

The appeal is dismissed.