

## Harbans Singh Vs Biro

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

**Date of Decision:** Sept. 10, 2014

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 6 Rule 17, 151

**Citation:** (2014) 4 RCR(Civil) 702

**Hon'ble Judges:** Rakesh Kumar Jain, J

**Bench:** Single Bench

**Advocate:** B.R. Mahajan, Senior Advocate and Sharad Mehta, Advocate for the Appellant

### Judgement

Rakesh Kumar Jain, J.

This order shall dispose of Civil Revisions No. 4659 of 2004 and 5751 of 2004 as both are inter connected. The

facts narrated in the Court are that Khajan Singh had two sons, namely, Maingal Singh and Kahla Singh. Maingal Singh had a son, namely, Sucha

Singh who had three sons, namely, Hari Singh, Balbir Singh and Sahib Singh. Hari Singh was having a daughter, namely, Biro @ Charanjit Kaur

and Balbir Singh has sons and daughters. Kahla Singh died unmarried and without any issue. When Maingal Singh died his property was mutated

in the name of his son Sucha Singh vide mutation No. 65 of 1960. After the death of Kahla Singh in the year 1968, his property was also mutated

vide mutation No. 310 of 1968 in the name of Sucha Singh being the only surviving heir. After the death of Sucha Singh, his estate was inherited by

his three sons. One of the sons of Sucha Singh, namely, Hari Singh suffered a consent decree in Civil Suit No. 708 dated 15.6.1990, in favour of

the children of other two brothers on 6.12.1990. In this suit, Hari Singh had suffered a statement on 30.11.1990, described himself as the son of

Sucha Singh son of Kahla Singh. He also executed a Will on 26.4.1995 in favour of defendants No. 10 to 15 before he died on 1.5.1995. The

mutation on the basis of the Will No. 6553 was sanctioned on 2.7.1996.

2. Biro the only daughter of Hari Singh filed a suit on 11.8.1997, claiming herself to be the owner of the property left behind by her father and

challenged not only the Will dated 2.7.1996 but also the decree dated 6.12.1990. She also prayed for possession and permanent injunction. The

said suit was contested by the defendants-present petitioners. During the course of arguments in the suit, respondent took a plea that statement

suffered by Hari Singh on 30.11.1990 does not belong to Hari Singh as he has been described as the son of Sucha Singh son of Kahla Singh,

whereas Kahla Singh was a bachelor and without any issue. Faced with this difficulty, petitioners filed an application under Section 151 of the

Code of Civil Procedure 1908 (for short "the Code") to produce on record the three documents namely (i) jamabandi for the year 1965-66; (ii)

Mutation No. 65 of 1964 and Mutation No. 310 of 1968 in order to connect Hari Singh with the family of Khajan Singh. Since, he wanted to lead

evidence by filing application under Section 151 of the Code and there was no pleadings in the written statement in this regard, therefore, he also

filed an application under Order 6 Rule 17 of the Code to take a plea that Hari Singh son of Sucha Singh son of Kahla Singh, as mentioned in the

statement recorded on 30.11.1990, is in fact Hari Singh son of Sucha Singh son of Maingal Singh. The application filed under Order 6 Rule 17 of

the Code was dismissed.

3. While dismissing the application under Order 6 Rule 17 of the Code, learned trial Court had observed that since, it is not the case of Biro that

Hari Singh was treated as the grand son of Kahla Singh, there was no occasion for the petitioners to file the application to amend the written

statement at that stage.

4. Aggrieved against the said order, the petitioners have filed Civil Revision No. 4659 of 2004. The other application filed by the petitioners under

Section 151 of the Code for leading evidence was dismissed on the ground that application under Order 6 Rule 17 of the Code was for bringing

the fact and pleadings, has already been dismissed. This order is challenged by way of filing a Civil Revision No. 5751 of 2004.

5. In this view of the matter, both the petitions are consolidated and are being taken up together to pass a common order as the decision in the

revision petition for amendment of the written statement would have a direct bearing on the decision of the application filed under Section 151 of

the Code for additional evidence.

6. The hearing of the case commenced before lunch and the case was passed over twice to await the presence of learned counsel for the

respondent but there is no representation either before lunch or even in the post lunch session whereas I am dictating the order in the open Court.

7. Learned counsel for the petitioners has argued that necessity to file the application for amendment of the written statement has arisen because

during the course of arguments, learned counsel for the plaintiff-Biro has challenged the statement of Hari Singh dated 30.11.1990 on the basis of

which the suit was decreed on 6.12.1990 in favour of the defendants, on the ground that statement of Hari Singh was recorded as son of Sucha

Singh son of Kahla Singh whereas Kahla Singh admittedly died as bachelor and without any issue. Therefore, it would have created a hurdle in the

proper adjudication of the lis as it was only an error of omission/commission while recording his parentage in the statement recorded on

30.11.1990. Otherwise, from the documentary evidence it is proved that Hari Singh was son of Sucha Singh son of Maingal Singh as reflected in

the jamabandi for the year 1965-66; Mutation No. 65 of 1960 and Mutation No. 310 of 1968. It is further submitted that learned trial Court while

dismissing the application for amendment has erred in observing that it is not mentioned in the plaint that Biro had any objection regarding the

parentage of Hari Singh. It is submitted that of course, it is not mentioned in the plaint but in the statement recorded by Hari Singh on 30.11.1990,

the parentage recorded is being used by the plaintiff to project that the decree in the Civil Suit No. 708 dated 15.6.1990 is not actually suffered by

Hari Singh. In this view thereof, it is submitted that an application for amendment of the written statement is filed for clarification.

8. After hearing learned counsel for the petitioner and perusing the available record, I am of the considered opinion that there is an error in the

reasoning adopted by the learned trial Court while dismissing the application for amendment of the written statement. The plaintiff might not have

taken this plea in the plaint that Hari Singh is not the son of Maingal Singh but taking advantage of the statement made in the Civil Suit No. 708

dated 15.6.1990, it is tried to be projection before the trial Court that Hari Singh is in fact son of Maingal Singh as Kahla Singh was unmarried and

issueless. In these circumstances, it has become necessary to make a clarification by way of amendment in the written statement so that it may

commensurate with the evidence already available on the record which of course is the evidence coming from the custody of revenue department

and cannot be manufactured at this stage. Accordingly, finding merit in the Civil Revision Petition No. 4695 of 2004, the same is hereby allowed.

Adverting to Civil Revision Petition No. 5751 of 2004, the only reasoning given for disallowing the application for additional evidence is that since,

the application for amendment of the written statement has already been declined and in the absence of any pleadings, the evidence cannot be led,

the evidence has to be brought on record has been denied to the petitioner. Since, I have already allowed Civil Revision Petition No. 4695 of

2004 permitting the petitioners to amend the written statement filed by them, application filed under Section 151 of the Code to bring on record the

revenue record by way of additional evidence is allowed and the Civil Revision Petition No. 5751 of 2004 is also allowed.