

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

- 1. RSA-1064-1995 (O&M)
Reserved on :11.07.2022
Date of decision : 15.07.2022**

SHAKUNTLA DEVI AND ANOTHER

..Appellants

Versus

GIAN CHAND (DECEASED) THROUGH LRS & ORS.

..Respondents

- 2. RSA-1200-1995 (O&M)**

LEELAWATI

..Appellant

Versus

GIAN CHAND (DECEASED) THROUGH LRS & ORS.

..Respondent

- 3. RSA-3-2003 (O&M)**

GIAN CHAND (DECEASED) THROUGH LRS & ORS.

..Appellants

Versus

SHAKUNTALA DEVI AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Avnish Mittal, Advocate
Ms. Aparna Singhal, Advocate
for the appellant.**

**Mr. Abhay Chauhan, Advocate
for the appellant-Leelawati (in RSA-1200-1995)**

**Mr. Kewal Krishan, Advocate
for the applicant.**

**Mr. Deepak Achint, Advocate
for Mr. N.D. Achint, Advocate
for the appellant.**

Mr. V.B. Aggarwal, Advocate
for respondent No.6(i) & 5(i).

Mr. Prateek Gupta, Advocate
for the respondent(s).

ANIL KSHETARPAL, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi**.

(Dead) thorough LRs Vs. Chandrika and others, (2016) 6 SCC 157.

2. This judgment shall dispose of three connected appeals bearing RSA No.1064 of 1995, RSA12001995 and RSA No.3 of 2003. The learned counsel representing the parties are *ad idem* that these three connected appeals can conveniently be disposed of by a common judgment.

3. In the considered opinion of the Court, the following questions of law require adjudication:-

1. If succession opens before coming into force of Hindu Succession Act, 1956 (hereinafter referred to as 'the 1956 Act'), but after the adoption of the Constitution of India, whether intestate succession with respect to agricultural land would be governed by the provisions of the Hindu Women's Right to Property Act, 1937 (hereinafter referred to as 'the 1937 Act'), or by para 159 of the Punjab Land Administration Manual providing for rule of primogeniture?

2. If the immovable property is irrevocably donated by a big landowner in favour of his *purohit*, whether the

ownership still continues to vest with the landowner or the donee would be deemed to have become owner of the property which has been so donated?

4. The learned counsel representing the plaintiff submits that late Smt. Leelawati has died without leaving behind any legal heir, therefore, the appeal shall stand abated. He relies upon the judgments passed by the Supreme Court in:-

1. Venigalla Koteswaramma vs Malempati Suryamba (2021).

4 SCC 246, and

2. Gurnam Singh (D) Through Lrs & Ors vs Gurbachan Kaur.

(D) Through Lrs (2017) 13 SCC 414.

5. It may be noted here that the High Court for the State of Punjab and Haryana and the Union Territory of Chandigarh has made amendments in Order 22 Rule 2, 3 and 4 of the Code of Civil Procedure, 1908. As per Order 22 Rule 11 CPC, on the death of Smt. Leelawati, Rule 3 of Order 22 shall be applicable. The amendment brought in Order 22 Rule 3 Sub-Rule 2 vide notification dated 21.01.1992, is extracted as under:-

“PUNJAB, HARYANA AND CHANDIGARH.- For existing sub-rule(2) of Rule 3 substituted:-

Rule 3(2): where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist.” - Haryana Gazette, 25-2-1992, Pt. III(LS), p. 253- Chandigarh Administration Gazette, 21-2-1992, Extra., p. 196”

6. It is evident that as per the amendment, the appeal shall not abate against the deceased appellant and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been

pleader, in that event, shall continue to subsist. The judgment of the Supreme Court in *Venigalla Koteswaramma's case (supra)* is arising from a State in which there is no corresponding amendment in Order 22 of CPC. In *Gurnam Singhs' case (supra)*, the attention of the Court was not drawn to the amendment in Order 22 Rule 3(2) and 4 as applicable to the States of Punjab, Haryana and Chandigarh. Hence, in the humble opinion of this Court, the view in *Gurnam Singh's case (supra)* would have to be treated as *per incuriam*. In any case, it may be noted that late Smt. Leelawati, during her lifetime, executed a registered lease of the property in favour of Sh. Janak Raj, Sh. Papu Ram and Sh. Ramesh Kumar vide lease deed dated 12.08.1994. There is an application filed for impleading the lessees as her legal representatives. The expression “legal representatives” is not synonymous with the expression “legal heir”. In these circumstances, the application is allowed, particularly when there was an assignment of rights during the lifetime of late Smt. Leelawati in terms of Order 22 Rule 10 CPC.

7. This aspect can also be examined from another perspective. Late Smt. Leelawati was one of the defendants. A separate connected appeal i.e. RSA-1064-1995, has been filed by Smt. Shakuntala Devi. The judgment and decree impugned in both the appeals is common. In terms of Order 41 Rule 4 CPC, in the appeal filed by Smt. Shakuntala Devi, the whole decree is liable to be reversed particularly when it proceeds on a common ground.

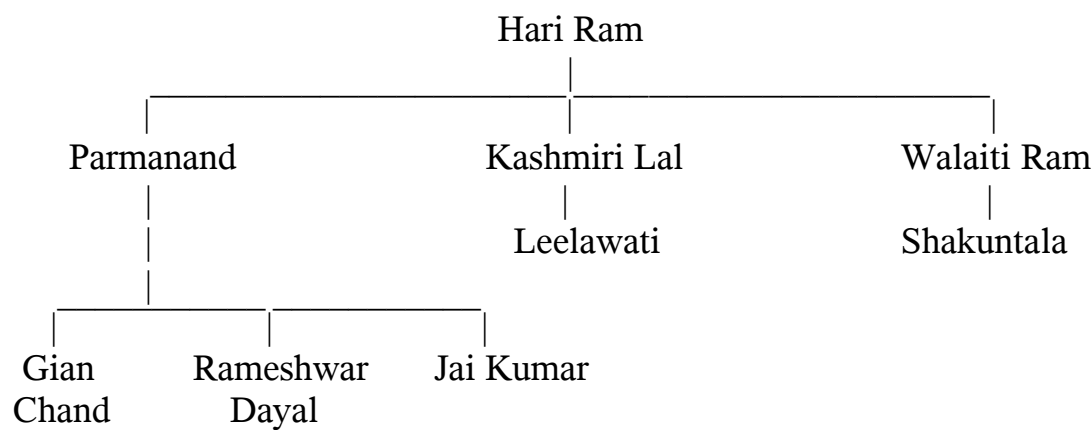
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Allowed as prayed for.

Smt. Reeta Bansal is impleaded as legal representative of late Smt. Leelawati.

CM stands disposed of.

8. It may be noted here that the dispute, in the present case, is centred around the inheritance of the donee namely late Sh. Hari Ram, who died in the year 1953. A small pedigree table is drawn to understand the *inter se* relationship between the various parties.:-



9. In fact, two separate connected suits have been decided which are subject matter of three Regular Second Appeals. RSA No.1064 and 1200 of 1995 have been filed challenging the common judgment passed by the Civil Court, whereas, RSA No.3 of 2003, has been filed by the same plaintiff for grant of decree of possession of the land which is subject matter of suit in the previous case.

10. RSA No.1064 & 1200 of 1995, have been filed by the defendants namely Smt. Shakuntala Devi and another and late Smt. Leelawati, respectively, whereas, RSA No.3 of 2003 has been filed by Sh. Gian Chand and others (legal representatives of late Sh. Parmanand). Civil Suit No.194-A/05.01.1978, was filed by Sh. Parmanand claiming that he is the only *muafidar* of the land and defendant No.1 and 2 namely Smt. Leelawati and Smt. Shakuntala Devi have no share in the land. He also prayed for grant of decree of injunction restraining the defendants from further alienation 1/3rd share of the land comprised in Khasra No.97. By way of amendment, the relief of possession by demolition of the construction

was also sought.

11. The proved facts, which have not been disputed, are as follows:-

Sh. Rao Prithi Singh was the owner of the property. Late Sh. Hari Ram was *purohit*. Sh. Rao Prithi Singh donated the property in favour of late Sh. Hari Ram in the year 1948. The mutation of the property as entered and sanctioned by the Assistant Collector, Second Grade, has been translated by the First Appellate Court in the following manner:-

“Today in public gathering, this mutation was presented. Rao Prithi Singh, owner and Hari Ram, Muafidar, who were identified by those present, admitted as correct and verified the Muafi of the land and change in possession. Therefore, after the change in entry, the corrected document be prepared.

sd/-AC IInd Grade 23.9.48

Raipur Rani 24.12.48

Today the mutation was presented in public gathering. Rao Prithvi Singh owner and Hari Ram, Muafidar, as identified by those present, are present, the owner states that he has given the land entered in mutation on Muafi to Hari Ram Muafidar on generation to generation basis. After my death, my heirs will have no right to get back the land from Muafidar. The corrected Shajra has been prepared and compared by Girdawar. Therefore, the mutation of Muafi of of land revenue of Khata No.1, Khasra no.381/1 measuring 5 bighas 1 biswas is sanctioned from Rao Prithi Singh in the name of HariRam Muafidar being in cultivating possession as above”

sd/-N.T.R. 24.1.49”

12. Sh. Hari Ram died in the year 1953 while leaving behind Sh. Parmanand, Sh. Kashmiri Lal and Smt. Shakuntala Devi widow of Sh. Walaiti Ram (widow of predeceased son) who died in the year 1942. It is claimed that on the death of Sh. Hari Ram, mutation of the property was wrongly entered in favour of Sh. Parmanand, Smt. Leelawati and Smt. Shakuntala Devi. Sh. Parmanand being the eldest son claims that he is

land and the same could not be inherited by defendant No.1 and 2. The defendant No.2 has sold the alleged 1/3rd share in land comprised in Khasra No.97 to defendant No.3 to 5.

13. The suit was contested alleging that the mutation of the land has been correctly sanctioned as Sh. Kashmiri Lal died in the year 1971. It is claimed that after the death of Sh. Hari Ram, the land has been allotted to the families of all the three sons equally. Defendant No.3 filed a separate written statement and reiterated the stand taken by defendants No.1 and 2. It was claimed that defendant No.1 and 2 only executed a sale deed on 03.09.1985 and defendant No.5 was already in possession of the land prior to 03.09.1985.

14. The trial Court dismissed the suit, whereas, the First Appellate Court has set aside the judgment and decree passed by the trial Court while decreeing the suit filed by the plaintiff. In substance, the First Appellate Court has held that the succession of late Sh. Hari Ram opened before coming into force of the 1956 Act, therefore, defendant No.2 (Smt. Shakuntala) had no right to inherit the property as her husband died in the year 1942. In view of para 159 of the Punjab Land Administration Manual, the property, being a limited and small grant, will be inherited by the eldest son namely Sh. Parmanand.

15. In RSA No.3 of 2003, the legal representatives of the plaintiff (Sh. Parmanand) are the appellants. Their suit for possession of land, measuring 26 kanals and 19 marlas, though was decreed by the trial Court but reversed by the First Appellate Court on the ground that subsequent suit for possession is barred under Order 2 Rule 2 CPC and the suit was filed beyond the prescribed period of 12 years. In fact, the result of the second

16. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbooks and the lower Courts record, which was requisitioned. They have also filed the written compilation of their respective arguments.

17. On the one hand, the learned counsel representing Smt. Shakuntala Devi contends that in view of the provisions of the 1937 Act, on the death of Sh. Hari Ram, the property was correctly entered in favour of the three natural heirs namely Sh. Parmanand, Sh. Kashmiri Lal and Smt. Shakuntala Devi. He submits that before coming into force of the 1956 Act, the 1937 Act was applicable, therefore, the First Appellate Court has erred in relying upon para 159 of the Punjab Land Administration Manual. He also relies upon the judgment passed in **Babu Ram Vs. Santokh Singh (deceased) through his LRs and others, (2019) 14 SCC 162.**

18. On the other hand, Sh. Abhay Chauhan, the learned counsel representing the appellant-Smt. Leelawati in RSA No.1200 of 1995, contends that firstly, the First Appellate Court has incorrectly noted para 159 of the Punjab Land Administration Manual and further, the same is also not applicable to the present case. He submits that para 159 is with regard to small grants made in consideration of service to be rendered to the village communities. He submits that, in the present case, there is no evidence that the grant/donation was in lieu of service rendered to the village communities. He further contends that not only the aforesaid para is not applicable on transfer of ownership but, it, also, does not determine the succession of the immovable property.

19. The learned counsel representing the respondents-plaintiffs (legal representatives of Sh. Parmanand) contends that the provisions of the

passed by the Division Bench of this Court in **Hari Dass Vs. Hukmi, AIR. 1965 (P&H) 254** and **Banarsi Dass Vs. Madho Ram, 1997(4) RCR(C) 328.**

He contends that once the provisions of the 1937 Act are not applicable, the First Appellate Court has correctly held that the property would be inherited by eldest son namely late Sh. Parmanand as the ownership rights were never transferred. He draws the attention of the Court to the meaning of expression “*muqfi*” in the various dictionaries. The learned counsel representing the respondent No.5(i) and 6(i) has contended that *muqfi* is basically exemption from payment of land revenue/rent/tax.

20. It may be noted here that question No.1 as noted hereinbefore stands answered in the judgment passed by the Supreme Court in **Babu Ram's case (supra)**. It may be noted here that previously, there was a difference of opinion among various High Courts as also the Federal Court regarding the applicability of the 1937 Act with respect to the agricultural land. However, in the case of **Babu Ram's case (supra)**, the Supreme Court, though considered the matter in the context of Section 22 of the 1956 Act, but had an opportunity to examine the correctness of the judgments passed by the Federal Court in **AIR 1941 Federal Court 72** and by a Full Bench of the Punjab and Haryana High Court in **Amar Singh Vs. Baldev Singh, AIR 1960 Punj 666 (FB)**, among examining various other judgments, it has been held that the relevant entries in the Government of India Act, 1935, have undergone a change after the applicability of the Constitution of India. While noting the difference between the two, the Court has held that the Parliament has omitted the phrase “save as regards the agricultural land” from item No.5 of the concurrent list provided in the VIIth Schedule of the Constitution of India. In that context, the Supreme Court has held that the

decision of the Federal Court would no longer hold good. The Supreme Court also held that the various contrary decisions of the High Courts shall stand overruled.

21. Another judgment relied upon by the learned counsel representing the plaintiff is in **Banarsi Dass case (supra)**. In that case, a learned Single Judge decided the case on the basis **Hari Dass case (supra)**, judgment of the Federal Court in **AIR 1945 Federal Court 25** and **Udham Kaur Vs. Prakash Kaur and others AIR 1945 Lahore 282**. In view of the judgment passed by the Supreme Court in **Babu Ram's case (supra)**, all those judgments shall no longer be good law particularly with respect to the succession which opens after the coming into force of the Constitution of India.

22. It is evident that Sh. Hari Ram died in the year 1953 i.e. after the adoption of the Constitution of India by the Parliament on 26.11.1949, which was enforced on 26.01.1950. In fact, Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, 393 and 394 came into force on 26.11.1949, whereas, other Articles came into force on 26.01.1950. Schedule VII is with reference to Article 246 of the Constitution of India which was adopted on 26.01.1950. Thus, after the enforcement of the Constitution of India, the judgments passed by the Federal Court or by a Division Bench would no longer hold good in view of the change in the relevant entry in concurrent list. In the present case, the succession of late Sh. Hari Ram opened in the year 1953, therefore, the Revenue Authorities correctly sanctioned mutation in favour of late Sh. Parmanand, Sh. Kashmiri Lal and Smt. Shakuntala Devi. It has not been debated before this Bench that the widow of a predeceased son is entitled to a share in the property as

per Section 3 of the 1937 Act. No doubt, under the 1937 Act, the widow inherits a limited estate, however, the same gets enlarged into complete ownership in view of Section 14 of the 1956 Act.

23. Accordingly, question No.1 is answered against the plaintiff, and, in favour of the defendants.

24. The second important issue which arises for consideration is with respect to the applicability of para 159 of the Punjab Land Administration Manual, which is extracted as under:-

*“159. To prevent the splitting up of small grants made in consideration of service to be rendered to village communities, it was ruled in 1865 that “small grants given in lieu of service to be performed or responsibilities to be fulfilled should be held from generation to generation by one individual only. * * * Ordinarily this individual should be the eldest heir of the deceased incumbent, but where special reasons exist for superseding him, it will be within the discretion of the local authorities so to arrange, provided this be in accordance with the wishes of those interested in the service to be rendered.”*

The occupation of existing holders was not to be disturbed, but advantage was to be taken of future successions to get rid of the joint enjoyment. ”

25. On reading of the Punjab Land Administration Manual, it is evident that it is a compilation of various orders of the Punjab which has been authored by Sir James McC. DOUIE in the year 1908 and reprinted in 1972 by the Government of Punjab. It was issued after examination by the Financial Commissioner and with the approval of the Punjab Government.

26. Para 159 makes a provision for holding of grants by a single individual in order to prevent the splitting up of the small grants made in consideration of service which is rendered to the village communities.

27. In the considered opinion of this Court, the ownership of the property was donated by Sh. Rao Prithi Singh in favour of late Sh. Hari

Ram. The order passed by the Assistant Collector, 2nd Grade, way back in 1948, which has already been extracted, clearly proves that this donation/grant was not in consideration of the services already rendered or to be rendered to the village communities. In fact, para 159 is applicable when the grant is subject to continuation of service to be rendered to the village communities like *dholidars*, *butimars*, *bhondedars* etc. In the present case, it is evident that the owner Sh. Rao Prithi Singh did not retain any rights with him. He unequivocally transferred the property in favour of late Sh. Hari Ram without any pre-condition including continuation of service to be rendered. There is also no evidence that the donor had given this donation to late Sh. Hari Ram in lieu of the services to be rendered to the village communities. Moreover, para 159 of the Punjab Land Administration Manual is not a mandatory provision. It has been stated that ordinarily, the person inheriting should be the eldest heir of the deceased incumbent, however, it does not lay down a uniform rule, particularly when the provision itself provides for exceptions. The succession by the eldest male heir is known as rule of primogeniture. In any case, the provision of Punjab Land Administration Manual which is compilation of orders/instructions issued by the Punjab Government cannot override the provisions of 1937 Act, which is a statute i.e. a superior form of legislation.

28. It may be noted here that the First Appellate Court had dismissed two applications filed by the defendants for permission to lead additional evidence. The correctness of such order has been assailed, however, this Court does not find it appropriate to deal with the same in view of the conclusion arrived at. It may be noted here that Sh. Rao Prithi Singh recognising the rights of Smt. Shakuntala (widow of Sh. Walaiti

Ram) had gifted 1/3rd share of the suit property in her favour on 11.06.1990.

29. Keeping in view the aforesaid discussion, the conclusion is inevitable. The judgments passed by the First Appellate Court impugned in RSA No.1064 & 1200 of 1995, are set aside and that of the trial Court is restored.

30. In RSA No.3 of 2003, late Sh. Parmanand claims the decree of possession on the premise that he has been declared as owner. In view of the decision in RSA No.1064 & 1200 of 1995, late Sh. Parmanand is only entitled to 1/3rd share of the suit property which was donated to late Sh. Hari Ram. Hence, the whole basis of the subsequent suit filed by late Sh. Parmanand ceases to exist.

31. Consequently, RSA No.3 of 2003, is dismissed.

32. All the pending miscellaneous applications, if any, are also disposed of.

15th July, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*