

LAHORE HIGH COURT

Jagtar Singh

Vs

Raghbir Singh

(Tek Chand, J.)

12.03.1931

JUDGMENT

Tek Chand, J.

1. The appeal arises out of a suit instituted by two minors, Raghbir Singh and Sarjit Singh, sons of Bahadur Singh, to contest certain alienations of agricultural land situate in the Lyallpur District, effected by their father in favor of defendants 1 to 13 on various dates between 1st August 1918 and 6th September 1922. The suit has been decreed on payment of a part of the consideration. The alienees appeal.

2. The relevant facts are that the alienor's father Subedar Major Jiwan Singh was a Jat of the Daska Tahsil of Sialkot District, whers he owned considerable landed property. He had two sons Chattar Singh and Bahadur Singh. Of these, Bahadur Singh was adopted by a distant collateral named Nam Singh, as far back as 1892. In 1893, Nam Singh died and his property was taken by his adopted son Bahadur Singh. Chattar Singh, the other son of Jiwan Singh, died childless in 1903. In June 1912, Government granted five squares of land in the Lyallpur District to Jiwan Singh in recognition of his military services, on condition that proprietary rights would be conferred on him on payment of a small sum as nazrana. The nazrana was duly paid by Jiwan Singh, and on 4th February 1913, mutation of the squares was effected in his name as full owner. About a month later, Jiwan Singh appeared before the revenue authorities and stated that ha had gifted these squares to his son Bahadur Singh, who, as stated above, had been adopted by Nam Singh, in 1892. Jiwan Singh prayed that his name be struck off and that of the donee entered as full owner. After the usual inquiries the Revenue Officer, on 12bh March 1913, sanctioned mutation in favour of Bahadur Singh, as owner "by virtue of the gift." At that time Bahadur Singh was childless, but a few years later he got two sons. In the lower Court, there was a dispute as to the dates of birth of these sons, but before us it was admitted by the appellants' learned Counsel that plaintiff 1 Raghbir Singh was born on 11th September 1917, and plaintiff 2 Sarjit Singh, was born on 26th February 1921.

3. In August 1918, Bahadur Singh raised money from some of the defendants by executing four mortgage deeds in respect of a part of the property in Lyallpur District, which had been gifted to him by Jiwan Singh in 1913. Jiwan Singh was alive at the time but raised no objection. He died in April 1919, and after his death Bahadur Singh sold one of the squares to defendants 1 to 4,

part of the consideration being the money secured on the mortgage of August 1918, and the remainder cash. In 1910-21 he executed four more mortgage deeds and thus raised further sums from the defendants.

4. Bahadur Singh died in 30th January 1923, and his minor sons through their mother as next friend instituted the present suit on 29th January 1924, challenging the alienations on the ground that the property alienated was ancestral in the hands of Bahadur Singh, and that he had no power to transfer it without necessity. The alienees pleaded inter alia that the land was not ancestral qua the plaintiffs and that the alienations were effected for consideration and necessity. The learned Subordinate Judge however found that the property was ancestral, and he also held that necessity was established only for a part of the consideration mentioned in the various deeds.

5. On appeal the first contention raised on behalf of the defendants-appellants is that the land was not ancestral in the hands of Bahadur Singh and that he had full and unrestricted power of disposition over it. After hearing both counsel at length, I am of opinion, that this contention is sound and must prevail. It is well settled that under Customary law ancestral property" means, as regards sons, property inherited from a direct male lineal ancestor. In this case, the land in question was admittedly the self-acquired property of Jiwan Singh and he possessed absolute power of disposition over it. He gifted it six years before his death to Bahadur Singh. It did not devolve on the alienor by inheritance from a male ascendant and therefore was not ancestral in his hands qua his own sons, the plaintiffs, Mr. Badri Das feeling, the strength of this argument, contended that the transfer by Jiwan Singh in favour of Bahadur Singh, though nominally designated a gift, was in reality nothing more than an arrangement by which he appointed Bahadur Singh as his mukhtar for the purpose of managing the squares, he himself being an old man and unable to live in the Lyallpur District. There is however no warrant for this suggestion either in the record of the mutation proceedings or in any evidence led at the trial. The transaction was one of gift, pure and simple, whereby he divested himself of all rights in the squares and invested Bahadur Singh with full ownership. The change of title was duly given effect to in the revenue papers and Bahadur Singh continued to exercise rights of ownership for six years, without protest by Jiwan Singh.

6. Mr. Badri Das urged that there was no occasion for Jiwan Singh, to make a gift of the squares in favor of his sole surviving son so soon after he had acquired proprietary rights in them. But if an explanation for this act on the part of Jiwan Singh, is required, it will be found in the fact that Bahadur Singh had been adopted by Nam Singh about 20 years before, that he had succeeded to his adoptive father's estate and it was at best a moot point, whether on Jiwan Singh's death his property would devolve on Bahadur Singh, or whether it would be taken by his widows on a life tenure and on their death by his collaterals. It is obvious that in order to defeat these claims and to benefit Bahadur Singh, he made the gift. It was next contended that the gift was in reality a mere "acceleration of succession" and the gifted property should be taken to be subject to the same incidents, as it would have been, if it had actually descended by inheritance. In reply the learned Counsel for the appellants has strenuously argued that under the custom of the Jats of Sialkot District a son, who has been adopted by a distant collateral, does not succeed to his natural father even though the latter had no other son alive at the time of his death. It is, however, not necessary to go into this question as even if Bahadur Singh be assumed to be the next heir of Jiwan Singh, the gift can by no stretch of reasoning be treated as an acceleration of succession It is, of course true that a person can surrender his estate to the next heir and thus accelerate the

succession. But it is settled law that if he wishes to do so, he must completely efface himself and pass his "whole interest in the whole estate" to the entire body of heirs who would be entitled to take it in the event of his death: *Behari Lal v. Madho Lal Ahir*¹ *Rangasami Goundan v. Nachiappa Goundan*² and *Wazir Chand v. Makhu*³ In the case before us, it is admitted that Jiwan Singh, owned other valuable property in the Sialkot District, which was not included in the gift and which continued to be held by him until his death six years later. In face of this fact it cannot be said that the gift was in the nature of an "acceleration of succession."

7. In his judgment the learned Subordinate Judge has referred to certain rulings under Hindu law, but counsel for both parties are agreed that these rulings have no real bearing on the case before us. It is therefore not necessary to discuss them. It may however be stated that under Hindu law also the consensus of authority is that such property is not ancestral. It is also conceded by Mr. Badri Das, that the other cases like *Sri Ram v. Ramji Dad*⁴ relied upon by the learned Subordinate Judge are also irrelevant, as they related to property which was admittedly ancestral in the hands of the donor (but this is not the case here). The decisions which are really in point are *Kasu v. Barhat Ali*⁵, decided by LeRossignol and Broadway, JJ., on 10th April 1924, (printed at pp. 213 and 244 of the paper book) and *ML Shafi v. Wait Ahmad*⁶, decided by this Bench on 11th February 1931. The respondents' learned Counsel expressed his inability to distinguish those cases or to challenge their correctness.

8. I have no doubt whatever that the squares in question were not ancestral in the hands of Bahadur Singh, and he had full power to deal with them as he liked, uncontrolled by his sons.

9. On this finding the plaintiffs have no locus standi to maintain the suit and it is not necessary to decide the other points raised in the pleadings.

10. I would therefore accept the appeal, set aside the judgment and decree of the learned Subordinate Judge and dismiss the plaintiffs' suit with costs throughout.

11. The cross-objections necessarily fail and are dismissed.

Harrison, J.

I agree.

¹(1892) (19) Cal. 236

²A.I.R. 1981 P.C. 196

³(1902) (17) P.R. 1902

⁴(1909) (59) P.R. 1909

⁵ Civil Appeal No. 1767 of 1921

⁶ Civil Appeal No. 1765 of 1925