

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

1. RSA No.1312 of 1999 (O&M)  
Date of decision : 11.01.2019

Jagat Ram ...Appellant

Versus

Smt. Rajo ...Respondent

2. RSA No.2325 of 1999 (O&M)  
Date of decision : 11.01.2019

Smt. Rajo ...Appellant

Versus

Jagat Ram ...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. Surinder Dhull, Advocate for the appellant  
(In RSA No.1312 of 1999)  
for the respondent (In RSA No.2325 of 1999)

Mr. C.B. Goel, Advocate for the appellant  
(In RSA No.2325 of 1999)  
for the respondent (In RSA No.1312 of 1999)

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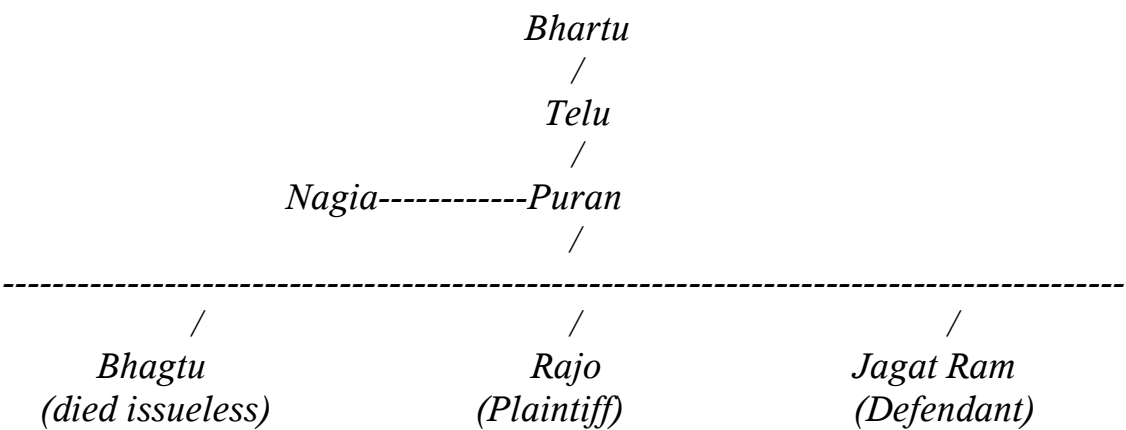
**ANIL KSHETARPAL, J.**

By this judgment, RSA Nos.1312 and 2325 of 1999 which have been filed by the plaintiff as well as by the defendant shall stand disposed of.

In the considered opinion of this Court, the question of law which requires determination is whether the property inherited by Class-I heir from his father as per Section 8 of the Hindu Succession Act, 1956, would be his individual property or ancestral property or joint hindu family

property?

A brief pedigree table would facilitate understanding of inter se relationship between the parties:-



As per record, Telu was owner of agricultural land in two villages, one Village Pai and second Village Thai Badela. Telu died somewhere in the year 1968-69 and as per Section 8 of the Hindu Succession Act, his property was inherited/succeeded by his two sons late Nagia and Puran. Mutations of the two villages i.e. Pai and Thai Badela are Ex.P11 and Ex.P3. These mutations were sanctioned in the year 1969. Thereafter, these two brothers namely Late Nagia and Puran continued as joint owners of the property to the extent of half share each in both the villages. Nagia died issueless on 22.11.1987. On the death of Nagia, mutations were sanctioned in favour of his only brother Puran. Thus, Puran became exclusive owner of the entire property. Puran was having 2 sons and a daughter-Bhagtu i.e. plaintiff No.1 who has since died (issueless) and a married daughter Rajo and Jagat Ram defendant-appellant in RSA No.1312 of 1999. Rajo was married and Bhagtu was not having any child. On the basis of a family settlement, Puran acknowledged Jagat Ram as sole owner of the entire property resulting into a Civil Court decree dated 09.03.1989. It

may be significant to note that in the aforesaid plaint filed by Jagat Ram, it was pleaded that Puran is exclusive owner of the property. This fact was admitted by Puran. His statement in the Court is Ex.P17 whereas judgment passed on the basis of admission is Ex.P18 on the record.

Puran, after suffering the decree, died in the month of June, 1989. Bhagtu and Rajo filed a suit from which these appeals have arisen claiming that property in the hands of Puran were ancestral and, therefore, there was no question of family settlement between Puran and Jagat Ram alone. It was also claimed that Puran never appeared before the Court nor engaged any counsel. Puran was stated to be old, infirm and illiterate rustic villager and did not know anything.

On the basis of evidence, learned trial Court decreed the suit filed by the plaintiff. Appeal preferred before the First Appellate Court was partly allowed and it was held that property to the extent of half share which was inherited by Puran from Nagia is not an ancestral property. Thus, the First Appellate Court held that only half share of the property which Puran inherited directly from Telu was ancestral and, therefore, plaintiffs are owners to the extent of 2/3<sup>rd</sup> share whereas Jagat Ram shall be entitled to only 1/3<sup>rd</sup> share in the property which Puran inherited directly from Telu.

That is how two appeals, one filed by the defendant and second filed by the plaintiff have come up for hearing. It may be noted here that Bhagtu died issueless on 10.07.1991. It is also admitted fact on the record that Smt. Rajo i.e. plaintiff No.2 appellant in RSA No.2325 of 1999 was married much before decree on the basis of the family settlement was passed. When Rajo appeared as PW1 on 21.01.1992, she has stated that she

has an elder daughter who is 13 years of age and this girl was born after seven years of marriage. Thus, it can be safely concluded that Smt. Rajo married somewhere in the year 1972-73.

Now the stage is set for answering question of law framed earlier.

**1. Whether the property inherited by Class-I heir from his father as per Section 8 of the Hindu Succession Act, 1956, would be his individual property or would be ancestral property or joint hindu family property?**

In the present case, it is proved on file that on the death of Telu, property was inherited in equal share by late Sh. Nagia and Puran in both the villages after coming into force of Hindu Succession Act, 1956. No evidence has come on file that Telu was having any other Class-I heir on the date of his death i.e. somewhere in the year 1968. After the death of Telu, Nagia and Puran became co-owners to the extent of half share. Nagia and Puran continued to be co-sharers for 18 years when Nagia died on 22.11.1987. On the death of Nagia, Puran being his only Class-II heir inherited the property. This property came to Puran under Section 8 of the Hindu Succession Act, 1956 read with the Schedule attached to the Hindu Succession Act, 1956. In the considered opinion of this Court, once on the death of a common ancestor, property has devolved upon his Class-I heirs or Class-II heirs as per Section 8 of the Hindu Succession Act, 1956, such heirs would become absolute owners of the property and such property would not be either joint hindu family or coparcenary or ancestral in the hands of such legal heirs, in absence of any other evidence to this effect. This aspect has been dealt with in detail by Hon'ble the Supreme Court in

series of judgments starting from **Commissioner of Wealth Tax, Kanpur and others Vs. Chander Sen and others, (1986) 3 SCC 567** followed by judgment passed by Hon'ble the Supreme Court in case of **Yudhister Vs. Ashok Kumar (1987) 1 SCC 204** and subsequently followed in the case of **Bhanwar Singh Vs. Puran and others (2008) 3 SCC 87** and recently in the case of **Uttam Vs. Saubhag Singh (2016) 4 SCC 68**. Para 10 of the judgment passed by Hon'ble the Supreme Court in the case of Yudhister (Supra) is extracted as under:-

*“10. This question has been considered by this Court in CWT, v. Chander Sen where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as karta of his own undivided family but takes it in his individual capacity. At pages 577 to 578 of the report, this Court dealt with the effect of Section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th edn. pages 924-26 as well as Mayne's Hindu Law, 12th edn. Pages 918-19. Shri Banerji relied on the said*

*observations of Mayne on 'Hindu Law', 12th Edn. at pages 918-19. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn. page 919. In that view of the matter, it would be difficult to hold that property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a- vis his own sons. If that be the position then the property which devolved upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house.”*

In view of the aforesaid judgments passed by Hon'ble the Supreme Court and keeping in view the provisions of Hindu Succession Act, 1956, it is safe to conclude that the entire property which came to be inherited by Puran either directly from Telu or from Nagia his brother, is individual property of Puran and, therefore, Rajo or Bhagtu had no right, title or interest in the property. Both the Courts have not recorded any finding that Puran did not appear or Puran was under any undue influence. Rajo on having been married was not member of the family after her marriage in early 1970s. Bhagtu was issueless. It was for this precise reason that Puran in order to avoid any future dispute acknowledged in a family settlement that Jagat Ram is the owner of the property. It may be noted that Bhagtu @ Bhagat Ram did not appear in evidence, although issues were

framed on 13.03.1990 and Bhagtu died on 10.07.1991. Accordingly, question of law is answered in favour of the defendant. Thus, the appeal filed by Jagat Ram i.e. RSA No.1312 of 1999 is allowed and RSA No.2325 of 1999 is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**11.01.2019**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                      Yes/No**