1961

March 6.

GURBACHAN SINGH AND OTHERS

v.

PURAN SINGH AND OTHERS

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Hindu law—Ancestral property—Lands obtained in lieu of ancestral lands in consolidation proceedings—Area representing ancestral land, if ancestral.

One 'M' executed a will bequeathing the property in dispute. A suit was brought for declaration, *inter alia*, that the will was ineffective and 'M' had no power to bequeath the land in dispute as it was ancestral *qua* the defendants.

The question for decision was whether the portion of land which had fallen to the share of 'M' in consolidation proceedings *in lieu* of his share in land held by him was ancestral or not.

Held, that where land had been consolidated and *in lieu* of ancestral lands and non-ancestral land a consolidated area was given to a proprietor, then such of the portion of the consolidated area which corresponds to the area of land which was ancestral, will be ancestral land.

Where the possession by the immediate common ancestor is not shown in the revenue records but that of a more remote direct ancestor is shown, and the history of the land gives no indication of its acquisition except by inheritance, the land would be ancestral.

Attar Singh v. *Thakar Singh*, (1908) L.R. 35 I.A. 206, referred to.

Haveldar Mihan Singh v. *Piara Singh*, (1946) 48 P.L.R. 536 and *Gurdev Singh* v. *Desaundhi*, A.I.R. 1948 E.P. 22, approved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 492 of 1958.

Appeal by special leave from the judgment and order dated September 12, 1955, of the Punjab High Court, Chandigarh, in Regular Second Appeal No. 747 of 1951.

Achhru Ram and *K. L. Mehta*, for the appellants.

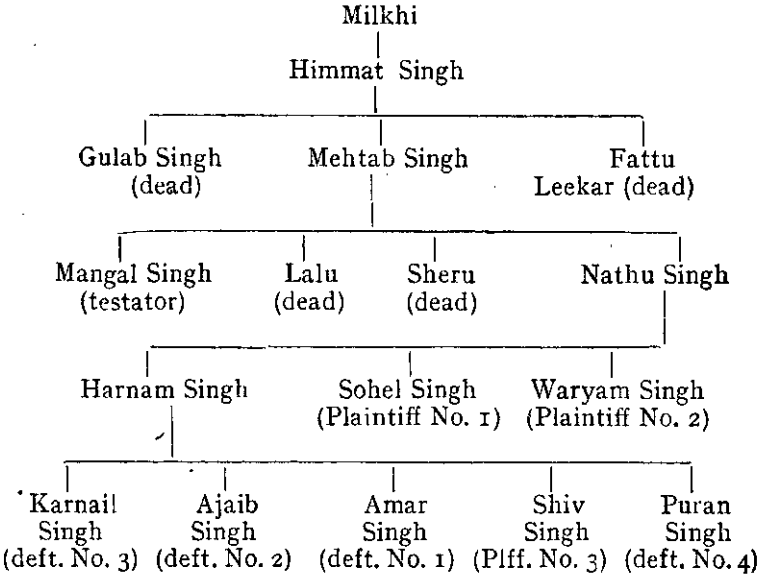
I. M. Lal and *Mohan Lal Aggarwal*, for respondents Nos. 1 to 4.

1961. March 6. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—This appeal arises out of the judgment and order of the High Court of the Punjab reversing

in second appeal the decree of the District Court and thus dismissing the plaintiffs' suit for declaration. In order to understand the question in controversy it is necessary to set out the following pedigree:



On August 11, 1947 Mangal Singh executed a will bequeathing the property in dispute to Amar Singh defendant No. 1. After the death of Mangal Singh on October 25, 1947 the mutation of his estate was effected in the name of Amar Singh on April 10, 1948 by mutation No. 733. The plaintiffs Sohel Singh, Waryam Singh and Shiv Singh brought a suit for declaration that the will was ineffective against them and for possession of certain parcels of land mutated in the name of Amar Singh. The allegation was that the will was made under undue influence, coercion and fraud and that Mangal Singh had no power to make the will as the land in dispute was ancestral qua the defendants. These allegations were denied and requisite issues were raised. The suit was dismissed by the trial court holding that it was not proved that the execution of the will was procured by the exercise of undue influence or coercion or fraud and that the land had not been proved to be ancestral.

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An appeal was taken against this decree to the District Judge who held that out of 66 Kanals, 2 Marlas of land in dispute an area of 28 Kanals, 3 Marlas was ancestral as it was held by Himmat Singh, father of Mehtab Singh the common ancestor. The District Judge also held that Mehtab Singh had predeceased Himmat Singh but of this there seems to be no proof. On appeal the High Court reversed the judgment of the District Judge and restored that of the trial court and the appellants have come in appeal to this court by special leave.

The sole question for decision in this appeal is whether 28 Kanals 3 Marlas out of the land in suit by the appellants is proved to be ancestral qua them. Out of the land claimed 20 Kanals 19 Marlas described in Para A-2 had been proved to have been acquired by Mangal Singh by pre-emption and another portion was his self-acquired mortgagee land. Therefore the dispute was confined to certain Khasra numbers which had fallen to the share of the testator in consolidation proceedings *in lieu* of his share in land held by him. The excerpt P.W. 6/1 prepared by the Special Kanugo shows that some of those *Khasra* numbers were traced to the possession of Himmat Singh s/o Milkhi in 1849 and some *Khasra* numbers were traced to the possession of Himmat Singh and others and the remaining were traced to strangers. The District Judge held that only the land which was held in 1849 by Himmat Singh could be ancestral qua the plaintiffs and therefore decreed the suit in regard to that portion which was 28 Kanals and 3 Marlas and that is the area of the land which is now in dispute.

In order to come to this conclusion the learned District Judge in an elaborate judgment has traced the history of each *Khasra* number and decreed only those *Khasras* which were held by Himmat Singh. The High Court did not accept this finding but, in our opinion, the High Court was in error in interfering with that finding. At the first regular settlement the land decreed was held by Himmat Singh and the revenue pedigree shows that in 1885 the three branches

descending from Himmat Singh, i. e., Gulab Singh who was alive, sons of Mehtab Singh and Leekar son of Fattu held *khewat* Nos. 34, 35 and 36 which were equal in area and each branch was paying land revenue of Rs. 13. The excerpt Ex. P. W. 6/1 prepared by the *Kanungo* further shows that the land held by the sons of Mehtab Singh, i. e., *Khata* No. 34 was held by them jointly and in equal shares. On these facts the finding in regard to the land decreed was held to be ancestral.

It was argued on behalf of the respondents that the land was not ancestral and that it cannot be ancestral unless it was shown that it was held by the common ancestor, i. e., Mehtab Singh and as there was no revenue entry showing the land to have been held by him the land could not be said to be ancestral. Support for this was sought from a judgment of the Privy Council in *Attar Singh* v. *Thakar Singh* (1) where Lord Collins observed as follows:—

> "It is through their father, as heir of the above-named Dhanna Singh, that the plaintiffs claimed, and unless the lands came to Dhanna Singh by descent from a lineal male ancestor in the male line through whom the plaintiffs also in like manner claimed, they are not deemed ancestral in Hindu law."

But this does not support the submission of counsel for the respondents. It is true that in the present case the land was held by a remote ancestor and not by the immediate common ancestor but the history of the land which has been referred to above clearly shows the ancestral nature of the land in the hand of the descendants, the parties to the present appeal. It therefore is ancestral. The contention of the respondents does not find support from decided cases and it is an erroneous view to take that merely because the possession by the common ancestor itself is not shown in the revenue records but that of a more remote direct ancestor is it is non-ancestral even though the history of the land gives no indication of its acquisition by the descendants except by inheritance.

(1) (1908) L.R. 35 I.A. 206, 211.

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It was then argued that as the land claimed had been consolidated and both ancestral and non-ancestral land had got mixed up it cannot be said as to what portion is ancestral and what is non-ancestral. This again is not a correct approach to the question. Where land has been consolidated and in lieu of ancestral lands and non-ancestral land a consolidated area is given to a proprietor then such of the portion of the consolidated area which corresponds to the area of land which was ancestral will be ancestral land. It was so held in *Haveldar Mihan Singh* v. *Piara Singh* (1) which is a decision of Abdul Rashid and Mehr Chand Mahajan, JJ. (as they then were). The same view was taken in a later judgment of the East Punjab High Court in *Gurdev Singh* v. *Dasaundhi* (2) where it was observed:—

> "However, where the ancestral portion of the land so given or thrown was by no means negligible and bore a definite proportion to the whole of the land there can be no difficulty in apportioning the land acquired according to the areas of the two classes of such land, namely ancestral and non-ancestral."

The District Judge in our view rightly held that 28 Kanals and 3 Marlas were ancestral and he has rightly decreed the suit qua that portion.

The appeal therefore succeeds and is allowed, and the decree of the District Judge is restored with costs in this Court and in the High Court.

Appeal allowed.

(1) (1946) 48 P.L.R. 536. (2) A.I.R. 1948 E.P. 22, 25.