

1964

March 24

## MARA AND OTHERS

v.

## NIKKO AND OTHERS

[M. HIDAYATULLAH AND N. RAJAGOPALA AYYANGAR, JJ.]

*Inheritance—Jhalli Jats of Tehsil Ludhiana—Properties Ancestral or non-Ancestral—Whether Sister excludes collaterals.*

Claiming inheritance to the properties of one P—a *Jhalli Jat* of Ludhiana Tehsil, the respondents, who were P's sister and sister's son filed a suit against the appellants—P's collaterals. The Subordinate Judge decreed the suit and an appeal to the District Judge was dismissed. They held that the lands in suit were not ancestral and that there was no evidence to show that among the *Jhalli Jats* of Ludhiana collaterals excluded sisters and sister's son in respect of non-ancestral property. An appeal to the High Court was also dismissed.

*Held:* (i) Where lands are so mixed up that the ancestral and non-ancestral portions cannot be separated they must be regarded as non-ancestral unless it is shown which are ancestral and which are not.

*Aptar Singh v. Thakar Singh*, 35 I.A. 206, applied.

Land ceases to be ancestral if it comes into the hands of any owner otherwise than by descent.

*Inder Singh v. Gulzara Singh*, A.I.R. 1951 Punj. 345, *Saif-ul-Rahman v. Mohammad Ali Khan*, I.L.R. 9 Lah. 95 and *Jagtar Singh v. Raghbir Singh*, I.L.R. 13 Lah. 165, referred to.

(ii) The application of the personal law to the family by the courts below was correct and paragraph 24 of Rattigan's Digest which excludes sisters from inheritance from non-ancestral property is too widely stated.

*Ujagar Singh v. Mst. Jeo*, [1959] Supp. 2 S.C.R. 781 and *Waryam Singh v. Smt. Sukhi*, CA No. 452/61 decided on 23-4-1963 (non-reportable) referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 490 of 1962. Appeal by special leave from the judgment and order dated October 20, 1959 of the Punjab High Court in Regular Second Appeal No. 1591 of 1959.

*Kartar Singh Chawla* and *Harbans Singh*, for the appellants.

*I. M. Lal* and *M. R. K. Pillai*, for the respondents.

March 24, 1964. The Judgment of the Court was delivered by

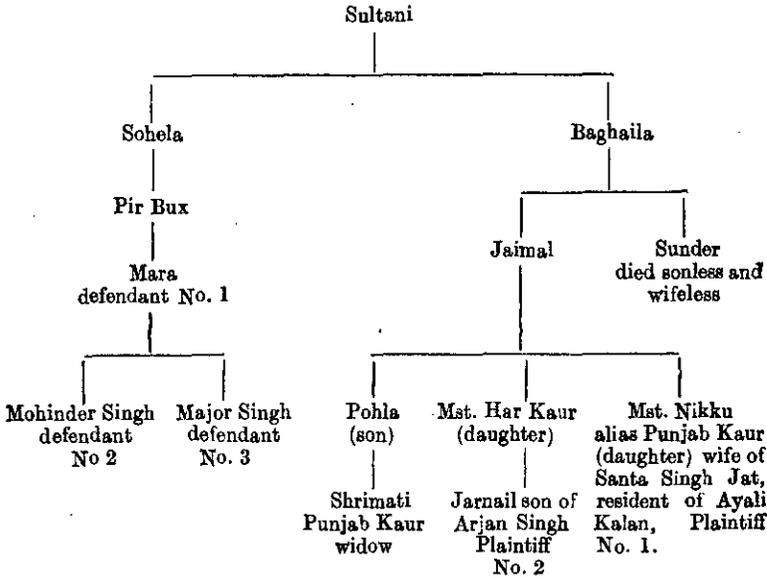
*Hidayatullah, J.*

HIDAYATULLAH, J.—This is a defendants' appeal by special leave against the order of the High Court of Punjab dated October 20, 1959 dismissing summarily second appeal filed by the appellants. The suit was filed by the respondents for possession of a plot, a house and a *Taur* and half share in certain lands as preferential heirs of one Pohla after the death

of Pohla's widow Punjab Kaur on February 7, 1952. The plaintiffs are Mst. Nikko, sister of Pohla and Jarnail Singh, son of Mst. Har Kaur who was another sister of Pohla. The first appellant Mara is a collateral of 4th degree of Pohla and the other two appellants are Mara's sons. The following genealogy gives the relationship of the parties:—

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The parties are *Jhalli Jats* of village Chomon, Tehsil and District Ludhiana. The plaintiffs claimed that the property was non-ancestral and according to the *Riwaj* applicable to the family, sisters excluded collaterals in respect of both ancestral and non-ancestral properties. It appears that after the death of Panjab Kaur, Mara got one of the fields mutated in his own name and thereafter took possession of the whole property. He made gifts to his sons of some of the properties and that is why they were joined in the suit. Mara and his elder son Mohinder Singh filed a joint written statement in which they raised many pleas the details whereof need not be given here. They claimed that according to the custom applicable to the family, sister and sister's sons were excluded from inheritance in respect of properties whether ancestral or non-ancestral. They however claimed that the property was ancestral and denied the genealogy.

The Subordinate Judge, Second Class, Ludhiana framed six issues of which issues No. 2, 3 and 4 alone are important in this appeal. Those issues are:—

- "2. Whether the property is ancestral *qua* Pohla and Mara?"
- "3. Whether the question of the nature of the property is material for the decision of this case?"

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“4. Whether the plaintiffs are preferential heirs to the estate of Mst. Panjabo widow of Pohla?”

The parties led voluminous oral evidence in the case but the Subordinate Judge did not rely upon it. We have not been referred to any portion of this evidence in this appeal. The learned Subordinate Judge held that the suit lands were not ancestral and further that no evidence was produced to prove that the other properties were ancestral. On the third issue he referred to question No. 52 from the *Riwaj-i-am* relating to the settlements of 1882 and 1909—1910 (Exts. D-1 and D-2) in which it is stated that among the *Jhalli Jats* of Tehsil Ludhiana sisters or sisters' sons never succeed. He, however, held on the authority of *Ahmad v. Mohammad and others*(<sup>1</sup>) that since question refers only to ancestral property and that the nature of the property was thus material. On the fourth issue he held on the strength of the answer to question No. 52 that sisters and their sons were excluded from ancestral property but as the answer was not applicable to non-ancestral property the personal law would apply unless special custom was proved. He therefore placed the burden on the defendants relying upon *Harnam Singh v. Mst. Gurdev Kaur*, (<sup>2</sup>) *Mst. Sukhwant Kaur v. S. Balwant Singh and others*(<sup>3</sup>) and *Mst. Jeo v. Ujagar Singh*.(<sup>4</sup>) As he had already rejected the oral evidence and there was no other proof that the property was ancestral, he decreed the suit.

On appeal the District Judge, Ludhiana remitted three issues to the trial Judge and they were as follows:—

“Issue No. 4:—

Whether there is any custom by which the parties are governed according to which the plaintiffs are entitled to succeed to the ancestral as well as non-ancestral left by the Pohla in preference to Mara defendant?”

“Issue No. 4A:—

Whether under the custom by which parties are governed the defendant Mara is a preferential heir to the plaintiffs in respect of the ancestral as well as non-ancestral property of Pohla deceased?”

(<sup>1</sup>) A.I.R. 1936 Lah. 809.

(<sup>2</sup>) 1957 P.L.R. 609.

(<sup>3</sup>) A.I.R. 1951 Simla 242.

(<sup>4</sup>) 1953 P.L.R. 1

“Issue No. 4B:—

If the custom set out by the parties is not proved, whether the plaintiffs are preferential heirs to Mara defendant under personal law applicable to the parties?”

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On these issues the report of the Subordinate Judge, First Class, Ludhiana was against the contention of the defendants. The learned District Judge held, in agreement with the Subordinate Judge, that the lands in suit were not ancestral and he held also that there was no evidence to show that among the Jhalli Jats of Ludhiana collaterals excluded sisters and sisters' sons in respect of non-ancestral property. He referred to Exts. 9, 10, 12 and 13 which were judgments in other cases as evidencing the contrary. He accordingly dismissed the appeal. The Second appeal filed thereafter was dismissed summarily by the High Court.

The first question to decide is whether these lands are ancestral or non-ancestral. The concurrent finding of the two courts below is that none of the properties in dispute is ancestral. The High Court *prima facie* saw no reason to differ from any of the conclusions of the courts below. It is contended on the strength of a *Kafiat* of *Thulla Malla* prepared at the settlement of 1882 that this land came into possession of one Sekhu who was admittedly a common ancestor in the family and the property, which is now in dispute, must be regarded as ancestral. It is contended that the finding is vitiated because the two courts below did not read this *Kafiat* along with the extracts from the Records of rights of the years 1882 and 1909-1910 in which the names of Jaimal and Sunder, sons of Baghela, and of Pir Bux son of Sohila are shown as persons in enjoyment of half shares in these lands. It is argued that the lands in suit are thus proved to be ancestral as they belonged to Sekhu the common ancestor and the *Riwaj-i-am* as disclosed in question No. 52 applies to the case. It appears, however, from the *Kafiat* as well as the Record of Rights that these lands were once abandoned and when people came back Sekhu got possession of some lands but in addition to these Sekhu's descendants had acquired the share of one Dalpat in the *Thulla* and subsequently the entire estate of another holder, namely, Maidas was purchased by Jaimal, Sunder and Sohila. This shows that the lands in dispute are not entirely ancestral but are made up of lands which may be described as ancestral and non-ancestral.

Now, it has been ruled in the Punjab consistently that where lands are so mixed up that the ancestral and non-ancestral, portions cannot be separated they must be regarded

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as non-ancestral, unless it is shown which are ancestral and which are not. This was laid down by the Privy Council in *Avtar Singh v. Thakar Singh*<sup>(1)</sup>. It was held by Mr. Justice Kapur (as he then was) in *Indar Singh v. Gulzara Singh and others*<sup>(2)</sup> basing himself upon *Saif-ul-Rahman v. Mohammand Ali Khan*<sup>(3)</sup> and *Jagtar Singh v. Raghbir Singh*<sup>(4)</sup> that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent. Once these conclusions are reached, it is quite obvious that the decision of the District Judge not to apply the answer to question No. 52 to non-ancestral land was right. It may be mentioned that the answers to questions refer to ancestral property only and this is now firmly established. In fact, it was not denied at the hearing.

It is, however, contended that there are decisions to show that the right of the collaterals was recognised in respect of even non-ancestral land to the exclusion of sisters and their sons. No ruling from the Law Reports has been brought to our notice. Some cases from the Ambala and Amritsar Districts are cited but those obviously cannot be any authority, because, as is well-known, custom in the Punjab changes from district to district, tehsil to tehsil and pargana to pargana. It has been ruled in this Court that paragraph 24 of Rattigan's Digest which excludes sisters from inheritance from non-ancestral property is too widely stated. (See *Ujagar Singh v. Mst. Jeo*<sup>(5)</sup> and *Waryam Singh and Others v. Smt. Sukhi and another*) (Civil Appeal No. 452 of 1961 decided on April 23, 1963). The learned District Judge cited some instances in which the sisters and sisters' sons were allowed to succeed in preference to collaterals. One of the documents filed by the defendants in the suit (Ext. D-6) also supports the contention of the respondents. In this view of the matter it cannot be said that the application of the personal law to the family by the courts below was erroneous. It is contended lastly that the rulings only show that collaterals of 5th degree are excluded and there is no case showing that a collateral of 4th degree was excluded. If personal law applies, as it does, a collateral of the 4th degree is also excluded.

In our judgment this appeal must fail and is accordingly dismissed with costs.

*Appeal dismissed.*

(<sup>1</sup>) 35 I.A. 206.

(<sup>2</sup>) A.I.R. 1951 Pb. 345.

(<sup>3</sup>) I.L.R. 9 Lah. 95.

(<sup>4</sup>) I.L.R. 13 Lah. 165.

(<sup>5</sup>) (1959 Supp. 2 S.C.R. 781.