

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-5690-2019 (O&M)
Reserved on: 03.03.2025
Date of decision: 10.03.2025

HANISH GULATI AND ANOTHER ..Appellants
Versus
JYOTI GULATI AND OTHERS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

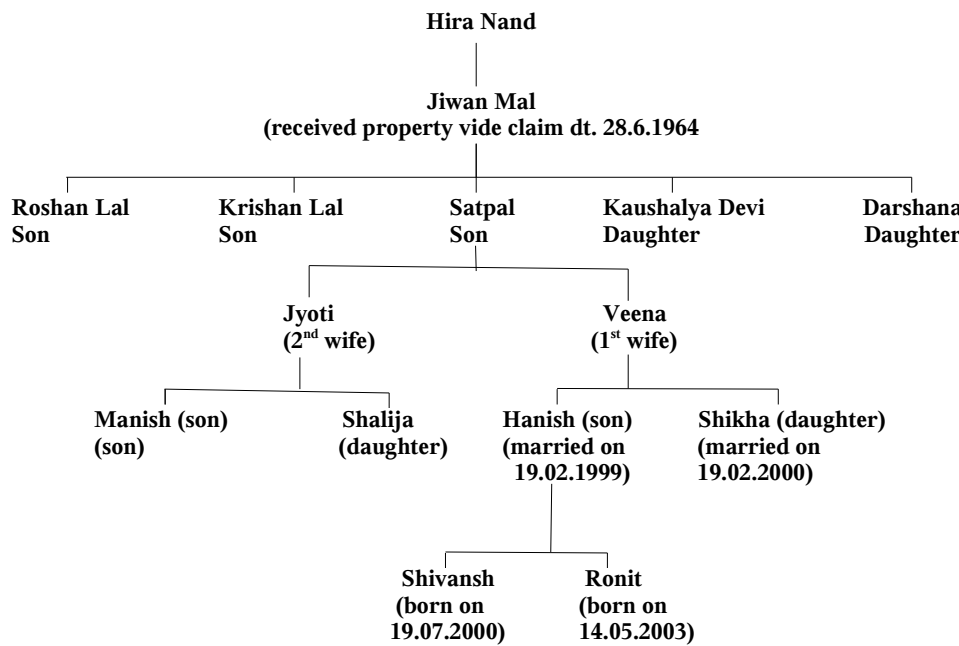
Present: Ms. Himani Sarin, Advocate for the appellants.

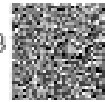
Mr. Pravindra Singh Chauhan, Sr. Advocate
with Mr. Nanveet Singh, Advocate
for respondent No.1 to 3.

ANIL KSHETARPAL, J.

1. Brief facts of the case:-

- 1.1 The defendants assail the correctness of concurrent findings of fact arrived at by the Courts while passing the preliminary decree for possession by way of partition of the joint property.
- 1.2 In order to comprehend the issues involved in this appeal, a small family tree and the relevant facts, in brief, are required to be noticed.





1.3 The plaintiffs filed the suit claiming that Sh. Satpal Gulati died intestate on 13.08.2001 leaving behind plaintiffs and defendants as his only class I heirs. The suit was filed with respect to two properties, which are property 'A' and 'B'. Sh. Satpal Gulati became the owner of property 'A' through registered relinquishment deed dated 28.11.2000, executed by Sh. Roshan Lal, Sh. Krishan Lal, Smt. Kaushlaya Devi, Smt. Darshana (brothers and sisters of Sh. Satpal Gulati). Property 'B' was acquired by him through Civil Court decreed dated 22.09.2001, passed in Civil Suit No.229 of 2001.

1.4 Defendants did not dispute the relationship, however, it was averred that plaintiff No.1 and 2 have no share in the property as it was joint Hindu Family ancestral property.

1.5 After appreciating the evidence, both the Courts recorded concurrent finding of fact that both the properties are neither joint Hindu Family nor ancestral properties, hence, preliminary decree for partition of both the properties was passed.

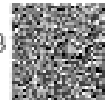
1.6 It may be noted that Sh. Satpal Gulati's first wife died during his lifetime. Thus, the Court held that each of the class I heirs namely the plaintiffs and defendants will inherit the property to the extent of 1/5th share each.

2. Arguments put forth by the learned counsel for the parties:-

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

2.2 Learned counsel for the appellants has made the following submissions:-

- i. The property is a joint Hindu Family property as Sh. Satpal Gulati used to live along with his family members.
- ii. The plaintiffs have filed a suit for separate possession



by way of partition without seeking declaration. She submits that in absence of declaration, suit for separate possession by way of partition is not maintainable.

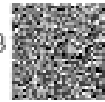
3. **Analysis and Discussion:-**

3.1 This Court has considered the submissions of learned counsel for the parties.

3.2 It is not in dispute that Sh. Satpal Gulati became an owner by view of relinquishment-cum-transfer deed executed on 28.11.2000. He did not only inherit the property from his father Sh. Jiwan Mal but also got property from his two brothers and two sisters. The property is a two storey house located in Model Town, Panipat. There is a difference between joint Hindu Family and joint Hindu Family property. In this case, the admission is only to the effect that Sh. Satpal Gulati along with his children and wife used to live together. Sh. Satpal Gulati was running business under the name of M/s Gulati Trading Company. However, that itself would not be sufficient to prove that the property was joint Hindu Family property. It is also evident that major part of the property was received by Sh. Satpal Gulati from his brothers and sisters by virtue of a relinquishment deed, hence, the property is not ancestral.

3.3 The plaintiffs have filed a suit for separate possession by way of partition. They were not required to seek any separate declaration. Once, the plaintiffs have claimed property being class I heirs of Sh. Satpal Gulati, the relief of declaration is inbuilt therein. Reliance by learned counsel representing the appellants on **Anthula Sudhakar Vs. P. Buchi Reddy (dead) by LRs and others, AIR 2008 (SC) 2033**, is misplaced because in that suit, the Court has examined the following questions:-

“(i) What is the scope of a suit for prohibitory injunction



relating to immovable property?

(ii) Whether on the facts, plaintiffs ought to have filed a suit for declaration of title and injunction?

(iii) Whether the High Court, in a second appeal under section 100 CPC, examine the factual question of title which was not the subject matter of any issue and based on a finding thereon, reverse the decision of the first appellate court?

(iv) What is the appropriate decision? ”

3.4 It is evident that the Supreme Court did not lay down as a law that a separate declaration in a suit for separate possession by way of partition is mandatory.

4. Decision:-

4.1 Keeping in view the aforesaid discussion, the result is inevitable, hence, the appeal is dismissed.

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

10th March, 2025

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No