**PUNJAB AND HARYANA HIGH COURT**

Lal Singh Sukha Singh

Vs

Roor Singh Bela Singh

(H Singh, C.J. Kapur, J.)

17.12.1952

**JUDGMENT**

**Kapur, J.**

1. This is a plaintiff's appeal against a judgment and decree of Mr. Jagdish Narain Kapur, Subordinate Judge 1st Class, Amritsar, dated 3-1-1948, dismissing the plaintiff's suit for possession of land and two vacant sites.

2. The following pedigree-table will show the relation ship of the parties:
JASPAT | _____|_____ _____ | | | | Maja Singh Mirza Singh Suraj singh Paria Singh | | | | _____|_____ Dewan Singh | _____|_____ | | | | | | Amir Singh Wazir Singh _____|_____ | Sham Singh Ram Singh | | | | | | Mehtab Singh Sarmukh Singh Gurmukh Singh Sukha Singh | Mohan Singh Attar Singh | | | | | | | Vir Singh Adopted son Isher Singh | |Sobha Singh Sant Singh | | | | | Darshan Singh(plaintiff 4) | | _____|_____ | _____|_____ | | | | | | | | Ghasita Singh=Tabo Naraini | Malla Singh Lal Singh Jamial Singh | | | | (Plaintiff 4) | | Rur Singh adopted son Rur Singh | Ishar Singh | (Defendant 1) (Defendant 1) |_____ | | | | | Bodha Singh Jiwan Singh Wasawa Singh | | | _____|_____ | | | | Inder Singh(Plaintiff 2) Jagat Singh(Plaintiff 3) | | | _____|_____ | | | Naurang Singh Nidhan Singh Karam Singh | | | adopted son Nihal Singh Jawahar Singh Dayal Singh | | Surendra Singh Jowala Singh | | _____|____ Dyali (Defendant 2) | | | | Hakkim Singh Uttam Singh Tara Singh Bazara Singh | | (Plaintiff 8) (Plaintiff 9) Harnam Singh(Plaintiff 5) | _____|_____ | | Katha Singh(Plaintiff 6) Jagir Singh(Plaintiff 7)

3. Ghasita Singh died in 1922 leaving a widow Mst. Tabo. Ritr Singh who is the son of the sister of Ghasita Singh claims to have been adopted by Ghasita Singh in 1911 when he (Rur Singh) was only four years old.

4. On the death of Sant Singh mutation was effected in favour of the plaintiffs and Dyali defendant 2, but Rur Singh, it is alleged, took possession of the property claiming to be the adopted son of Tabo which the plaintiffs alleged according to law and custom was not allowed. It was also alleged that the property in dispute is ancestral.

5. Rur Singh denied the plaintiffs' claim and pleaded that he was in possession since the time of the death of Sant Singh, being the adopted son of Ghasita Singh, son of Sant Singh, and was not adopted by Mst. Tabo, that a will was made in his favour by Mst. Tabo on 15-6-1937 and that the suit was not within time. In para. 7 he pleaded that he was the son of Mst. Naraini, the daughter of Sant Singh, and was adopted by Ghasita Singh, that this adoption was admitted in the will made by Mst. Tabo and even if the adoption was not proved and the will was held to be invalid the property in dispute was not ancestral and as a daughter's son he was a preferential heir according to the custom of Amritsar.

6. The Court stated the following issues:
(1) Are the plaintiffs reversioners of Sant Singh deceased and in what degree?
(2) Is the property in suit ancestral 'qua' the plaintiffs and Sant Singh deceased? If not, what is the effect?
(3) Was Rur Singh defendant validly adopted by Ghasitia Singh and when? What is the effect?
(4) Is the suit within limitation if the adoption was effected more than six years before this suit?
(5) Did Mst. Tabo make any valid will regarding the suit property in 1937 in favour of Bur Singh and had she the right to do so (6) Is the suit barred by time if the will is proved?
(7) Are the plaintiffs entitled to a decree for possession in excess of their own share in the suit-property?

7. There is no dispute before us that the plaintiffs are the reversioners of Sant Singh. It was disputed that the property is non-ancestral. But in spite of the arguments of counsel for the appellants we cannot hold that the admission made by the plaintiffs' Advocate in the Court of the Subordinate Judge that the land was non-ancestral was in any way erroneous. We must therefore hold that the land was non-ancestral.

8. The trial Court held that Rur Singh had been validly adopted by Ghasita Singh and as the adoption took place more than 30 years before the institution of the suit the suit was barred by time. The trial Court also held that Mst. Tabo had no power to make the will.

9. The controversy was firstly confined to the decision of issue 2 as to the right of the plaintiffs to exclude Rur Singh as the daughter's son of Sant Singh from succeeding to the non-ancestral

property of Sant Singh. The appellants' counsel relied on the 'Riwaj-i-Am' of the Amrit-sar District of the Settlement of 1940, Ex. P-10 at p. 103 of the paper book, where the question of the right of daughters and their issues had been considered. Question No. 55 answers thereto are as follows:
"Right of daughters and their issues.

Q. No. 55 -- Under what circumstances are daughters entitled to inherit?
(a) In case of ancestral property.
(b) In case of acquired property.
Answer:- All tribes.
(1) In the presence of son or sons of the deceased daughters do not inherit.
(2) In the presence of a widow daughters do not succeed to property.
(3) In the absence of sons or a widow unmarried daughters inherit till marriage.
(4) If there be no collaterals upto the fifth degree, married daughters inherit as full owners with unrestricted powers. There is a custom obtaining among Sindhu-Jats that property devolves upon married daughters in the absence of collaterals upto the seventh degree This custom is applicable in both the cases (a) and (b). For relevant mutations see Schedule I. For Civil Judgments see Schedule II". The plaintiffs came into Court alleging that the property in dispute was ancestral property and they never alleged that even if the property was non-ancestral they had a preferential right to succeed to the estate of Sant Singh. On the pleadings therefore they are not entitled to turn round and say that even if the property was non-ancestral they had a preferential right. In --*'Kishan Singn v. Mt. Santi[1]',* it was held as indeed it was held by their Lordships of the Privy Council in -- *'Abdul Hussain v. Mt. Sond Dero[2]',* that custom must be alleged in precise terms and must by evidence be established as pleaded. Young, C. J., said:

> "The appellants in their grounds of appeal in this Court again relied on their original averment that the land in suit was ancestral but no attempt was made to support this averment and indeed, as the question is one of fact, this Court is precluded by the finding of the learned District Judge from considering it. The position is that the custom which it was necessary for the plaintiffs to allege and prove, was not pleaded nor put in issue : the first issue having been found in favour of the defendants, the suit ought to have been dismissed".

10. Again in -- *'Karain Dad v. Mst. Moham-mad Bibi'[3],* a case which was referred to a Full Bench and waa after their decision decided by a Division Bench, the High Court did not allow the question of rights of parties in regard to the ancestral property to be agitated when in the plaint the plaintiff had already come on the basis that the property in dispute was non-ancestral (page 5 of the reports in the judgment of Tek Chand, J.). But even if this could be allowed after the decision of their Lordships of the Privy Council in -- *'Mt. Subha-ni v. Nawab[4]',* the approach to the question of rights of females is now different and the rule in -- 'Subhani's case (D)', has been approved of by the Supreme Court in --*'Gokal Chand v. Parvin Kumari'[5],*

11. In -- *'Narain Singh v. Kapur Singh[6]',* a case from Ainritsar a Bench of this Court examined the rights of daughters to succeed and after referring to several judgments including -- *'Qamar-ud-Din v. Mt. Patch Bano[6]', --Sadhu Singh v. Mst. Harnamon'[7],* it was held that daughters exclude collaterals in succession to the non-ancestral property of their fathers. In Rattigan's Digest of Customary Law as revised in the new edition (13th) at p. 367 there are a large number of decided cases where it was held that to the non-ancestral property of their fathers, daughters are better heirs than collaterals.
12. In -- *'Bawa Singh v. Mt. Taro[9]',* Harnam Singh J. held in a case whore the disputants were the daughter and fifth degree collaterals that the daughters were preferential heirs. It is, in my opinion, too late in the day to hold that to the non-ancestral property collaterals have a preferential claim to the daughters.

13. It was then submitted that the daughter had predeceased the father and therefore the dispute was not between a daughter and collaterals but it was between daughters' sons and collaterals. Reliance was placed on paragraph 23 of Rattigan's Digest where it is stated that a daughter's son is not recognised as an heir of his maternal grandfather, except in succession to his mother, but this statement of custom has nothing to do with noil-ancestral property. It occurs in that portion of paragraph 23 which deals with the rights of daughters and their sons to ancestral property of the father. In -- 'AIR 1953 Punj 196 (P)'(Supra), to which I have referred above, the claimants were collaterals and the daughter's sons. Besides no case has been cited before us which would show that a daughter's son is not a preferential heir to the estate of his mother's father if the mother had predeceased the father. The proposition which was argued by Mr. Gandhi goes against the very first principles of custom which recognises the right of representation. As a matter of fact in -- *'Hashmat Ali v. Mst. Nasib-un-Nisa'[10],* their Lordships of the Privy Council held in favour of the right of representation of a daughter of a pre-deceased brother. This right of representation amongst females was recognised in --*'Mt. Kaman v. Ghafoor Ali',[11] Ain -- 'Sanata v. Mt. Sahib Bibi'[12], and two unreported judgments of the Lahore High Court[13]* -- by Dalip Singh and Beckett JJ. I am therefore of the opinion that even this submission of counsel for the appellants is without any force. I would therefore hold that Rur Singh as the daughter's son of Sant Singh is a preferential heir to the property in dispute than the collaterals.

14. In view of my finding on this point it is not necessary to go into any other question. I would therefore dismiss this appeal with costs in this Court and in the Court below.

**Harnam Singh, J.**

15. I agree in dismissing the appeal with costs.

Cases Referred.

1AIR 1938 Lah. 299 (301) (F. B.) (A)
2 AIR 1917 P. C. 181 (B)
3AIR 1942 Lah. 1 (P. B.) (C)
4AIR 1941 P. C. 21 (D)
5AIR 1952 S. C. 231 (E)
6AIR 1953 Punjab 196 (F)
7AIR 1944 Lah. 72 (G)
8AIR 1946 Lah. 444 (H)
9AIR 1951 Punj. 239 (I)
10A. I. R. 1925 P. C. 99 (101) (J)
11. I. R. 1928 Lah. 230 (K)
12A. I. R. 1941 Lah. 94 (L)
13'P. A. No. 183 of 1943, D/- 8-3-1945 (M)', by Mahajan and Teja Singh, JJ. and -- 'S. A. No. 1951 Of 14 14 1939 D/- 11-1-1943 (N)