

**PUNJAB AND HARYANA HIGH COURT**

S. Kuldip Singh

Vs

Karnail Singh Bakhshish Singh

(M Singh, C.J. D.K. Mahajan, J.)

12.07.1961

**JUDGMENT**

**D.K. Mahajan, J.:**

1. In order to appreciate the dispute in this appeal, it will be advisable to set out the pedigree-table of the parties :

BHAGAT \_\_\_\_\_ SINGH  
\_\_\_\_\_|\_\_\_\_\_||| Ram  
Singh Jodh Singh Dewan Singh | \_\_\_\_\_|\_\_\_\_\_ Sahib Singh ||| Surjan  
Singh Fateh Singh Akwak Singh \_\_\_\_\_|\_\_\_\_\_ (last male holder)= ||||  
Mst. Mehtab Kaur Lehna Singh Ganda Singh Dola Singh Rur Singh ||| Harnam Singh= ||  
Balwant Singh Mst. Beant Kaur | | \_\_\_\_\_|\_\_\_\_\_  
\_\_\_\_\_|\_\_\_\_\_||| Pritam Singh Surain Singh Jagir Balbir  
Raghubir Harbans Ujagar | \_\_\_\_\_|\_\_\_\_\_ Singh Singh Singh  
Singh Singh ||||| \_\_\_\_\_|\_\_\_\_\_| Bakbshish Sohan Thakar Labh Singh ||| Singh Singh  
Singh | Jagdip Singh Kuldip Singh | \_\_\_\_\_|\_\_\_\_\_ Ganga Singh ||||| Teja Jarnail  
Didar Kartar | \_\_\_\_\_|\_\_\_\_\_ Singh Singh Singh Singh  
\_\_\_\_\_|\_\_\_\_\_||| Nihal Singh Kehar Singh  
Mala Singh \_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|||  
Inder Singh Partap Singh Surat Singh= Bhagwan Singh Sher Singh | Mst. Beant Kaur  
\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_|| Piara Singh Gulzar Singh

2. In this appeal the dispute relates to an area of land measuring 510 kanals 14 marlas held by Akwak Singh. Initially this area was 499 kanak 14 marlas, but during the course of settlement the area has increased as mentioned above. Akwak Singh died in 1894 and was succeeded by his widow, Mst. Mehtab Kaur. Before the year 1919 she gifted the suit land to Harnam Singh son of Lehna Singh, one of the collaterals of her husband. This gift was challenged by the other collaterals of his, and their suit was decreed on the 4th April 1919, and it was held that the gift would not be binding on their reversionary rights after the death of the widow. In October 1957

Mehtab Kaur died. This led to the present suit by the descendants of Ganda Singh, Dola Singh and Rur Singh. In this suit the plaintiffs laid claim to the entire property on the basis of Sections 12 and 13 of the Hindu Succession Act. It was, however, dismissed by the trial Court and it is not necessary to state the grounds on which the trial Court proceeded, for on appeal the suit was decreed by the Additional District Judge, Amritsar. He said that Sohan Singh and Bakhshish Singh plaintiffs were the nearest heirs in view of the provisions of Ss. 12 and 13 of the Hindu Succession Act and would exclude the defendants. It may be mentioned that Sohan Singh died during the pendency of the suit and is represented by his sons Teja Singh and Jarnail Singh and his daughters, but, as the nearer heirs, that is, Sohan Singh and Bakhshish Singh had joined with them the remoter heirs as plaintiffs, there was no question of his not decreeing the suit as such, for the nearer heirs had no objection to the decree being granted in favour of all the plaintiffs including the remoter heirs in the line of succession. So far as the defendants were concerned they being remote heirs qua Bakhshish Singh and Sohan Singh, and therefore would naturally be ousted by Sohan Singh and Bakhshish Singh. In this view of the matter he decreed the plaintiffs' suit in its entirety. The descendants of Harnam Singh have now come up in second appeal to this Court.

3. The only contention advanced by the learned counsel for the appellants, in view of our decision in *Kuldip Singh v. Surain Singh*, Second Appeal No. 1112 of 1960 (Punj), decided today, is that the defendants should also have been given one-fourth of the suit land as heirs of Akwak Singh. This would have been so under the law as it stood before the coming into force of the Hindu Succession Act. This Act has made drastic changes in the law of succession so far the Hindus are concerned. Section 8 lays down the general rules of succession in the case of males, for, here in this case we are concerned with a case of succession to a male. It is not disputed that the plaintiffs or the defendants are not one of the heirs specified in Class I or Class II but they are agnates of the last male-holder and would fall within the category of heirs in Section 8(c) and, since there are no heirs of Class I and Class II, they are entitled to succeed to the last male-holder. So far the agnates are concerned, the rule of succession is laid down in Sections 12 and 13 which are in these terms ;

"12. The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

Rule 1 : Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2 : Where the number of degrees of ascent is the same or none, that heir is Preferred who has fewer or no degree of descent.

Rule 3 : Where neither heir is entitled to be preferred to the other under Rule 1 Or Rule 2 they take simultaneously.

13. (1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the their in terms of degrees of ascent or

degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree, either ascending or descending."

On the basis of these rules it was not disputed that Bakhshish Singh and Sohan Singh are fifth degree collaterals of Akwak Singh, and the defendants and the other plaintiffs are sixth degree collaterals, besides a few who are seventh degree collaterals. That being so, Bakhshish Singh and Sohan Singh would exclude all the other collaterals, in view of Rule 2 in Section 12.

4. It was sought to be contended that succession should be deemed to have opened out on the death of Akwak Singh in 1894 and the inheritance should devolve according to the law as it existed before the coming into force of the Hindu Succession Act. This argument cannot be accepted in view of the fact that the widow of Akwak Singh was alive and died in the year 1957, and it has been held by this Court in a number of decisions, e.g. *Smt. Banso v. Charan Singh*, 1960-62 Pun LR 865 : (AIR 1961 Punj 45), *Gurmit Singh v. Tara Singh*, AIR 1960 Punj 6 and *Mst Taro v. Darshan Singh*, AIR 1960 Punj 145, that where a widow died after the coming into force of the Hindu Succession Act and has not become absolute owner of the property, then the heirs of her husband have to be found out and those heirs have to be found according to the law prevalent at the time when the widow died, that is, as in the instant case, the Hindu Succession Act. Therefore, there is no merit in this contention either.

5. For the reasons given above this appeal fails and is dismissed but, in the circumstances of the case the parties are left to bear their own costs throughout.

**Mehar Singh, J.**

6. I agree.