

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 2258 of 2012 (O&M)
Date of Decision: 26.4.2017

Tikka Amar SinghAppellant

Versus

Mohan Singh and othersRespondents

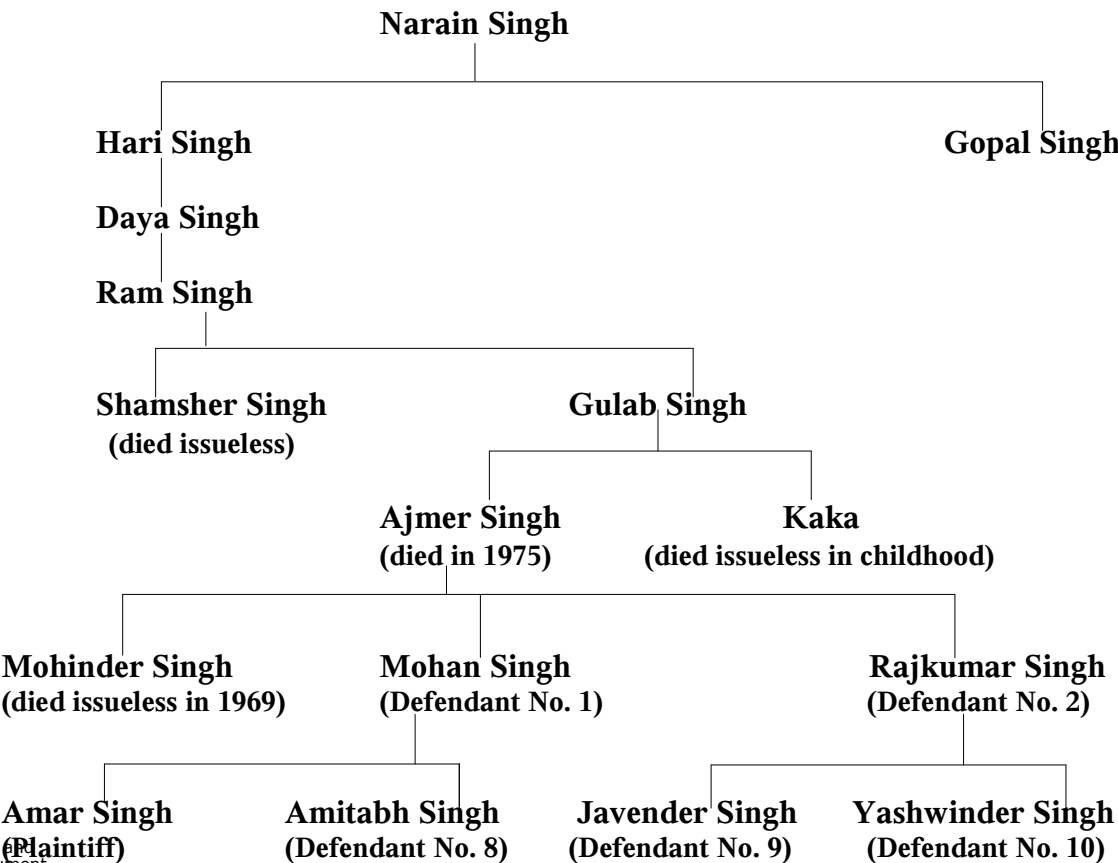
CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S.Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate
for the appellant.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate
for respondents No. 2, 9 and 10.

ANITA CHAUDHRY, J

Dissatisfied with the judgments of both the Courts below it is the plaintiff's second appeal. The pedigree table set out in para 3 of the plaint would be necessary.



According to the defendants, the above pedigree is incomplete. The names of daughters and wives have been excluded. Mohinder Singh had left behind his widow, Prem Wati. Ajmer Singh had a daughter, Raj Kumari. It is the estate left behind by Ajmer Singh which is in dispute.

Amar Singh son of Mohan Singh had filed the suit and arrayed his brother and father, uncle and cousins as respondents and assailed the alienations made by his father and uncle Raj Kumar defendant No. 2 in favour of defendants No. 11 to 35. The plaintiff claimed that he hailed from a family of Jagirdars of Ramgarh and the rule of primogeniture subsisted in the family and he being the elder son, was entitled to inherit and succeed to the entire Jagir, the details of which were given in the schedule attached with the plaint. The relief claimed was set out in the title. It was claimed that all the properties in the hands of Late Mian Ajmer Singh were inherited by Ajmer Singh from his fore-father and the same were Cis-Sutlej Jagir properties and Mian Ajmer Singh was simply a limited owner and had no right to alienate the Jagir estate as it was impartible and the Punjab Gazetteer of Ambala district included the family tree. It was claimed that the ancestors of the plaintiff were independent rulers who came under the protection of British government in or around 1809. In 1846, the British government introduced several reforms and with that objective, the government reduced the rights and privileges of the petty Chieftains and the ancestors of the plaintiff were reduced to the status of Jagirdars. However, the land possessed by them was left untouched and they were also granted Mufiyat qua land revenue. It was pleaded that the British government invited all the Jagirdars to submit their option regarding rule of primogeniture and they were to execute an agreement with the government

and Mian Daya Singh, ancestor of the plaintiff executed an agreement on 23.7.1861 with the British government adopting the rule of primogeniture and a reference in this regard was made in the condition incorporated in the Register General of Jagir and annexed a copy dated 12.3.1889 with the plaintiff.

It was pleaded that in 1945, late Mian Ajmer Singh grandfather of the plaintiff executed an agreement with the Government adopting the rule of primogeniture and Government of Punjab issued a notification on 25.8.1945 and as per this agreement, the provisions of Hindu Succession Act were not applicable and the Jagir left by Mian Ajmer Singh was to come to the eldest son and the younger son was only entitled to maintenance.

The plaintiff had referred to para 87 of the Punjab Land Administration Manual by Mr. Douie and had claimed that the female heirs were not allowed to succeed to the Jagir and, therefore, neither Prem Wati widow of Mohinder Singh nor Raj Kumari daughter of Mian Ajmer Singh nor Parkash Vati grandmother of the plaintiff and wife of late Mian Ajmer Singh were entitled to any share and the corpus of Jagir was intact and all the holders were limited owners. On the death of Mian Ajmer Singh, defendant No. 1 (his father) only had a life tenure and all the alienations made by defendants No. 1 and 2 were illegal and did not affect his right. It was pleaded that some part of the land had been acquired and defendant No. 2 had received compensation and they were liable to remit the compensation. It was pleaded that wrong entries had been made in the revenue record and were not binding upon him. It was pleaded that defendant No. 1 had transferred some land to defendants No. 11 to 14 and defendant No. 2 had transferred some land out of the Jagir estate to

defendants No. 15 to 35 without any authority. It was pleaded that the plaintiff was not aware of the agreement executed by Mian Daya Singh and under a wrong impression, he had filed suit for declaration claiming his right on the basis of a Will executed by Prem Wati and he had moved an application for transposing his name from the array of plaintiffs and to enable him to seek appropriate remedy available under the law including Punjab Jagir Act, 1941. It was pleaded that he had requested defendants No. 3 and 4 not to release the compensation to defendants No. 1 and 2 but they did not pay any heed.

Defendant No. 1 failed to file any written statement.

Defendant No. 2, 9 and 10 took the plea that the suit was barred under Order 2 Rule 2 CPC and limitation. Plea of estoppel, maintainability and locus standi were raised. It was pleaded that the suit was collusive between the plaintiff and defendants No. 1 and 8. It was denied that the rule of primogeniture was applicable or that it was Cis-Satluj Jagir. They took the plea that the plaintiff had been lodging claims and filing cases previously also and the present suit was barred under Order 2 Rule 2 CPC and he could not be allowed to approbate and reprobate. It was pleaded that the plaintiff was claiming a right under a Will executed by Prem Wati and Raj Kumari and was claiming a share in the land in village Bhanu, Amrala and Ramgarh and the compensation which was lying with the Land Acquisition Collector-cum-S.D.O. and a suit had been filed by him seeking restraint of the defendants from withdrawing the amount. They had also annexed the copy of the plaint Ex. D-19. It was pleaded that plaintiff Amar Singh along with his brother had challenged the Will dated 1.7.1993 and this was observed in the order dated 6.8.1997 (Annexure R-5) passed by the

High Court and he was estopped from filing the suit. It was pleaded that rule of primogeniture was not applicable nor it had been followed by their ancestors and the suit was barred by limitation as the plaintiff had attained majority 20 years prior to the filing of the suit. It was pleaded that the plaintiff had asserted his right under the Hindu Succession Act in another case titled *Kanwar Mohan Singh versus Lajja Ram and others* (Annexure R-6) and the case was filed through the same counsel. It was pleaded that Raj Kumari was the daughter of Mian Ajmer Singh and she was given land by her father. The defendants had specifically denied letter No. 60 of 1856 referred to in para 4 of the plaint. It was pleaded that Ajmer Singh held the property as full owner and the rule of primogeniture was not applicable to the family. It was pleaded that Mian Ajmer Singh was the only son and he had not adhered to the agreement referred to in para 9 of the plaint and had divided his property amongst his three sons in the early 1950s and it was Mohinder Singh who was the eldest son and was succeeded by his wife Prem Wati and the rule of primogeniture in this line was never followed nor there was any agreement. It was specifically pleaded that the three sons of Ajmer Singh were owners of their respective shares and after the death of Ajmer Singh the property was inherited by Mohan Singh, Raj Kumar, Prem Wati (widow of Mohinder Singh) and Raj Kumari (daughter of Ajmer Singh) and Parkash Wati widow of Ajmer Singh and mutations were entered. It was specifically denied that any agreement had been entered into with the British rulers or that there was any custom.

Defendant No. 6 i.e. State Bank of India filed a separate written statement.

The vendees filed a separate written statement pleading that the

property had been purchased more than 12 years ago for valuable consideration and the suit was barred by time.

Some of the defendants were proceeded *ex parte* but it is not necessary to give those details as they are not necessary for disposal of the appeal.

On the pleadings of the parties, following issues were framed by the trial Court:-

1. *Whether plaintiff is entitled to decree of declaration, as prayed for ? OPP*
2. *Whether suit is not maintainable in the present form ? OPD*
3. *Relief.*

The trial Court referred extensively to the Punjab Land Administration Manual compiled by Sir James Douie and for the purposes of disposal of the suit, framed the following questions for consideration:-

- (i) *Whether the plaintiff belongs to the family of Cis-Satluj Jagirdars of Ramghar.*
- (ii) *Whether the suit property is part and parcel of Jagir Estate/Cis-Satluj Jagir.*
- (iii) *Whether the rule of primogeniture is applicable to the suit property.*

The trial Court held that the family of Hari Singh Narain Singh Branch was declared Cis-Satluj Jagirdar and they belonged to the family of Cis-Satluj but the plaintiff had failed to prove that the suit property was part and parcel of Cis-Satluj Jagir. It was held that the plaintiff had failed to lead evidence to show that the rule primogeniture was applicable to the fore-fathers of the plaintiff. It was observed that 75% of the suit property had already been acquired by the State Govt. and the father of the plaintiff had got his share of compensation and the children of Mian Ajmer Singh

had executed a division during his lifetime and father of the plaintiff and Raj Kumar, his brother were alive and had not disputed the division. It noted that the plaintiff was claiming an interest on the basis of a Will under the Hindu Succession Act which was contrary to the plea raised here. It was observed that the plaintiff had raised objections under Section 30 of the Land Acquisition Act and the jurisdiction of the civil Court was barred and those questions were to be dealt with by the Court before whom the objections were filed. It was held that the suit was barred under Order 2 Rule 2 CPC and also by limitation as the alienations and the acquisition had taken place several years ago. The suit was ultimately dismissed.

Aggrieved by the judgment, an appeal was preferred by the plaintiff. It would be relevant to mention here that after the plaintiff filed the appeal, he moved an application under Order 41 Rule 23-A and 27 CPC challenging the three additional issues framed in the judgment and sought permission to lead additional evidence and remand of the case to the lower Court for fresh decision. The application was dismissed. A revision was filed in the High Court which was dismissed on 6.9.2011. The order reads as under:-

“However, perusal of the judgment of the trial court reveals that aforesaid additional issues have not been framed. On the contrary, while discussing issue no. 1 framed on 26.11.1999, the trial court for convenience and clarity framed points for determination which are being referred to as additional issues by the petitioner. In fact, these are not additional issues framed by the trial court. On the contrary, these are only points for determination arising from the arguments advanced before the trial court. These points arise under issue no. 1 already framed in the suit. Said issue no. 1 is of wide amplitude and all pervasive and covers all the aforesaid three points for

determination. On bare reading of judgment of the trial court in this regard, it cannot be said that additional issues have been framed. On the contrary, trial court recorded finding on issue no. 1 by determining three points arising under the said issue. No additional issues were framed. Consequently, judgment in the case of Perikal Malapa (supra) is not applicable to the facts of the instant case because in that case additional issues had been framed and therefore, it was essential to afford opportunity of leading evidence whereas in the instant case no additional issues were framed and therefore, opportunity of leading further evidence was not required to be afforded to the parties. Similarly, in the case of Rattan Bala (supra) additional issues had been framed after the plaintiff had led his evidence and therefore, the plaintiff was permitted to lead evidence in rebuttal on the said issues, onus of which was on the defendant. Consequently, both these judgments are not applicable to the facts and circumstances of the case in hand.”

I have heard both the sides at great length. The entire emphasis of the appellant was on several paras of Douie's manual and great part of the time while leading the submission centered around Douie's manual. Both the lower Courts have referred in extenso to them and we need not call attention to it all over again.

The lower Court had held while referring to para 81(b) of the Land Administration Manual that territory between Satluj and Yamuna was Cis-Satluj and included the present districts of Simla, Ambala, Ludhiana, Ferozepore (except the Fazilka tahsil) and tehsil Kaithal and pargana Indiri in Karnal and the plaintiff's family was Cis-Satluj Jagirdars. The finding was upheld by the lower Appellate Court. The appellant is aggrieved of the finding of both the Courts below when it concluded that the plaintiff had

Primogeniture was not adopted. There were some other issues as well relating to maintainability of the suit, limitation and Order 2 Rule 2 CPC which were decided against him.

Both the Courts held the suit to be hopelessly barred by limitation. On the issue of Order 2 Rule 2 CPC, the lower Court held the suit to be barred. Both the Courts gave different findings on the maintainability of the suit.

Para 86 and 87 of lower Court judgment reads as under:-

“86. Section 30 of the said Act, thus, contemplates two types of cases to be referred to the Court, i.e., a dispute regarding apportionment of the compensation, and the person to whom the compensation is payable. The reference under the Act regarding any dispute as the person to whom the compensation is payable is in the nature of a suit, really in the nature of inter pleader suit. The procedure before the Reference Court under section 30 of the said Act is also governed by the provisions contained in the Code of Civil procedure as Section 30 does not contain any provision expressly or by necessary appellation that the provisions of CPC are not applicable. The decision under section 30 of the said Act is a decree and as such the aggrieved party has a right to appeal. A decision on the reference under section 30 of the said Act decides the question of title and interests of the parties, and the same is binding on them.

87. In the present case, not only the Notification has become final, even amount of compensation has been released by the State qua the land acquired. Thus, in view of the settled proposition that notification has become final and proceedings have attained finality, the present is not maintainable, therefore, the question of granting an injunction in the form of Mandatory Injunction against the State Authority from proceeding in accordance with law, does not arise. In the aforesaid view, I derive support from the authorities relied

*upon by the learned counsel for the defendants No. 2, 9 and 10, namely, **Shaymalidas versus Illa Chowdhry and others, 2006(12) Supreme Court Cases 300; S.P. Subramanya Shetty and others versus K.S.R.T.C. & others, 1997(1) Apex Court Journal 544 (S.C.): Laxmi Chand and others versus Gram Panchayat, Kararia and others, AIR 1996 Supreme Court 523; and Kehar Singh versus Nishan Singh and others, 2006(3) RCR (Civil) page 125.***

The Appellate Court gave the following reasons and observed as under:-

“26. Now coming to the submission made by the learned counsel for the contesting respondents-defendants qua jurisdiction of the civil court being barred to entertain the present suit in view of the fact that more than 75% of the suit property has already been acquired by the State Government and also compensation regarding the same had been received by the parties and other persons including the appellant-plaintiff and further that the present suit simpliciter for declaration and permanent injunction only without seeking the relief of possession filed by the appellant-plaintiff is not maintainable. In this regard the learned trial court in para no. 86 and 87 of the impugned judgment while referring to section 30 of the Land Acquisition Act has held that since the acquisition proceedings have attained finality the present suit is not maintainable and has also found the cases of Shamli Dass (supra), S.B. Subramania (supra) and Kehar Singh (supra) applicable on the point of maintainability, but in my considered opinion the aforesaid authorities are clearly distinguishable from the facts of this case as in the case of Shamli Dass (supra) the appellant was claiming title to the acquired land, whereas in S.B.Subramania's case (supra) the petitioner had challenged the notification under the Land Acquisition Act and in the authority Kehar Singh vs. Nishan Singh (supra), the petitioners were tenants on the acquired land and thus the Hon'ble Supreme Court and Hon'ble High

Courts in the aforesaid authorities had held the jurisdiction of the civil court to be barred. However, in the present case the appellant-plaintiff is claiming his right and title over the suit land on the basis of inheritance by relying on the rule of primogeniture and as such, in view of the authorities “Dr. G.H. Grant versus The State of Bihar” AIR 1966 Supreme Court 237 and Malkiat Singh versus Harnek Singh and others 1992(1) All India Land Law Reporter Page 530 relied upon by the learned counsel for the appellant-plaintiff the jurisdiction of the civil court to entertain this suit is not barred.

27. *It is relevant to note there that by assailing the division of property amongst his children in the 1950's by Mian Ajmer Singh as well as the alienations made by the respondents-defendants no. 1 and 2 in favour of other respondents-defendants a declaration has also been sought that the appellant-plaintiff is only and exclusively entitled to inherit the Jagir estate as detailed in the plaint and without seeking the relief of possession the appellant-plaintiff has filed the present suit. However, in view of the authority “Devi Lal vs. Shokaran and another” 2011(1) Law Herald (P&H) 549 relied upon by the learned counsel for the contesting respondents-defendants, the present suit is not maintainable. Though, learned counsel for the appellant-plaintiff had relied upon the authority “Jai Krishna Dass and others vs. Babu Ram and others” AIR 1967 (Punjab) 263 but the said authority is distinguishable and not applicable to this case. Hence, in the considered opinion of this court the learned trial court had rightly decided issue No. 1 and 2 against the appellant-plaintiff.”*

The substantial question which arises is whether the suit property is Cis-Satluj Jagir. The lower Court referred to the Ambala Gazetteer and then referred to Ex. P2 to Ex. P3/Ex. PX. These are certified copies taken from another suit.

The plaintiff has admitted to have filed a suit for declaration

qua the suit property on the basis of the Will executed by Premwati. According to him, he had moved an application in the previously instituted suit for transposing his name from the array of the plaintiffs to enable him to seek appropriate remedy under the rule of primogeniture. No record was however produced. Only a passing reference had been made and the plaintiff did not bother to give any details.

It was not disputed before this Court that a large portion of the property had been acquired by the State which dates back to the year 1985 and 1987. Some of the objections filed by the parties and the notifications are available on record. The plaintiff had earlier claimed compensation on the basis of the Will dated 1.7.1993 said to have been executed by Raj Kumari. Another suit was filed by plaintiff Amar Singh and his brother Amitabh Singh against Raj Kumar Singh and Mohan Singh seeking 1/4th share of the land of Prem Wati. The suit was filed in 1997 and is Ex. D-19. It is not in dispute that Ajmer Singh had died in 1975. The property was distributed after the property had devolved on the legal heirs of Ajmer Singh. Mohan Singh-father of the plaintiff and Raj Kumar alienated the properties which were never challenged by the plaintiff. There is an admission by the plaintiff that the alienations were made decades ago. The plaintiff became major in 1973. He could challenge the alienations within three years of attaining majority. The mutations had been sanctioned 25 years ago.

Before going into the question of maintainability of the suit it is first necessary to see as to whether the rule of primogeniture is based on a custom or has statutory force.

One of the recognized customs is embodied in the old rule of

‘primogeniture.’ In simple words, it means the primacy of the first-born son. The eldest born succeeds to the estate to the exclusion of all the other survivors. As a result, the estate, though ancestral, is made impartible.

There was a consistent custom being followed, rule of primogeniture in respect of the Hindu Rulers of India in the ancient and medieval history, the British Government, after becoming a paramount power, continued to recognise the said custom by recognizing the eldest son as the Raja for a particular State. Even after integration of the States after independence, the Govt. of India had been also giving effect to the rule of primogeniture for recognizing the successors to the rulers of the various States which had been merged with the territories of India. It was thus a custom.

The plaintiff had referred to the Land Administration Manual to draw strength to the references made therein. Chapter III of the Punjab Land Administration Manual deals with the assignment of land revenue. Para 79 of the said manual reads as under:-

79. Importance of Land revenue assignments in the Punjab.

Grants of land revenue by the State to private individuals are often compendiously described as “jagirs” and muafis”. No broad distinction can be drawn between these two terms “Jagir” is usually appropriated to the larger grants and especially to those given for services of a military or official character and “muafi” to assignments of less value and importance. The subject is one of much interest in the Punjab where such alienation’s form a larger proportion of the total land revenue than in any other province in India. How this has

come to pass will appear in the sequel . It is the more curious because the views which prevailed among the men who had the greatest influence on the early administration of the Punjab were not favorable to the maintenance of a privileged class and a rapid reduction of the amount of revenue diverted from public purposes was looked for. Eleven years after annexation the Financial Commissioner estimated the assigned land and revenue at 33 lakhs. Forty years later its gross amount was still much the same; but owing to the great expansion of the land revenue of the Punjab the proportion in 1928 was only 1/13th.

Para 81, 141 and 150 of the Punjab Land Administration Manual would be relevant and read as under:-

81. Subject must be tested separately for different tracts -*In treating of the subject it will be convenient to deal separately with-*

(a) the territories included in the Punjab state as Maharaja Ranjit Singh bequeathed it to his successors. Here a distinction must be drawn between the jagir tenures of (1) Kangra and the tract between the Beasx and Sutlej compressing the present districts of Jullundur and Hoshiarpur and (2) the districts lying to the west of Beas and Sutlej annexed later;

(b) The Cis-Sutlej territory the plains portion of which was taken under our protection in 1809 and the hill tract in 1815. This includes the present districts of Simla,

Ambala , Ludhiana, Ferozepore (except the Fazilka tahsil) and tahsil Kaithal and pargana Indiri in karnal;

(c) The Delhi and Bhatti territories conquered in 1803 and transferred from the North–Western Provinces to the Punjab in 1858. These comprise the districts of Hisar, Rohtak, Gurgaon , Delhi, tahsil Panipat and paragana Karnal in Karnal and tahsil Fazilka in Ferozpore.

141. Proposal to introduce primogeniture in case of the principal jagirs-*Before these orders were issued the Lieutenant-Governor had proposed to consult the principal Sardars in the Cis-Sutlej and Trans-Sutlej divisions as to the propriety of abolishing chundavand where it existed and also marking primogeniture the rule of decent for their jagirs. In advocating primogeniture the Cis-Sutlej Commissioner, Mr. Barnes had written :-*

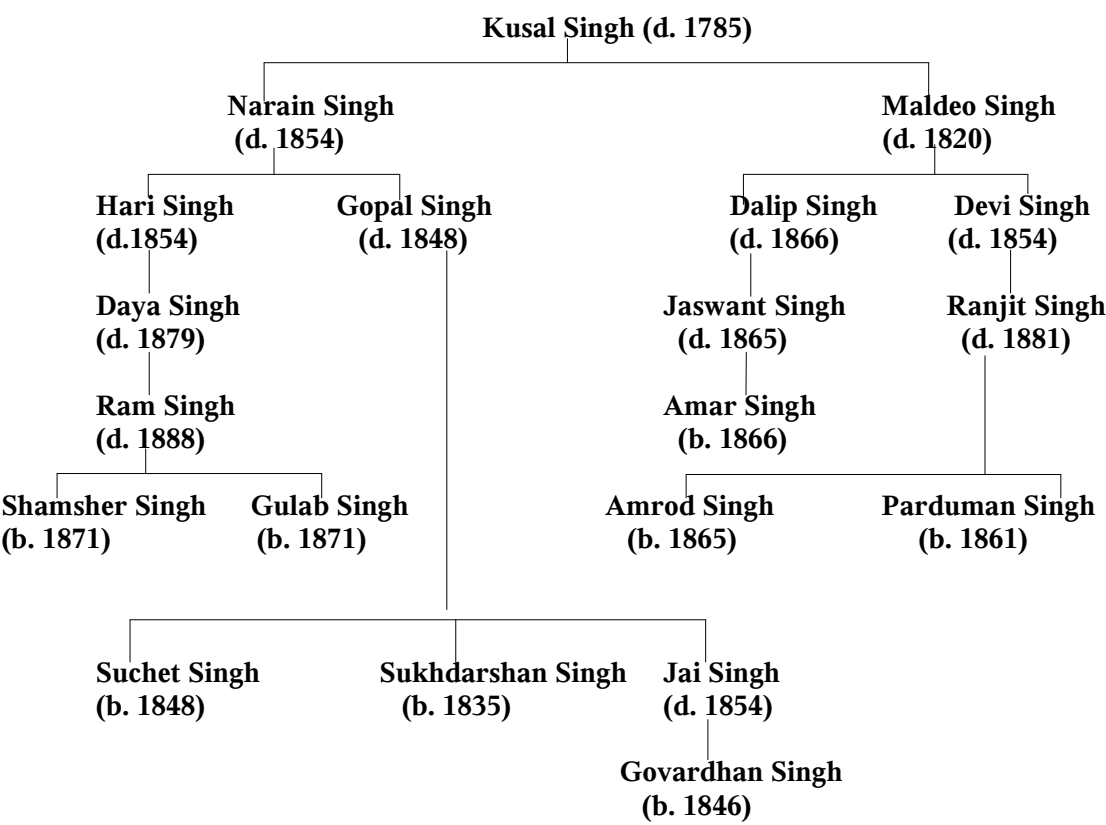
“I should desire in all feasible cases to institute the law of primogeniture as was recently done in the case of ramgarh and thereby to secure a powerful and influential aristocracy who with such guarantees would doubtless be as loyal and as useful to Government as they proved to be during the recent rebellion.”

150. Primogeniture introduced in case of Ramgarh jagir.*In a letter No. 1490, dated 1st April 1859, Lord Canning sanctioned primogeniture as regulating in future the succession of the jagir enjoyed by one branch of the Ramgarh family in Ambala*

“as this proposal has emanated from the younger sons themselves.” The family is a Rajput one connected with the Raja of Bliaspur.

The above would show the area which would be the Cis-Satluj territory. It also refers to the introduction of primogeniture which was introduced in one branch of Ramgarh family as the proposal came from the younger son.

The Haryana District Gazetteer of 1892 which was reprinted in 1998 gives the pedigree of the leading families and jagirs and there is a reference to the Ramgarh family and the pedigree table is shown as under:-



Below the pedigree table, there is a reference to the branches of the family which reads as under:-

“The two main branches of the family, descended from Maldeo Singh and Narain Singh, are quite distinct, as Mian Kusal Singh died before 1809. The head of the elder branch, Mian Parduman Singh, receives rather over a third of the total jagir of Rs. 18,400 a year. There are special orders about this family recognising the right of primogeniture, and the younger

brother Sardar Amrod Singh is entitled to maintenance only. The remaining Rs. 12,000 of jagir revenue is divided among the following Sardars :—

- (1) Amar Singh of Dhandarru.*
- (2) Govardhan Singh of Kishangarh.*
- (3) Sukhdarshan Singh and Suchet Singh of Khatauli.*
- (4) Shamsher Singh and Gulab Singh of Rarngarh.*

Sardar Amar Singh's right to a share in the jagir is not usually recognised in the family, though the case was decided by Government in his favour when the dispute arose. Sardar Govardhan Singh's jagir includes the revenue of Bharal in Bhoj Mator of the Morni ilaka, a village now assessed at Rs. 320 and the only part of the Morni tract of which the revenue is not enjoyed by the Mir of Kotaha or his sub-assignees.

Most of the Sardars are respectable men, but Mian Parduman Singh alone takes a prominent position in the country, exercising powers as an Honorary Magistrate and Sub-Registrar. The family holds itself aloof from the people of the district in virtue of its connection with ruling families in the Hill States. It is the only family of this class anywhere in Ambala.

The Land Administration Manual refers to the fact that rule of primogeniture was followed by one branch of the families in Ambala as there was a proposal by the younger sons themselves for its adoption. It was the family of Maldeo Singh which had adopted the custom of primogeniture. With this, the plaintiff's task of proving that the custom was followed in their branch becomes more difficult.

The explanation given on behalf of the appellant was that Hari Singh, his son Daya Singh and his grandson Ram Singh were the only sons therefore there was no reference to this rule in their line of descent and it became applicable to their family later and there is a reference to it in

any such circular. The agreement executed by Mian Daya Singh dated 23.7.1861 referred in the plaint was not proved. Mere exhibiting a document does not dispense with its proof. No record had been called for nor any document proved. When the documents were not proved, those could not be considered. The plaintiff applied for attested copies of documents filed in another case and introduced them in this case. An objection was taken promptly by the defendants. The only evidence on the record from the plaintiff side is his self serving statement. The plaintiff did not even bother to prove that the land, details of which were given in the file came down from the ancestors. He failed to disclose which part of the land was acquired and what was the land which remained. He failed to even place the copies of the sale deed executed by his father and uncle. Admittedly the plaintiff is not in possession of the property. The suit for declaration simplicitor was not maintainable.

Much stress was laid on the notification of 24-8-1945 which refers to a written instrument executed by Mian Ajmer Singh and it reads as under:-

“892-R : Whereas by a written instrument duly executed and dated the 25th day of July, 1944 Mian Ajmer Singh son of Mian Gulab Singh, resident of Ramgarh in the Ambala District has signified on behalf of himself and his family acceptance of the rule of primogeniture in respect of the succession to the assignment of land revenue enjoyed by him and more particularly set out in the said written instrument and in the second schedule appertaining thereto, the Governor of the Punjab is pleased to declare in exercise of the powers conferred by Section 7 of the Punjab Jagirs Act, 1941, that the said rule of descent as set out in the first schedule to the said written instrument shall prevail in the family of the said Mian

Ajmer Singh in respect of succession to the said assignment of the land revenue.”

“No. 893-R: In exercise of the powers conferred on him by Section 8 of the Punjab Jagirs Act, 1941, the Governor of Punjab is pleased to direct that, the rule of descent declared by Punjab Government notification No. 892-R, dated 24th August 1945, to prevail to the family of Mian Ajmer Singh, son of Mian Gulab Singh, resident of Ramgarh in the Ambala district, shall be subject to all the conditions specified in the said section.”

What is jagir? It would be relevant to refer to the provisions contained in Punjab Jagirs Act, 1941. Section 2(b) defines Jagir and it reads as under:-

(b) "Jagir" includes -

- (i) any assignment of land revenue made or deemed to have been made under this Act,*
- (ii) any assignment of land revenue made by the competent authority, before the passing of this Act,*
- (iii) any grant of money made or continued by or on behalf of [the Central or State Government] which purports to be or is expressed to be payable out of the land revenue ; and*
- (iv) any estate in land created or affirmed by or on behalf of the [the Central or State Government] which carries with it the right of collecting land revenue or receiving any portion of the land revenue.*

Jagir includes assignment of land revenue. The above two notifications also refer to assignment of land revenue and nothing more than that.

The appellant had sought support from ***Dattatraya alias Prakash and others versus Krishna Rao alias Lala Saheb Baxi through***

LRs. etc. AIR 1991 Supreme Court 1972 but the facts were different and the judgment is not applicable to the facts.

A reading of the notification referred above would show that it relates only to the assignment of land revenue. The plaintiff had failed to place on record the written instrument executed on 25.7.1944. The plaintiff had held back that document. No effort was made to summon the record. The Gazette notification referred to above issued by the Revenue Department under the signature of Secretary to Government of Punjab does not refer to the adoption of rule of primogeniture in respect to the succession to the estate. The observations made in this regard by both the Courts below are found to be correct. The plaintiff had failed to prove that the succession to the estate was governed by the rule of lineal primogeniture. There is no evidence that this custom had been followed. Not a single instance was cited. Neither the Land Administration Manual or the Ambala Gazetteer refers to the adoption of this custom in this branch. A suit was filed by Yoginder Singh son of Mian Sher Singh in their branch from the line of Gopal Singh's family and the plea of primogeniture was raised and the suit was dismissed and the judgment was placed on record which is Ex. D-12.

A perusal of the Land Administration Manual makes it clear that Hari Singh Narain Singh branch of Ramgarh were declared Cis-Satluj Jagirdar and the plaintiff had proved that he belonged to that family. The question remains whether the suit property was part and parcel of Cis-Satluj Jagir, I find that there is absolutely no evidence. The plaintiff had been unable to show that there was any grant in their favour. The judgments reported as ***M/s Hajee S.V.M. Mohamed Jamaludeen Bros. and Co. vs.***

Govt. of T.N. AIR 1997 Supreme Court 1368, Jor Bagh Association (Regd.) and others vs. Union of India and others AIR 2004 Delhi 389, Amarsarjit Singh etc. vs. State of Punjab AIR 1962 Supreme Court 1305 and Maharaja Jagat Singh vs. Lt. Col. Bhiwani Singh and others AIR 1996 Delhi 14 are not applicable.

The plaintiff had been unable to show that the Government had made any declaration with respect to any estate. No agreement had been placed on record to show that there was any such settlement between Jagirdars and the British Government. The assignment in the two notifications (Ex. P-4 and P-8) referred to by the plaintiff only are with respect to land revenue. Reference to Section 5 Sub Section (ii) of the Hindu Succession Act referred to by the appellant is clearly misplaced. The notifications cannot be deemed to be a covenant or agreement entered into by any ruler of the Indian State with the Government of India. There is nothing to suggest that this branch of family was recognized by the Government of India as a Ruler. Therefore, in view of matter Sub Section (ii) of Section 5 had no application. The plaintiff had failed to prove that the suit property was part and parcel of Cis-Satluj Jagir and the findings recorded in this regard by both the Courts below are affirmed. Both the Courts below have correctly dealt with the issues and cannot be faulted with. The plaintiff had failed to summon any witness from the Revenue Department or to place jamabandis or excerpts to show that the property was part of the Cis-Satluj Jagir. It would be relevant at this stage to refer to para 73 of the judgment of the lower Court which reads as under:-

“Next, it has been argued by the learned counsel for the plaintiff that plaintiff was not aware about the adoption of rule of primogeniture by his forefathers and he came to know only

some days before the filing of present suit on 22.2.1999, therefore, the plea of primogeniture was not available to the plaintiff and plaintiff continued to claim interest on the basis of Will or as per the provisions of Hindu Successions Act. With due respect, this plea of the learned counsel for the plaintiff is without any force or law or facts, because, from 1989 till the filing of the present suit, both the parties have filed so many suits/references against each other and in those suits/cases, the plea of primogeniture was never taken, although, plaintiff, his brother, father Mohan Singh were vigilant to move the Court for enhancement in land acquisition compensation in individual capacity as well as LRs of Premwati and Raj Kumari. Even otherwise, plaintiff has failed to prove his plea by way of any cogent evidence. The plaintiff is a Law Graduate. He was born on 31.8.1955 and he came into service in 1979. It is an admitted fact that the suit land was partitioned by Mian Ajmer Singh among the members of his family during his lifetime, i.e. before the year 1975. Mian Ajmer Singh died in the year 1975 and at that time, the plaintiff had attained the age of majority. It is well settled principle of law that ignorance of law is no excuse.”

The fact that alienations had been made by Ajmer Singh during his lifetime were not disputed before me. Ajmer Singh had died in 1975. The alienations made by him were not challenged within limitation. It was rightly held that the suit was barred by limitation.

A question would arise whether the rule of primogeniture could survive even after the enforcement of the Hindu Succession Act. This question would not arise in this case but is being dealt with only for academic purposes.

Does the 1956 Act make any change? It is necessary to examine the relevant provisions of the Hindu Succession Act.

The Act, as the preamble shows, was promulgated “to amend

and codify the law relating to intestate succession among Hindus.” Thus, the Act was enacted with two things in view. The existing position had to be changed. Secondly, the law relating to succession was to be codified. The ‘code’ is ‘self-contained and complete.’ The result is that the Court is not “at liberty to go outside the law so created simply because before the existence of that enactment, another law prevailed.” It is on this basis that the effect of the Act has to be considered.

For the purposes of the present case, the relevant provisions are contained in Sections 4 and 5. Sections 4 provides as under:

“4. Over-riding effect of Act— (1) Save as otherwise expressly provided in this Act—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commence of this Act shall cease to have effect with respect of any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provision of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings”.

A perusal of the above provision shows that the Act has an overriding effect. On promulgation of the Act, “any text, rule or interpretation of Hindu law or any custom or usage as part of that law ceases to have effect with respect to any matter for which provision is made in it.

Thus, any custom or law which was in force before June 17, 1956, ceased to

apply to the Hindus to the extent it was inconsistent with the provisions of the 1956 Act.

An exception was carved out in Section 5 whereby certain properties were specifically excluded from the application of the Act. For the purposes of this case the relevant provision is contained in Clause (ii). It reads as under:

“5. Act not to apply to certain properties— This Act shall not apply to—

(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act”.

A perusal of the above provision shows that if by the terms of an agreement or covenant entered into by the Ruler of an Indian State with the Government of India or under an existing enactment, the estate was to descend to an individual, the provisions of the Act would not apply. There is a rationale for the exception. The rights of the Rajas who had joined the Union were governed by the terms of binding instruments. The succession was governed by the terms of accession. The undertaking, if any, had to be honoured. The promise had to be fulfilled. Thus, it appears that special provision was made.

What is the result? By virtue of Section 4, the customary rule of ‘primogeniture’ was abrogated. The succession was to be governed by the provisions of the Hindu Succession Act. Even the rights, which were inchoate, were made enforceable. The property, which was hither-to-fore ‘impartible’, had become capable of partition.

In ***Hans Raj vs. Dhanwant Singh, AIR 1961 Punjab 510***, a

related to the abrogation of the rule of custom on the promulgation of the 1956 Act. It was held that Section 4 “does away with the rule of custom so far as succession is concerned and, therefore, after the Hindu Succession Act came into force, no Hindu can be said to be governed by the rules of customary law and the succession to the property held by a Hindu must be regulated by the provisions of the Hindu Succession Act.”

In ***Sundari v. Laxmi, (1980) 1 SCC 19 : AIR 1980 SC 198***, it was held by their Lordships that “Section 4 of the Act gives overriding application to the provisions of the Act and lays down that in respect of any of the matters dealt with in the Act all existing laws whether in the shape of enactment or otherwise which are inconsistent with the Act are repealed. Any other law in force immediately before the commencement of this Act ceases to apply to Hindus in so far as it is inconsistent with any of the provisions contained in the Act. It is, therefore, clear that the provisions of Aliyasanthana law whether customary or statutory will cease to apply, in so far as they are inconsistent with the Hindu succession Act.”

In view of the above and on going through the preamble on the Hindu Succession Act, it is clear that the old laws had been amended and law had been modified and the old rules or customs which were enforced before June 1956 insofar as they were inconsistent with any of the provisions contained in the Act stood abrogated and the rule of primogeniture also stood abrogated.

In ***N. Padmamma and others versus S. Ramakrishna Reddy and others (2008) 15 Supreme Court Cases 517***, reference had been made to ***Bhe & Ors. vs. Magistrate, Khayelistha & Ors. (2004) 18 BHRC 52*** and it was held as under:-

A right in a property which is vested in terms of the provisions of the Hindu Succession Act cannot be taken away, except in terms of provisions of another statute, which would have an overriding effect. Such special statute should be a complete code. It shall ordinarily be a later statute. Ordinarily again it must contain a non-obstante clause.

19. Law of Primogeniture is no longer applicable in India. Such a provision may be held to be unconstitutional being hit by Article 14 of the Constitution.

Para 22 of *Anuj Garg and others versus Hotel Association of India and others (2008) 3 Supreme Court Cases 1* is relevant and it reads as under:-

“In Bhe v. Magistrate, Khayelista the South African Constitutional Court was required to consider the constitutionality of the Black Administration Act, 1927 (South Africa) and the Regulations of the Administration and Distribution of the Estates of Deceased Blacks (South Africa). This scheme was purporting to give effect to the customary law of succession where principle of male primogeniture is central to customary law of succession. It was held by the majority that the rule of male primogeniture as it applied in customary law to the inheritance of property was inconsistent with the constitution and invalid to the extent that it excluded or hindered women and extra-marital children from inheriting property. The rules of succession in customary law had not been given the space to adapt and to keep pace with changing social conditions and values. Instead, they had overtime become increasingly out of step with the real values and circumstances of the society they were meant to serve. The application of the customary law rules of succession in circumstances vastly different from their traditional setting caused much hardship. Thus the official rules of customary law of succession were no longer universally observed. The exclusion of women from inheritance on the grounds of gender

was a clear violation of the constitutional prohibition against unfair discrimination. Further, the principle of primogeniture also violated the right of women to human dignity as it implied that women were not fit or competent to own and administer property. Its effect was to subject those women to a status of perpetual minority, placing them automatically under the control of male heirs, simply by virtue of gender differentiation.”

So far as the question regarding the jurisdiction of the Civil Court is concerned, the Division Bench of this Court in ***Malkiat Singh versus Harnek Singh 1992(2) PLJ 40*** while relying on ***Dr. G.H.Grant vs. The State of Bihar, AIR 1966 Supreme Court 237***, had held that the Civil Court's jurisdiction had not been excluded to determine the question of title between the parties and the Land Acquisition Act did not debar the Civil Court's jurisdiction except to the extent of amount of compensation. It is, therefore, held that the Civil Court had the jurisdiction. The plaintiff had earlier filed a suit claiming his right under the Hindu Succession Act and he could have taken the plea only in the first suit and the second suit could not have been filed. Therefore, the suit was also barred under Order 2 Rule 2 CPC.

In view of the observations made above, I find no merit in the appeal and is dismissed.

(ANITA CHAUDHRY)
JUDGE

April 26, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes