

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 2260 of 1987 (O&M)
Date of decision : April 08, 2015

Harbans Kaur
... Appellant

vs.
Tej Kaur through L.Rs and others
... Respondent

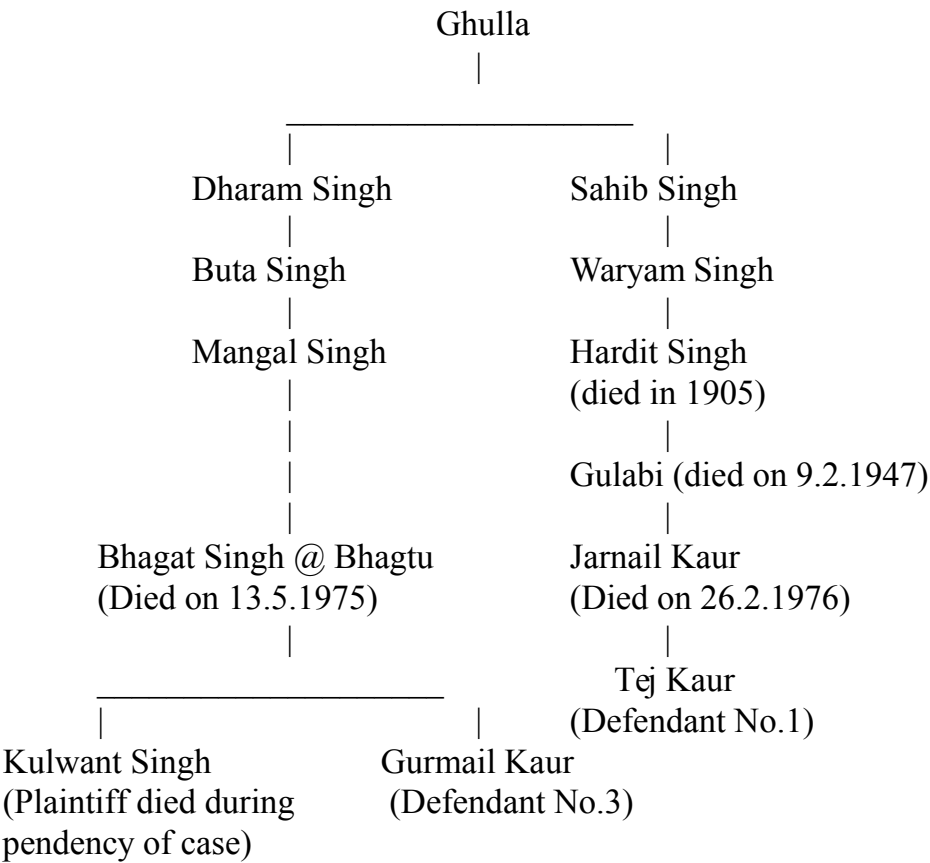
CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.R. Mahajan, Sr. Advocate with
Mr. Prateek Mahajan, Advocate
for the appellant (s).

Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate
for the respondent (s).

Surinder Gupta, J

Kulwant Singh son of Bhagat Singh alias Bhagtu filed suit for possession of land measuring 10 Bigha 5 Biswa bearing Khewat No.262, Khatauni No.456, Khasra No.1375/761, as per jamabandi for the year 1975-76 situated at village Mahaulikalan, Tehsil Malerkotla. The pedigree table given below will help in understanding the relationship of parties.



The case of plaintiff Kulwant Singh (since deceased, now represented by his legal heirs), in brief, is that the suit property along with other property was owned by Hardit Singh who died in the year 1905 leaving behind his widow Gulabi. After the death of Hardit, Gulabi became limited owner of suit property and other land owned by Hardit Singh during her life time, which would have ultimately devolved upon Bhagat Singh @ Bhagatu as collateral of Hardit Singh.

Gulabi gifted the suit land to her daughter Jarnail Kaur vide gift deed dated 29.5.2003 (Samvat). It was specifically mentioned in the gift deed that Jarnail Kaur shall have no right to sell or mortgage the land gifted to her and she will be limited owner of the gifted land during her life time. A mutation No.1348 on the basis of gift deed was sanctioned in favour of Jarnail Kaur. Smt. Gulabi died in the year 1947 and after her death, entire estate left by Hardit Singh (except the suit land) was inherited by Bhagat Singh alias Bhagtu vide mutation No.1361 (Ex.P3). Bhagat Singh alias Bhagtu died on 13.5.1975, leaving behind the plaintiff Kulwant Singh (since deceased) as his legal heir. Jarnail Kaur daughter of Gulabi died on 26.2.1976 and after her death, the suit land had reverted to the legal heirs of Bhagat Singh alias Bhagtu in accordance with the terms of gift deed. However, defendant No.1-Tej Kaur (since deceased now represented by her legal heirs) who was daughter of Jarnail Kaur got the suit land mutated in her name in revenue record. Request of plaintiff-appellant Kulwant Singh to defendant No.1/respondent No.1-Tej Kaur to hand over possession of suit land failed to have any impact, compelling him to file the instant suit.

In the written statement, relationship of parties was not disputed. It was, however, denied, that the suit property and other estate owned by Hardit Singh was his ancestral property. Jarnail Kaur daughter of Gulabi had lost her husband and was residing with her mother. It was denied that after the death of Hardit Singh, Gulabi became limited owner of the land owned by her husband Hardit Singh and Bhagat Singh alias Bhagtu was the heir of Hardit Singh and Gulabi. He had taken the benefit of the old age of Gulabi and got the mutation of estate of Hardit Singh (except the suit land), sanctioned in his favour. Gulabi had gifted 10 bigha 5 biswa of land in favour of her daughter Jarnail Kaur. The term of the gift deed that Jarnail

Kaur could not sell or mortgage the suit land was illegal, null and void. Jarnail Kaur was entitled to inherit the entire estate of Gulabi but Bhagat Singh alias Bhagtu in connivance with revenue officials got the mutation of that land sanctioned in his favour and Jarnail Kaur being hapless widow was left to fend with 10 bigha 5 biswa of land gifted to her. She had executed a registered Will dated 4.6.1963 regarding her entire estate in favour of her daughter Tej Kaur, on the basis of which mutation dated 26.2.1976 was rightly sanctioned in her favour.

Pleadings of the parties led to the framing of issues as follows :-

1. *Whether Bhagat Singh @ Bhagtu was the only legal heir of Hardit Singh and his widow Mst. Gulabi since deceased?OPP*
2. *Whether Jarnail Kaur obtained the suit property from Mst. Gulabi as a limited owner having no right to sell, mortgage or alienate the suit property in any manner in view of some gift? OPP Onus objected*
3. *Whether the limitations, if any, on the rights of Jarnail Kaur under the gift, vide which she could not sell mortgage or alienate the suit property in any other manner, was invalid and in-effective on the rights of Jarnail Kaur?OPD*
4. *Whether plaintiff is estopped by his act and conduct from filing the present suit?OPD*
5. *Whether the plaintiff is entitled to the possession of the suit property?OPP*
6. *Whether the parties are governed by custom, if so, what that custom is?OPP*
7. *Whether the suit land is ancestral of Hardit Singh and Bhagat Singh, if so, its effect?OPP*
8. *Whether Gulabi inherited the suit property from Hardit Singh as limited owner, if so, its effect?OPP (onus objected).*
9. *Whether the suit is barred by time?OPD*

10. *Whether Tej Kaur defendant and Jarnail Kaur had perfected title by adverse possession?OPD*

11. *Relief.*

Then Sub Judge Ist Class, Malerkotla decreed the suit of plaintiff Kulwant Singh. Not satisfied, Tej Kaur filed appeal against the judgment and decree passed by the lower court in which issues No.2 and 3 were recast as follows :-

“2. *Whether the admitted writing dated 16Har 2003 BK is a gift-deed or an agreement for maintenance? Onus on the parties.*

3. *Whether the limitation, if any, on the rights of Jarnail Kaur under writing Ex.AX are invalid and in-effective on her rights?OPD”*

The case was remanded and report was called on these issues. Then Sub Judge Ist Class, Malerkotla returned finding on the recast issue No.2 that the document executed on 16 Har 2003 BK was a gift deed. The findings on re-cast issue No.3 were recorded in favour of plaintiff Kulwant Singh.

The appellate court accepted the appeal and dismissed the suit with the observations in para No.9 of the judgment which reads as follows :-

“9. *The trial court has decided issue No.7 in favour of the plaintiff-respondent holding that the land in dispute was ancestral in the hands of Hardit Singh. It has been observed by the trial court that no record was produced by the respondent to show that the property was ever held by common ancestor Ghula. It has been held that since Waryam Singh and Buta Singh were holding land equally which they inherited from their fathers, a presumption could be raised that it was once held by their common ancestor. The observations of the trial court are not warranted by any law. The presumption can be raised only if the two were recorded to be owners in equal shares in the settlement records and not any other jamabandi. Firstly the record does not pertain to settlement and secondly, Dharam Slingh father of Buta Singh*

and Sahib Singh father of Waryam Singh come in between Buta Singh and Ghula on the one hand and Waryam Singh and Ghula on the other hand, Ghula being the common ancestor. That means if Dharam Singh and Sahib Singh were recorded owners in equal shares in the settlement record only and said presumption could be raised. It has been so held in Ram Datt vs. Ashok Kumar 1983 R.L.R. 482. The presumption raised by the trial court could not be raised at all in the circumstances of the present case. In the absence of any proof, the land in dispute will be deemed to be the self-acquired property of Hardit Singh. Therefore, the findings of the trial court on issue No.7 that the land in dispute is proved to be the ancestral land qua Hardit Singh are reversed.”

I have heard learned counsel for the parties and perused the record.

Mr. B.R.Mahajan, learned Senior Advocate for the appellant has argued that the land was admittedly owned by Hardit Singh and after his death Gulabi, his wife became its limited owner. Bhagat Singh alias Bhagtu being collateral inherited the land left by Hardit Singh. This fact can not be disputed as in the gift deed dated 16 Har 2003 Samvat executed in favour of Jarnail Kaur, it was specifically mentioned that Bhagat Singh alias Bhagtu was the real owner of the entire property left by Hardit Singh and Jarnail Kaur was given only life interest in the suit land with specific term that she could not alienate the same in any manner. Reliance has been placed on the observations in case ***Shivdev Kaur (D) By L.Rs and others vs. R.S. Grewal, 2013 AIR (SC) 1620***. He has argued that where the property is acquired by Hindu female by way of Will or gift giving her only life interest, the said right would not crystalize into absolute ownership and it would remain the same even after the commencement of Hindu Succession Act, 1956. Jarnail Kaur could not claim anything beyond what she had acquired in the suit land under the gift deed. Hardit Singh died in the year 1905. The gift deed was executed in the year 1947 and Gulabi had died on 9.2.1947. After the death of Gulabi, entire estate left by Hardit Singh except the suit land devolved upon Bhagat Singh alias Bhagtu. After the death of Jarnail Kaur

on 26.2.1976, the suit land had also devolved on legal heir of Bhagat Singh alias Bhagtu who had died in the year 1975. While referring to Section 14 (2) Hindu Succession Act, he has argued that the land which devolved on Jarnail Kaur by way of gift, gave her only life interest and would not mature into her absolute ownership.

Mr. Arun Jain, learned Senior Advocate for the respondent has argued that Jarnail Kaur had become widow during the life time of her mother Gulabi and was residing with her. She being the daughter of Hardit Singh had better right, then the collateral to inherit his property. He has relied on the observations in case ***Lal Singh Sukha Singh and others vs. Roor Singh Bela Singh and others*** AIR 1953 Punjab 202 and ***Mt. Harnam Kaur vs. Ratna and others*** AIR (36) 1949 East Punjab 267. The land in dispute was not proved to be ancestral property in the hands of Hardit Singh. It was his self acquired property, as such, after his death, had fallen to the share to Gulabi and Jarnail Kaur and they being the only legal heir of Hardit Singh were entitled to inherit the same. It is another matter that being illiterate, destitute and hapless lady, Jarnail Kaur could not resist the claim of Bhagat Singh alias Bhagtu over other land of her father which he (Bhagtu) got mutated in his favour. In the circumstances, it is proved that she had pre-existing right in the estate of her parents and under Section 14 (1) Hindu Succession Act had become the absolute owner of the suit property after coming into force of Hindu Succession Act, 1956. He has support his arguments with the observations of Hon'ble Supreme Court in case ***Vaddeboyina Tulasamma and others vs. Vaddeboyina Sesha Reddi (dead) by L.Rs.*** AIR 1977 Supreme Court 1944, ***Sri Ramakrishna Mutt rep. By Manager vs. M. Maheswaran and others***, 2010 (4) RCR (Civil) 791, ***Subhan Rao and another vs. Parvathi Bai and others*** 2010 (4) RCR (Civil) 542 and ***Smt. Beni Bai vs. Raghubir Prasad*** 1999 (2) RCR (Civil) 210.

As is evident, the relationship of parties is not disputed. Hardit Singh was the owner of big chunk of land including the suit land. He died in the year 1905 leaving behind Gulabi, his wife and Jarnail Kaur his daughter. Bhagat Singh alias Bhagtu was a collateral being the great grand son of brother of grand father of Hardit Singh. It is not disputed that

Jarnail Kaur had lost her husband and was living with her mother Gulabi. To ensure her maintenance, she was given the suit land vide deed dated 16 Har 2003 Samvat (Ex.AX).

The substantial question of law which arises for determination in this appeal is as to whether Jarnail Kaur became the absolute owner of the suit property after coming into force of Section 14 of Hindu Succession Act?

Perusal of the gift deed Ex.AX shows that Jarnail Kaur was given limited rights during her life time in the suit land for her maintenance. In the case of *Mt. Harnam Kaur vs. Ratna (supra)* it was observed that according to general custom in the province of Punjab, daughter or daughter's daughter has better right to succeed non ancestral property than the collateral of the propositus. Plaintiff Kulwant Singh (since deceased) came up with a case that property in the hands of Hardit Singh was ancestral property and the parties were bound by the custom (*Rewaz-e-am*) prevalent amongst the *Jats* in Punjab. The defendant/respondents have denied this plea of appellant, *inter alia*, pleading that the property in the hands of Hardit Singh was his self-acquired property. First appellate court rightly analysed this fact while observing that in the absence of any evidence on record to show that the property was ever held by common ancestors Ghula the land owned by Hardit Singh could not be held to be ancestral property. This fact is not disputed that no evidence had been produced to prove that the suit property devolved on Hardit Singh from Ghula or it was ever owned by Waryam Singh father of Hardit Singh or Sahib Singh father of Waryam Singh (Grand father of Hardit Singh). The first appellate court has rightly drawn the conclusion that in the absence of evidence on record to prove the suit property to be the ancestral property, it is to be deemed as the self-acquired property of Hardit Singh. In the matter of self-acquired property, the daughter excludes the collateral. **The above discussion leads to a conclusion that Jarnail Kaur daughter of Hardit Singh had pre-existing right in the suit property.** In the case of *Vaddeboyina Tulasamma and others (supra)*, while dealing with the applicability of the provisions of Section 14 (1) & (2) Hindu Succession Act, 1956, the Apex Court had observed in para Nos.37 and 38 as follows :-

“37. In the light of the above decisions of this Court the following principles appear to be clear:

- (1) that the provisions of s. 14, of the 1956 Act must be liberally construed in order to advance the object of the Act which is to enlarge the limited interest possessed by a Hindu widow which was in consonance with the changing temper of the times;*
- (2) it is manifestly clear that sub-s. (2) of s. 14 does not refer to any transfer which merely recognises a pre-existing right without creating or conferring a new title on the widow. This was clearly held by this Court in Badri Parshad's case (supra).*
- (3) that the Act of 1956 has made revolutionary and far-reaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long felt need and tried to do away with the invidious distinction between a Hindu male and female in matters of intestate succession;*
- (4) that sub-s. (2) of s. 14 is merely a proviso to subs. (1) of s. 14 and has to be interpreted as a proviso and not in a manner so 'as to destroy the effect of the main provision.*

38. We have given our anxious consideration to the language of s. 14(1) & (2) and we feel that on a proper interpretation of s. 14(2) there does not appear to be any real inconsistency between s. 14(1), the explanation thereto and sub-s. (2). To begin with, s. 14(1) does not limit the enlargement of the estate of a Hindu widow to any particular interest in the property. On the other hand the Explanation to s. 14(1) brings out the real purpose of s. 14(1) by giving an exhaustive category of cases where principle of s. 14(1) has to operate, i.e. to cases where a Hindu female would get an absolute interest. The argument of the learned counsel for the appellant is that as the right of maintenance was a pre-existing

right, any instrument or transaction by which the property was allotted to the appellant would not be a new transaction so as to create a new title but would be only in recognition of a pre-existing right, namely, the right of maintenance. On the other hand Mr. Natesan appearing for the respondents submitted that the object of the proviso was to validate rather than disturb the past transactions which had placed certain restrictions or curbs on the power of a Hindu female and as the language of the proviso is very wide there is no warrant for not applying it to cases where pre-existing rights are concerned. In the alternative, Mr. Natesan argued that the Hindu woman's right to maintenance is not a legal right. unless an actual charge is created in respect of the property and is, therefore not enforceable at law. It is, therefore, not correct to describe a claim of a Hindu female's right to maintenance simpliciter as a pre-existing right because all the necessary indicia of a legal right are wanting."

The above principles of ***Vaddeboyina Tulassamma and others*** (*supra*) were also discussed and relied in case of ***Sri Ramakrishna Mutt Rep. By Manager vs. M. Maheswaran and others*** (*supra*). In case of ***Subhan Rao and another vs. Parvathi Bai and others*** (*supra*), the Apex Court while reiterating the observations in ***Vaddeboyina Tulassamma and others*** (*supra*) observed as follows :-

"16. A reading of Ex.P-1, the relevant portions of which have been extracted in the earlier part of the judgment makes it clear that Shiddoji Rao and his son Sadashiv Rao had executed deed of maintenance in respect of Rayatawa lands situated in Belagali and Kabbur villages in favour of Ramchandra Rao and Smt. Sundrabai because they believed that it was the duty of the family to maintain them. In their pleadings before the trial Court, the appellants did not dispute that Smt. Sundrabai was entitled to get maintenance from the family of her father-in-law, Shiddoji Rao. Not only this, the parties went to the trial on an agreed premise that she had a

pre-existing right of maintenance and she was given the right to enjoy the lands in lieu of her maintenance. If Parliament had not enacted Section 14(1) of the Act, Smt. Sundrabai would have, in view of the plain language of Ex.P-1, enjoyed the property during her life time only and after her death the same would have reverted to the family of the executants. However, by virtue of Section 14(1) of the Act, Smt. Sundrabai acquired absolute right over the lands in respect of which she was given right of enjoyment and she became full owner thereof without any restriction on her right to deal with the property in the manner she liked. Therefore, the sale deeds executed by her were legal and the courts below as well as the High Court did not commit any error by declining to nullify the same.”

This argument of learned counsel for appellant that under the gift deed Jarnail Kaur had accepted limited rights, as such, stands estopped from claiming absolute ownership of the suit property is without merits as after coming into force of Section 14 (1) Hindu Succession Act, Jarnail Kaur who was having pre-existing right in the property of her father, but was given limited rights under the gift deed Ex.AX attained absolute ownership over that land. This argument of learned counsel for appellant that it was specifically mentioned in the gift deed Ex.AX that real heir of the property of Hardit Singh was Kulwant Singh and after the death of Gulabi, Kulwant Singh had inherited the entire estate of Hardit Singh are sufficient indicator of the fact that the property in the hands of Hardit Singh was joint Hindu families property, carries no weight. It is settled principle of law that in order to prove the ancestral nature of the property sufficient and cogent documentary evidence is required to be produced on record. The fact that a particular property was ancestral in nature cannot be proved by mere admission or by drawing inference. The citations referred by learned counsel for appellant in case ***Shivdev Kaur vs. R.S. Grewal*** (*supra*) has no application to the facts and circumstances of the present case as principle laid down in case ***Vaddeboyina Tulassamma and others*** (*supra*) were not referred in this case. In above case (***Shivdev Kaur vs. R.S. Grewal***), father

had created some right in favour of his daughter under a Will. In the given facts and circumstances of the case, it was observed that she (daughter) had not attained absolute ownership of that property under Section 14 (2) of Hindu Succession Act.

As a sequel of my above discussion the substantial question law as framed in this appeal is answered against the appellant.

This appeal has no merits.

Dismissed.

(Surinder Gupta)
Judge

April 08, 2015
deepak

Whether to be referred to reporter : *Yes/No*