
(2005) 140 PLR 640 : (2005) 2 RCR(Civil) 554
High Court Of Punjab And Haryana At Chandigarh
Case No: Regular Second Appeal No. 2491 of 1983

Surjit Singh and
Another

APPELLANT

Vs

Bakhtawar Singh and
Another

RESPONDENT

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 Niranjana 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 Niranjana Singh was ancestral property. Bakhtawar 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 Niranjana Singh in compromise dated 17.8.1974. Bakhtawar 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 Niranjana Singh was survived by his daughter Amar Kaur while Hari Singh had a Will from Niranjana 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.