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

1.

RSA-2376-1992 (O&M)**Date of Decision : 27.02.2025**

Gomti (deceased) through LRs

... Appellant(s)

Versus

Ram Sarup (deceased) through LR & Ors.

... Respondent(s)

2.

RSA-2377-1992 (O&M)

Gomti (deceased) through LRs

... Appellant(s)

Versus

Agya Ram (deceased) through LRs & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

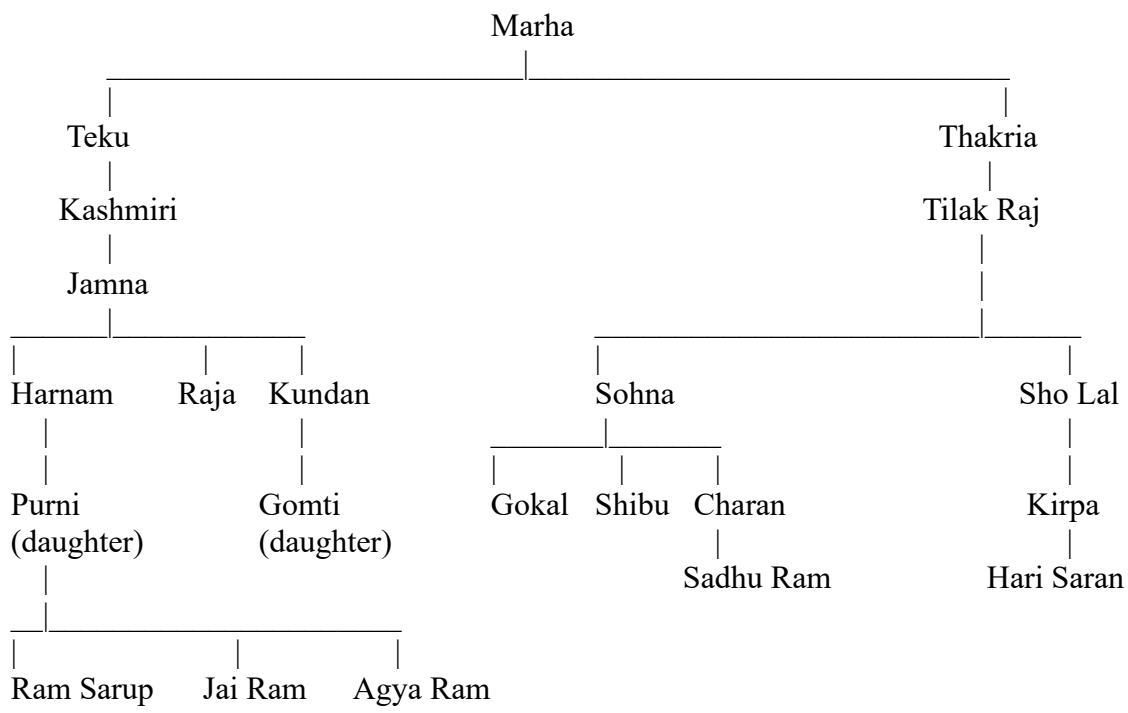
Present : Mr. A.S. Virk, Advocate
for the appellants (in both the appeals).

Mr. Pritam Saini, Advocate
for the respondents (in both the appeals).

ALKA SARIN, J. (Oral)

1. The present judgement shall dispose off the two above-noted appeals filed by the defendant-appellants challenging the judgment and decree dated 31.10.1992 passed by the First Appellate Court reversing the judgment and decree dated 17.01.1991 passed by the Trial Court.

2. For a clear understanding of the entire dispute, a pedigree table is being reproduced hereinbelow :



3. Brief facts relevant to the present *lis* are that one Hari Saran, qua whose property the entire dispute revolves around, died prior to 1955 and post his death Smt. Gomti filed a civil suit on 04.03.1955 (Ex.D1) titled Gomti vs. Bhagti claiming possession of agricultural land measuring 66 kanals 8 marlas owned by Hari Saran who is stated to have died issueless about 2½ years prior to the date of the institution of the suit. It was the case set up by Gomti in the said suit that Hari Saran was governed by custom in the matter of succession and Gomti who was the daughter of a collateral of Hari Saran was entitled to succeed in preference to the defendant therein who was a stranger. The said suit was decreed vide judgment and decree dated 08.10.1955 holding as under :

“Issue No.3.AIR 1940 Lahore 416 has been cited as an authority for the proposition that daughter of a collateral is entitled to succeed in preference to a stranger under custom. This is not disputed in case it was found that the defendant was the sister’s daughter of the last male

holder she would have succeeded to this land even in preference to a collateral of the 6th degree. There is no allegation that the suit land is ancestral and in succession to non-ancestral property daughters and their issues excludes collaterals of the 6th degree. Since the defendant is found to be a stranger issue found in favour of the plaintiff.

In the result the plaintiff succeeds and is granted a decree for possession of the suit land against the defendant under the circumstances of this case. Parties are left to bear their own costs.”

4. Subsequently on 05.09.1986 the plaintiff-respondents, who are the sons of Purni (sister of Gomti), filed the present suits for declaration with consequential reliefs of possession/permanent injunction. Civil Suit No.707 of 1986 was filed by Ram Sarup and Jai Ram and Civil Suit No.778 of 1986 was filed by Agya Ram. It is to be noted that there is no dispute regarding the relationship of Hari Saran, Gomti and Purni. In the plaint the stand taken by the plaintiff-respondents was that Gomti basing her claim on custom had filed the earlier civil suit which was decided in her favour and the appeal challenging the said judgment and decree was dismissed and on the basis of the said judgment and decree she had become the owner of the suit property.

Para 8 of the plaint reads as under :

“8. That as a matter of fact and as per customary law prevailing on the death of Shri Hari Sharan, the land detailed in para No.7 above and measuring 64K-3M was inherited by the plaintiffs and defendant No.2 in ½ share while defendant No.1 inherited the same to the extent of

½ share under the law prevailing at that time as the plaintiffs and defendant No.2 are sons of Smt. Purani, the real sister of Smt. Gomti. As a matter of fact Smt. Purani and Smt. Gomti being sisters had equal rights in the property of Hari Sharan as being daughter's son of the collateral Hari Sharan."

5. In the written statement, the stand taken by the defendant-appellants in para 8 reads as under :

"8. That para No.8 of the plaint is wrong as given and denied. The answering defendant was the only heir of Hari Saran. She got the land vide civil court judgment and decree referred to above. Neither the plaintiffs nor the defendant No.2 nor their predeceased mother was entitled."

In para 6 of the written statement the stand taken was that the plaintiff-respondents had no right in the suit property as their mother had died prior to the institution of the suit and she was an exclusive heir.

6. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff and defendant No.2 are the owners of the land in suit i.e. ½ share of land measuring 64K-3M, fully detailed and described in para No.7 of the plaint ? OPP
2. Whether the suit land was in possession of defendant No.2 as tenant and he has been dispossessed in execution proceedings ? OPD
3. Whether the suit has been filed at the instance of defendant No.2 as alleged ? OPD
4. Relief.

7. The Trial Court dismissed the suit vide judgment and decree dated 17.01.1991 holding that the plaintiff-respondents had not proved the custom that they were governed by in the matter of succession. The said judgment and decree was reversed by the First Appellate Court vide judgment and decree dated 31.10.1992 on the appeals preferred by the plaintiff-respondents in both the suits. Aggrieved by the same, the present regular second appeals have been preferred by the defendant-appellants.

8. Learned counsel for the defendant-appellants would contend that Gomti being the only surviving collateral of Hari Saran had a right to inherit the property viz-a-viz a stranger and therefore the judgment and decree dated 08.10.1955 (Ex.D1) was passed in her favour on the basis of the law laid down in **Tara Singh Vs. Bibi Suraj Kaur daughter of Raja Bhagwan Singh [1940 AIR (Lahore) 416]**. It is further the contention of the learned counsel that since Purni had predeceased Hari Saran, as per custom, her children had no right to inherit the property. It is further the contention that the First Appellate Court has misinterpreted the judgment of the Trial Court and twisted the words as used by the Trial Court. It is further the contention of the learned counsel that it has wrongly been noted by the First Appellate Court that defendant No.1 had not stepped into the witness box.

9. *Per contra* the learned counsel for the plaintiff-respondents would contend that the First Appellate Court has given detailed reasoning for reversing the judgment and decree of the Trial Court and the same has not been reversed on the ground that defendant No.1 had not stepped into the witness box. It has further been argued by the learned counsel for the

plaintiff-respondents that in the plaint the stand taken by the plaintiff-respondents was that Gomti had got the property on the basis of custom vide the judgment and decree dated 08.10.1955 (Ex.D1) and therefore they had also the right and though it was pleaded by the defendant-appellants in para 6 that since Purni had predeceased Hari Saran, therefore, her children had no right in the property, however, neither was any custom pleaded by them nor any evidence was led regarding the said custom. It is further the contention of the learned counsel that there was no custom which was to be proved by the plaintiff-respondents as they were only relying on the judgment (Ex.D1) to contend that since Gomti had been held to have a right as per custom, Purni who was admittedly her sister, her heirs would have also an equal right and hence the Trial Court's observation that no custom was proved is wholly erroneous.

10. I have heard the learned counsel for the parties.

11. In the present case a perusal of the plaint reveals that the case as set up by the plaintiff-respondents was that the property was owned by Hari Saran and that a mutation had been got entered qua the property by some stranger which was challenged by Gomti basing her right on the custom prevailing amongst the parties. The judgment and decree dated 08.10.1955 (Ex.D1) was passed in her favour and the appeal against the same was also dismissed. While decreeing the said suit, reliance had been placed by the Trial Court therein on the decision in the case of **Tara Singh** (supra). Neither in the said judgment in **Tara Singh's** case (supra) nor in the judgment (Ex.D1) is there any reference to the proposition that in case the

sister had predeceased the person whose property was in dispute her children would not be entitled to a share. In the judgment Ex.D1 there was no such finding that since Purni had predeceased Hari Saran, her children would not have any right in the property. Infact, the Division Bench of the Lahore High Court in the case of **Tara Singh** (supra) does not touch upon this issue at all. If it was the stand of the defendant-appellants that Purni had no right having predeceased Hari Saran, it was incumbent on them to have pleaded and proved the custom as per which Purni's heirs would not inherit the property of Hari Saran since Purni had predeceased Hari Saran. The heirs of Purni were not impleaded as parties in the earlier suit filed by Gomti and she claimed herself as the only collateral. Even otherwise, looking it at logically Gomti claimed her title through her father Kundan who was the collateral of Hari Saran and Kundan had predeceased Hari Saran and if the logic as espoused by the learned counsel for the defendant-appellants was to be applied even Gomti would not be entitled to the share in the property.

12. The argument of the learned counsel for the defendant-appellants that there is an observation by the First Appellate Court that defendant No.1 had not appeared in the witness box and the judgment and decree is itself perverse deserves to be rejected inasmuch as the ground for reversing the judgment and decree is not that defendant No.1 had not stepped into the witness box.

13. Not an iota of evidence has been pointed out by the learned counsel for the defendant-appellants to show that there was any custom prevailing at the relevant time debarring the heirs of Purni from inheriting

the property on the ground that she had predeceased Hari Saran. In the absence of any such evidence, no fault can be found with the judgment and decree passed by the First Appellate Court. No other point was argued.

14. In view of the above, I do not find any merits in the present appeals. No question of law, much less any substantial question of law, arises in the present case. The appeals being devoid of any merit are accordingly dismissed. Pending applications, if any, also stand disposed off.

27.02.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO