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

RSA-2832-2014 (O&M)

Date of decision : 18.08.2025

MALAK SINGH

....Appellant

Versus

BALWINDER SINGH & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Piyush Aggarwal, Advocate
for the appellants.

Mr. Hitesh Malik, Advocate
for respondents No.1, 8 & 9.

PANKAJ JAIN, J. (ORAL)

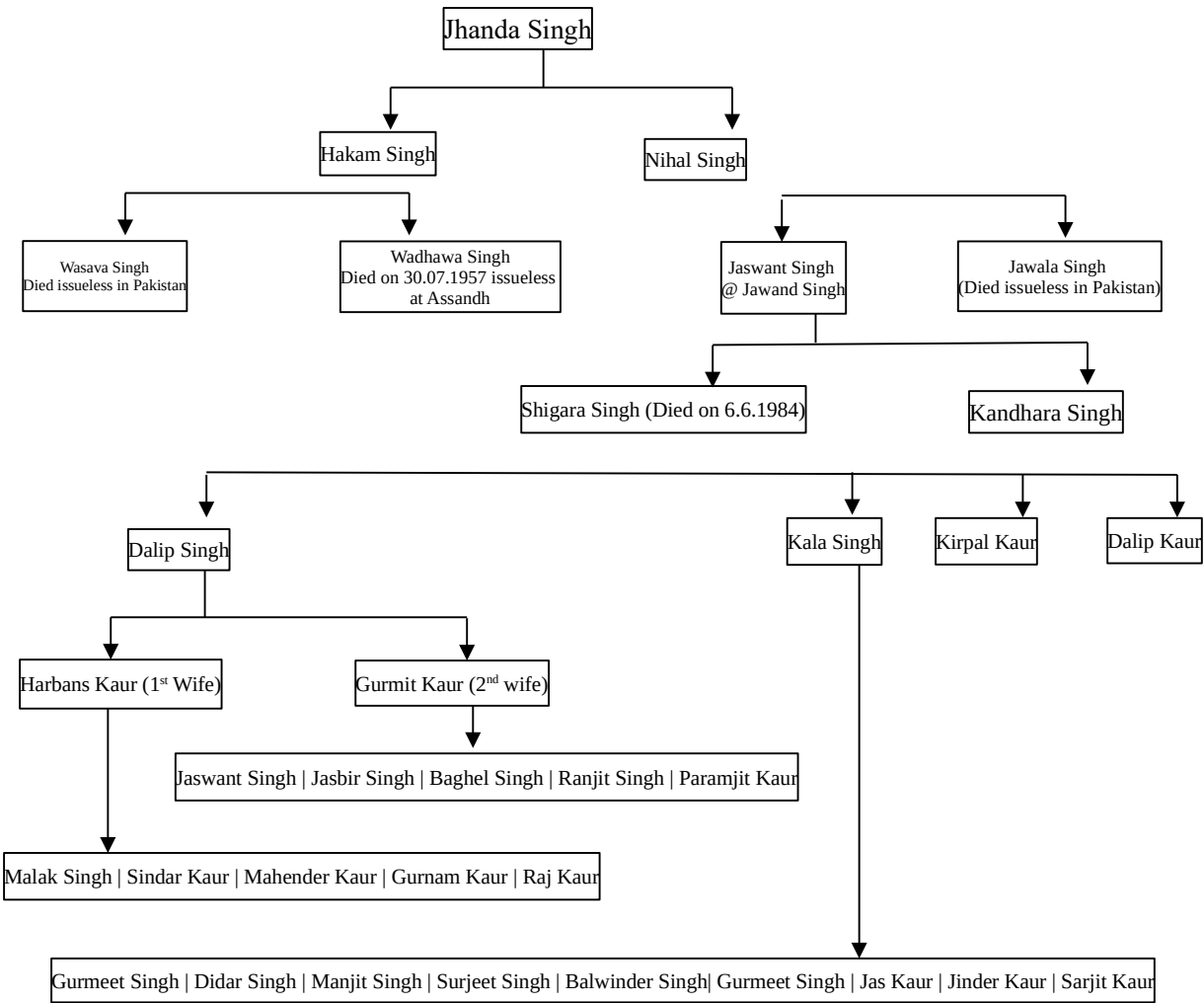
Defendant No.1 is in second appeal.

2. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position before the Trial Court i.e. the appellant as 'defendant No.1; respondent No.1 as 'plaintiff' and respondents No.2 to 8 as 'defendants No.2 to 8'.

3. Plaintiff filed suit seeking decree of declaration to the effect that he is owner in possession of land in dispute as described in the plaint. Judgment and decree dated 27.07.1989 and the consequential mutation are illegal, null and void.



4. In order to appreciate the controversy between the parties, it will be apt to peruse pedigree table which reads as under:



5. The parties are at loggerheads w.r.t. estate left by Wadhawa Singh, who died on 30.07.1957 issueless. The estate of Wadhawa Singh was succeeded by Shingara Singh and Kandhara Singh. In the earlier suit, Malak Singh propounded Will claimed to have been executed by Shingara Singh, dated 11.04.1984. The suit was decreed. In the present suit, the courts below held that Shingara Singh having inherited property from Wadhawa Singh, he was not entitled to execute WILL.



6. Admittedly, Wadhawa Singh died after Hindu Succession Act, 1956 came into operation. He died issueless. Thus, Shingara Singh and Kandhara Singh inherited his estate under Section 8 by succession and not by survivorship. In view thereof, the findings recorded by the Courts below holding that Shingara Singh could not have bequeathed the property inherited from Wadhawa Singh by way of WILL, cannot be sustained.

7. Trite it is that once a property is acquired by way of succession, the same loses its ancestral character. Reliance can be placed upon law laid down by the Apex Court in the case of **Commissioner of Wealth Tax, Kanpur etc. vs. Chander Sen Etc. 1986 (3) SCC 567**. The same was further relied upon by Supreme Court in the case of **Uttam Vs. Saubhag Singh & ors. 2016 4 SCC 68** holding as under :

“20. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. **Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe (1988) 2 SCC 126**, **Sheela Devi v. Lal Chand, 2006(4) RCR (Civil) 912 : (2006) 8 SCC 581**, and **Rohit Chauhan v. Surinder Singh 2013(4) RCR (Civil) 40 : 2013(4) Recent Apex Judgments (RAJ) 532 : (2013) 9 SCC 419**, were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarized as follows:-



(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in



the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.”

8. In view thereof, findings recorded by the Courts below to the effect that the property in the hands of Shingara Singh was ancestral and thus he was not entitled to execute WILL *qua* the property, cannot be sustained. The same are hereby set aside. Resultantly, the instant appeal is allowed.

9. Pending application(s), if any, shall also stand disposed off.

August 18, 2025
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No