

(51) In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trials of all the complaints, as there is no merit, therefore, the instant petitions deserve to be and are hereby dismissed as such in the obtaining circumstances of the cases.

(52) Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits, during the trials of the main complaints, as the same has been so recorded for a limited purpose of deciding the present petitions under section 482 Cr.PC. Since the matter is very old, so, the trial Court is directed to take all the effective steps, including day to day proceedings for expeditious disposal of all the complaints in accordance with law. The Registry is directed to send the copies of this judgment to the trial Court forthwith for compliance.

(53) At the same time, the parties through their counsel are directed to appear before the Special/Trial Court on 4.6.2012 for further proceedings.

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*J.S. Mehndiratta*

*Before K. Kannan, J.*

**UDHAM SINGH (DECEASED) THROUGH HIS LRS AND  
OTHERS—Petitioners**

*versus*

**HARNEK SINGH AND OTHERS—Respondents**

**RSA No.2027 of 1980**

2nd December, 2011

*Code of Civil Procedure, 1908 - Hindu Succession Act, 1956 - S.14(1), 15 - Two widows jointly hold estate - On death of one widow estate survived to the other - Property gifted by the surviving widow to her daughter - Suit filed by Reversioner that gift will not bind them - Donee died in 1954 - Possession at the time of passing of the Hindu Succession Act 1956 with the surviving widow (Donee) - Held, by application of Section 14 Clause 1 of 1956 Act, estate enlarged - Reversioner's right mere spes successionis - On death of surviving widow after 1956 due enlargement property will go to her children as heirs under Section 15 of the 1956 Act - Appeal dismissed.*



*Held*, That the principle of law relating to the manner of succession of a Hindu male, who had died before the passing of the Hindu Succession Act leaving the property to be survived by his widows and daughters is that the widows would exclude daughters and inherit what was called as the widows' estate. On the death of one of the widows, her interest would survive to the co-widow. If the co widow was in possession of the property on the date of the Hindu Succession Act, she would become the absolute owner.

(Para 8)

*Further Held*, That on Chand Kaur's death, the property will go only to her own daughters' children as heir under Section 15 of the Hindu Succession Act and the plaintiffs who are the children of the step-daughter Chinti will be excluded by the class of heirs prescribed under Section 15.

(Para 9)

*Further Held*, If the facts are that the daughter, who was the donee, died before 1956 and the property had come to be enjoyed by the mother and held by her on the date of the coming into force of the Act, then Section 14(1) would clearly apply.

(Para 10)

*Further Held*, that The suit that went to Lahore High Court was only a reversioner's suit and not a suit of assertion of any vested right of a daughter. Hindu law did not accord a full right in the property before the 1956 Act to any class of female heirs themselves, other than the property held as Sridhan. A property inherited from the father by a daughter was always limited, both under the Mitakshara as well as under the Punjab Customary Law. I reject, therefore, the contention that Chinti had a vested right in the property and she had a right to pass on such a vested right to the plaintiffs in respect of half share on the death of Chand Kaur. She had only a reversioner's interest, which right of reversion got extinguished on the coming into the force of the Hindu Succession Act by the operation of Section 14(1) that made Chand Kaur an absolute owner by virtue of her being in possession notwithstanding the gift.

(Para 14)



M.L. Sarin, Senior Advocate, with Ms. Alka Sarin, Advocate, and Mr. Nitin Sarin, Advocate, for the petitioners.

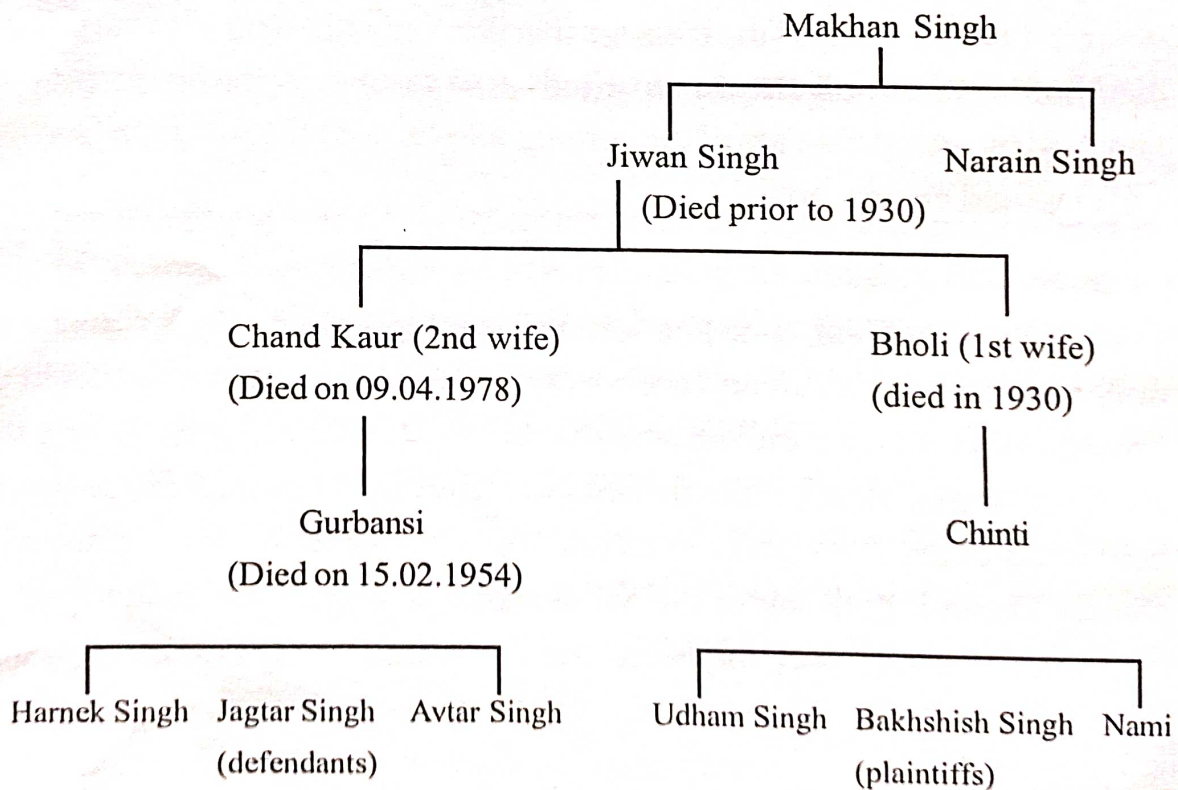
Alok Jain, Advocate, for the respondents.

**K.KANNAN, J.**

### 1. The lis & genealogy

(1) The plaintiffs, who were successful for securing a half share in the suit properties suffered a reversal of the decision at the appellate court. The Additional District Judge allowed the appeal of the defendants and dismissed the plaintiffs' suit. The plaintiffs are the appellants before this Court.

(2) The suit related to the estate of Jiwan Singh. The case will have to be understood in the context of the relationship between parties and it is, therefore, immediately set forth as under:-



### II. History of previous litigation

(3) It is an admitted case that Jiwan Singh died before 1930 leaving behind two widows, namely, Bholi and Chand Kaur. The two widows held their respective widow's estate jointly and on the death of Bholi, the



properties survived to Chand Kaur. Chand Kaur had made a settlement of the property that she inherited in favour of Gurbansi, her daughter on 29.06.1929. Chinti, who was the only daughter of the first wife Bholi, filed a suit impeaching the alienation as not binding on her. Jiwan Singh's brother Narayan Singh also filed a suit as a reversioner that the gift will not bind him. Both the suits were disposed of together. It was held that the gift would not bind Chinti. On an inter se dispute between Chinti and Narain Singh, it was held that the custom existing in Punjab preferred the daughter to the collateral of the deceased and upheld the claim of Chinti as a nearer reversioner.

(4) Two appeals had been filed before the Division Bench of the High Court of Judicature of Lahore and the Division Bench held through a judgment dated 28.11.1934 that the trial Court judgment was correct that revealed a well established custom amongst Jats of Jalandhar district that a daughter excluded a nearer male collateral in succession to the self-acquired property of her father.

### **III. Basis of the plaintiffs claim as pleaded**

(5) In the present suit instituted during the life time of Chand Kaur by the children of Chinti in assertion of the right declared in the suit filed by their mother, the defence was entered by the children of Gurbansi. Their contention was that the plaintiffs had no right in the property during the life time of Chand Kaur. In any case, Chand Kaur had become the full owner of the property under the Hindu Succession Act and she could alienate the property in any manner she pleased. Chand Kaur filed an independent written statement pleading enlargement of estate under the Hindu Succession Act, as she was in possession at the time of coming into force of the Act. The trial Court framed several issues and decreed the suit for half share on the basis of amended pleadings that the plaintiffs were staking a claim only to a half share referable to the the branch represented through the first wife Bholi and the remaining half share belonged to the other branch Chand Kaur and for their descendants. The appellate Court reversed the decision and held that the appeal was bound to succeed on a short ground that the plaintiffs had failed to connect the land in suit with the land comprised in the decree that had been passed in the suit filed by their mother. I find the appellate Court's observation to be wholly erroneous, for, there was never



a dispute that their mother was filing a suit in relation to some other property. Both parties were only contending the property to have originally belonged to Jiwan Singh and their respective claims to ownership emanated only through the lines of succession drawn through his respective two wives. I will, therefore, discard the finding of the appellate Court and hold that the decree obtained by the plaintiffs' mother Chinti against Chand Kaur and Gurbansi was verily the property which are presently covered in the suit.

#### **IV. Nature of reversioner's interest before Hindu Succession Act.**

(6) If Chand Kaur had divested herself of the widow's estate that she had obtained and allowed the property to be in the possession of the donee, namely, her daughter, then the donee had the very same interest which Chand Kaur had. By the law then prevailing, a widow's estate was limited to her life time only. The gift could have therefore been valid only for the life time of Chand Kaur herself. The facility of obtaining a decree of interdiction during life time of a reversioner and the widow was to secure a strong proof that in the event of the death of the widow, the reversioner could recover possession of the property without proving anything more. Reversioner's right was only *spes successionis* which was a mere chance of succession. (Mulla: Principles of Hindu law, Volume I, 19th Edition; Page 281; **Harnanth Kaur versus Inder Bahadur Singh (1)**). The decree itself will not be conclusive of a sure inheritance but the inheritance is always to be governed by the law when the succession opened.

#### **V. The concept of enlargement of widow's estate under 1956 Act.**

(7) There have been important changes of law which have to be still remembered, namely, on the passing of the Hindu Succession Act in the year 1956. If the widow had been in possession of the property of the widow's estate, by virtue of Section 14(1) of the Act, the widow's estate will be enlarged to absolute interest. If the widow herself had parted with possession then the person who holds the property will hold the property during the life time of the widow only with the incident of a limited right and not a full right which the widow would have obtained by virtue of Section 14(1). In this case, if Gurbansi had dispossessed Chand Kaur and she had outlived Chand Kaur then the reversioner would be entitled to make

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(1) AIR 1922 PC 403



a claim by a fictional death to Jiwan Singh as having occurred on the very date when Chand Kaur died. In this case, Gurbansi died even before the 1956 Act on 15.01.1954. Though the learned senior counsel appearing on behalf of the appellants argued that this was not an admitted fact, it bears out by unimpeachable documentary evidence through D-4 viz., mutation proceedings before the Collector, Jalandhar on 15.01.1954 that Gurbansi died on 15.01.1954. The issue, therefore, is the effect of death of Gurbansi on 15.01.1954, who had been the beneficiary under the gift of Chand Kaur, who had died before the donor, who held a widow's estate.

VI. Law to be applied is the law as on date when succession opened-viz., widow's death

(8) The contention of the learned counsel appearing on behalf of the plaintiffs is that the property was bound to be held by the heirs of Gurbansi during the life time of Chand Kaur. Gurbansi's heirs were the defendants but the moment Chand Kaur died, the property was required to be divided between the heirs of Jiwan Singh as though Jiwan Singh died on the day when Chand Kaur died. The principle of law relating to the manner of succession of a Hindu male, who had died before the passing of the Hindu Succession Act leaving the property to be survived by his widows and daughters is that the widows would exclude daughters and inherit what was called as the widows' estate. On the death of one of the widows, her interest would survive to the co-widow. If the co-widow was in possession of the property on the date of the Hindu Succession Act, she would become the absolute owner. If she had parted with possession of the property, it would be held by the alienee, the law of succession would be as per the law before 1956 Act. As an academic issue, if Gurbansi had remained in possession and outlived the mother as a donee and she had lived beyond 1956 (till after the commencement of the Act), the law prior to 1956 Act would be applied for determining succession. The law is clear that the last male owner must be deemed to have died on the date of death of the intervening female (widow). A judgment of this Court holding to the above proposition in AIR 1961 Punjab 45 was approved by the decision of the Hon'ble Supreme Court in **Daya Singh versus Dhan Kaur (2)**.



If the property had not been in possession of Chand Kaur, an inevitable consequence would have been to divide the property *per stirpes*. A half share would have gone to Jiwan Singh's children through the pre-deceased daughter (assumed as pre-deceased by a fiction that Jiwan Singh died only on 01.04.1978) and another half share would have gone to the children of other pre-deceased daughter through the first widow. In other words, the plaintiffs and the defendants would have become equal sharers of the property if Chand Kaur had lost her possession on the date of the coming into the force of the Act.

#### **VII. Effect of widow's possession, notwithstanding gift**

(9) In this case, the facts are different and the facts are brought through documents which cannot be denied. Although Chand Kaur had gifted the property to Gurbansi, there is a clear admission of the plaintiffs that Chand Kaur continued to be in possession of the property notwithstanding the gift. In this case, Gurbansi died on 15.01.1954 and the clear evidence was that Chand Kaur continued to be in possession when Gurbansi died on 15.01.1954. The plaint has been instituted on an express averment that Chand Kaur was actually in possession, with an apprehension expressed by the plaintiffs that she was planning to alienate the property and seeking for declaration of a joint possession of the property. If Gurbansi had never been in possession and Chand Kaur continued in possession then such possession on the date of the coming into the force of the Act enlarged the estate in her hands and made Chand Kaur herself the owner of the property. Here the decree obtained in the year 1929 and later affirmed by the High Court of Judicature at Lahore in A.S.No.1449 of 1931 will come to no benefit for the plaintiffs. We have already observed that the declaratory decree obtained is only a recognition of chance of succession and does not assure to a decree holder a right of entitlement. That right will be determined only on the date when succession opened. When Chand Kaur died she had already become absolute owner of the property gifted to her daughter. On Chand Kaur's death, the property will go only to her own daughters' children as heir under Section 15 of the Hindu Succession Act and the plaintiffs who are the children of the step-daughter Chinti will be excluded



by the class of heirs prescribed under Section 15. It has been authoritatively held by the Hon'ble Supreme Court in **Manshan Versus Tej Kaur in (3)** that even a declaratory decree will enure to the benefit of only the person, who would be entitled to the property as per the Hindu Succession Act.

(10) Learned senior counsel Shri Sarin would contend that Chand Kaur, who had gifted the property could never become the owner of the same and would refer to me to some of the decisions of the Hon'ble Supreme Court as going to support such a contention. The learned counsel refers me to a decision in **Kuldip Singh and others versus Surain Singh and others (4)**, which held that the widow who made a gift of property in which she had a limited interest cannot avoid gift subsequently and Section 14(1) of the Act cannot enure to her benefit. The learned counsel would also refer to the decision in **Kalawatibai versus Soiryabai and others (5)** and Naresh Kumari (dead) by LRs and another **versus Shakshi Lal (dead) by LRs and another (6)**, to contend that if a widow had sold the property prior to the coming into the force of the act, the widow does not become a full owner of the property under Section 14(1) of the Act. In such a case the reversioners and not the alienees would have a right in the property after her death. The above three decisions will apply in a situation where the widow Chand Kaur had, after the gift in favour of daughter Gurbansi lost her possession and the property was held by the alienee on the date of the coming into force of the Hindu Succession Act. If the facts are that the daughter, who was the donee, died before 1956 and the property had come to be enjoyed by the mother and held by her on the date of the coming into force of the Act, then Section 14(1) would clearly apply. All the three decisions referred to situations where on the date of the coming into force of the Succession Act, the widow was not in possession but the alienees were. In a case where the alienee was in possession of property, the applicability of Section 14(1) did not simply arise and the right of succession obtaining in favour of the reversioner to the exclusion of alienee could never be doubted.

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(3) 1980 Supp. SCC 367

(4) 1968 LXX PLR 30

(5) JT 1991(2) SCC 385

(6) AIR 1999 SC 928



(11) In this case, the situation is wholly different for two reasons:(i) The donee Gurbansi died before 1956 and the property came to be enjoyed by Chand Kaur. She was admitted to be in possession on the date when the Act came into force. The plaintiffs have come to Court on an express pleading that Chand Kaur is in possession even at the time of suit. The evidence of PW1 in the cross-examination reads thus, "*Chand Kaur was in possession of the entire land. Chand Kaur remained in possession even after the gift was set aside.*" The fact that Chand Kaur was in possession of the property has never been a point of contention. In the proceedings before the Collector, Jalandhar for mutation in the year 1954, the Collector had directed the mutation to take place in favour of Chand Kaur on the death of Gurbansi to the exclusion of Gurbansi's children themselves. The learned senior counsel appearing on behalf of the petitioner argues that this was merely a Collector's proceedings and it will not declare the law of succession. While I will allow to him the force of such a contention, there is no denying the fact that Chand Kaur obtained the mutation of revenue entries and continued in possession as admitted by PW1 himself.

(12) The contention that if a widow had alienated the property before 1956, she cannot claim it back is itself fallacious. A reconveyance made or a situation that brings back the property to widow that led to a situation of the widow continuing possession always enlarged her estate. The expression "in possession" at the coming into the force of the Act was always interpreted expansively to admit not merely actual physical possession but also constructive possession. In **Gummalapura Taggina Matada Kotturuswami versus Setra Veeravva and others (7)**, the Hon'ble Supreme Court held that the word 'possessed' in Section 14 is used in a broad sense and, in the context, means the State owning or having one's hand or power. Even a reconveyance by an alienee after the Act would enlarge the estate (**Vagat Singh versus Teja Singh (8)**). An alienee agreeing to treat the sale as cancelled by parting with possession back to the widow again enlarged the widow's interest (**Bhagwan versus Vishwanath (9)**).

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(7) AIR 1959 SC 571

(8) AIR 1970 P&H 309 (FB)

(9) AIR 1979 Bom. 1



Every incident that put the widow back in possession of the property, even after any form of alienation would make the widow the full owner of the property.

(13) The plaintiffs cannot discard their own pleadings and their admission. If the property had been in possession of Gurbansi's children, namely, the defendants, the plaintiffs would have definitely made an assertion, the moment Gurbansi died. This reasoning is not however without its weakness, for, the plaintiffs could still contend that Gurbansi by virtue of the settlement had a right to the entire extent of the limited estate of Chand Kaur and her own death (Gurbansi's) will not result in the property going in succession absolutely in favour of her children. The right which Gurbansi had, would be co-terminus to the right which Chand Kaur had. This will incidentally answer the contention raised by the defendants that the suit was beyond limitation. The suit had actually been filed during the life time of Chand Kaur herself. I have already excluded the possibility that Chand Kaur was only a limited owner. She was a full owner by virtue of Section 14(1) and, therefore, in terms of Section 15, the defendants excluded the plaintiffs totally.

**VIII. Property inherited by daughter from father before 1956, in the presence of widow was only a *pes succession* and never vested right**

(14) I had also formulated the proposition of the nature of interest that Chinti had during the life time of Chand Kaur: Whether it was a vested interest that would survive to a half share on Chand Kaur's death or it was merely a chance of succession. The learned senior counsel argued that the decision of the High Court of Lahore, while citing the Punjab Customary law clearly identified her as a nearer heir to the collateral. He wanted to read the observations of the High Court to make it appear as though that Punjab Customary Law allowed for an absolute ownership in separate property of the father even before 1956 Act. I would hold the contention to be erroneous and the observations of the Lahore High Court was only in the context of the examination of the issue as to who was the nearer heir.



The question posed for determination comes through the following words in the judgment of the Labour High Court:-

“....The sole question for determination in these appeals is, whether Mussammat Gurbanshi and Musammat Chinti, daughters of Jiwan Singh, the last male holder, are entitled to exclude Narain Singh from succession to the self-acquired property of their father, Jiwan Singh.....”

The Court was merely considering the *inter se* priorities between daughters of Jiwan Singh and the collateral Narain Singh as reversioners. There was no dispute amongst the respective daughters or their descendants in that suit. The suit that went to Lahore High Court was only a reversioner's suit and not a suit of assertion of any vested right of a daughter. Hindu law did not accord a full right in the property before the 1956 Act to any class of female heirs themselves, other than the property held as Sridhan. A property inherited from the father by a daughter was always limited, both under the Mitakshara as well as under the Punjab Customary Law. It is seen from the Rattigan's digest of Customary Law in the Punjab, 1989 15th edition in para 23, Remark No.5 at page 188, that, “a daughter when she succeeds to landed property, has merely a limited interest therein, and is not an absolute owner.” I reject, therefore, the contention that Chinti had a vested right in the property and she had a right to pass on such a vested right to the plaintiffs in respect of half share on the death of Chand Kaur. She had only a reversioner's interest, which right of reversion got extinguished on the coming into the force of the Hindu Succession Act by the operation of Section 14(1) that made Chand Kaur an absolute owner by virtue of her being in possession notwithstanding the gift. The plaintiffs are attempting to bury fathoms deep their own pleadings and build an edifice borne through a figment of imagination.

### **IX. Conclusion**

(15) The suit of the plaintiffs was rightly dismissed and I affirm the same, although on, what I hold to be on more appropriate legal reasoning. The plaintiffs shall bear the costs throughout.