Supreme Court of India
Jagat Singh vs Karan Singh (Dead) By Lrs. &Ors.; on 24 March, 1987
Equivalent citations: 1987 AIR 1279, 1987 SCR (2) 616
Author: M Thakkar
Bench: Thakkar, M.P. (J)

PETITIONER:
JAGAT SINGH

Vs.

RESPONDENT:
KARAN SINGH (DEAD) BY LRS. &ORS.

DATE OF JUDGMENT24/03/1987

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
RAY, B.C. (J)

CITATION:
1987 AIR 1279 1987 SCR (2) 616
1987 SCC (2) 349 JT 1987 (2) 31
1987 SCALE (1)580

ACT:
Tehri Garhwal Bhumi Sambandhi Adhikar Niyam: s.6(4)-Benefit under--'Spinda' of the Original 'khaikar' living with him as a member of his family--Whether entitled to become a sub-tenant of the head tenant--Provision applicable to Hindus only.

HEADNOTE:
Section 6(4) of the Tehri Garhwal Bhumi Sambandhi Adhikar Niyam provides that brother or 'sapida' (brother, nephew etc.) of the deceased sub-tenant will be entitled to be recognised as a 'khaikari' if he was jointly living with the deceased during his life time in the manner of a member of a joint family.

The appellant, a 'sapinda' of the original 'Khaikari' (sub-tenant) had started living with the deceased from the age of 12 or 13 years as a member of the latter's family. He has been sharing food and shelter with the deceased and was engaged in cultivating the land along with the deceased during his lifetime. At the time of the death of the later the obsequies were also performed by him.

The trial court came to the conclusion that the appellant fulfilled the conditions prescribed by s.6(4) of the

Act and was thus entitled to become 'khaikari' (sub-tenant) of the respondent head-tenant. The lower appellant court and the High Court took the view that s.6(4) was applicable not only to Hindus but also to Muslims and Christians, and, therefore, it was not sufficient for the appellant to have shared the food and shelter and carried on the agricultural operations with the deceased and that it must be shown that he was in fact a member of the joint family.

Allowing the appeal, the Court,

HELD: The High Court was in error in holding that only a member of an undivided family could claim the benefit of s.6(4) of the Tehri Garhwal Bhumi Sambandhi Adhikar Nayam. [620C-D]

Section 6(4) of the Act is designed to apply only to Hindus. The expression 'sapinda' employed in that provision is peculiar to traditional

617

Hindu Law and it would be altogether inapposite in the context of citizens of Muslim or Christian faith. [619C]

The expression "Jeevit Samay Men Abibhakt Kul Ki Reeti Se Uske Shareek Raha Ho" used in s.6(4) clearly provides a clue to the intention of the legislature to benefit such a 'sapinda' who had, lived with the issueless 'khaikar' and shared with him food, shelter, laying as also joys and sorrows along with him 'as if' he was a member of the joint family without in fact being one. Even if a separate brother or newhew were to live with an issueless tiller during his lifetime just as a member of the Undivided Hindu Family would be expected to 40, the benefit of becoming a sub-tenant of the head tenant is made available to him. [620A-C; 619G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1403(N) of 1973.

From the Judgment and Order dated 12.4.1973 of the Allahabad High Court in Second Appeal No. 2866 of 1965. S .N. Singh and T.N. Singh for the Appellant. Rameshwar Nath and Ravinder Nath for the Respondents. The Judgment of the Court was delivered by, THAKKAR, J. The controversy in this appeal centers around the interpretation of Section 6(4) of the Tehri Garhwal Buhmi Sambandhi Adhikar Niyam, enacted by the erst- while State of Tehri Garhwal which continued to remain in force even after its merger in the State of Uttar Pradesh.

The trial court came to the conclusion that the peti- tioner was entitled to become the 'kahikari' (subtenant) of the respondents who were 'maurusidars' (head tenants) of the land in question by virtue by the said provision and decreed the plaintiff's suit. The lower appellate court and the High Court took a contrary view and dismissed the suit. The original plaintiff has preferred the present appeal by special leave and has contended that the interpretation placed by the trial court was the

correct interpretation of the relevant provision and that the Lower Appellate Court and the High Court were in error in taking the contrary view.

The facts in so far as material are not in dispute. All the Courts have concurred in the finding that the petitioner was a 'sapinda' of Jeet Ram, the original 'khaikari' (sub- tenant) who died issueless. From the age of about 12 or 13 years the appellant had started living with deceased Jeet Ram. He was sharing food and shelter with Jeet Ram and was engaged in cultivating the land in question along with Jeet Ram during his life time. He had lived as a member of Jeet Ram's family and at the time of the death of Jeet Ram the obsequies were performed by him. Thereafter he was looking after the widow of Jeet Ram.

These facts having been firmly established the trial court upheld the appellant's right to become 'khaikari' (sub-tenant) of the respondents in respect of the land in question in the context of the right conferred by Section 6(4) of the Act. The said provision is in Hindi:

> "MRIT KHIAKAR KAR BHAI YA SAPINDA WARISH (BHAI, BHATEEJA AADI) KEWAL US DASHA MEN ADHIKARI HOGA JOB KI WAH US MIRT KHAIKAR KE SATH JEEVIT SAMAY MEN ABIBHAKT KUL KI REETI SE USKE SHAREEK RAHA HO."

Translated in English, it reads as under:-

> "Brother or Sapinda (brother, newhew etc.) of the deceased sub-tenant will be entitled if he was jointly living with the deceased during his life time in the manner of a joint family."

An analysis of the aforesaid provision reveals that in order to establish the claim to be recognized as a 'khaikari' under the said provision, one must establish that:-

> (1) He is a 'sapinda' of the deceased sub- tenant such as the brother or nephew. (2) He must have been living as a member of the family with the deceased during his life-time in the manner of a member of the joint family.

The Trial Court took the view that inasmuch as the petitioner was admittedly a sapinda of deceased Jeet Ram and inasmuch as he had been living jointly with the deceased during his life-time, had been sharing of food and shelter with him and had even performed the obsequies of Jeet Ram, he fulfilled the conditions prescribed by the said provision and was entitled to become a sub-tenant of the head tenant. The Lower Appellate Court and the High Court have taken the view that it is not suffi- cient for the appellant to have shared the food and shelter and carried on the agricultural operations with the de- ceased. It must be shown that he was in fact a member of the joint family. The High Court has made sought support from the reasoning that section 6(4) is applicable not only to Hindus but also to Muslims and Christians. With respect to the High Court this assumption is altogether unwarranted. The expression 'sapinda' employed in section 6(4) is a clear pointer to the conclusion that the said section is designed to apply only to Hindus. The expression 'sapinda' is

pecul- iar to traditional Hindu Law and it would be altogether inapposite in the context of citizens of Muslim or Christian faith. Failure to realize this aspect impelled the High Court to take a view contrary to the view taken by the trial court as is evident from the following passage:

> "As the provisions of section 6 (4) of the Tehri Garhwal Bhumi Sambandhi Adhikar Niyam are applicable not only to Hindus but also to Muslims and Christians etc. who may be living in Tehri Garhwal, the words "Joint Hindu Family" were not used and instead the words "ABHI BHAKT KUL KEE REETI SE USKE SAATH SHAREEK RAHA HO" were used. These words when applicable to a Hindu must mean a person who was a member of a Joint Hindu Family of the deceased Khaikar in this case Jeet Ram." It appears that the Lower Appellate Court and the High Court altogether missed to grasp the intendment and purpose of the provision. In the absence of such a provision an issueless tiller would experience great hardship for there would be nobody to assist him in his work in his lifetime, look after him in his old age, and to take care of his widow after his death. That is why even if a separated brother or nephew were to live with him during his life-time, share the food and shelter with him, and assist him in cultivation, just as a member of the Undivided Hindu Family would be expected to do, the benefit of becoming a sub-tenant is made available to him. Otherwise there was no point in providing that unless a 'sapinda' lived with him 'as if he was a member of the joint family' he would not be entitled to such a right. In fact the provi- sion has evidently been enacted with a view to relieve the distress of an issueless agricul- turist, who is separate from his joint family, so that any one of his sapindas living with him as a member of the family, assisting him in agriculture, and looking after him, would be entitled to become a 'khaikar' on his demise. The expression 'JEEVIT SAMAY, MEN ABIBHAKT KUL KI REETI SE USKE SHAREEK RAHA HO' clearly provides a clue to the intention of the legislature to benefit such a person who has lived with the issueless khaikar and shared with him food, shelter, labour, as also joys and sorrows along with him 'as if' he was a member of the joint family without in fact being one. The prospect of acquiring such a right would provide motivation to look after and render services to the issueless land holder for it would be unreasonable to expect him to do so selflessly, the world being what it is.
>
> We are therefore of the opinion that the lower appellate court and the High Court have entirely misunderstood the provision in hold- ing that only a member of an Undivided Family could claim the benefit of section 6(4). If such were the case there was no need to make such an elaborate provision. It would have been sufficient to say that a member of his joint family alone could claim such a right.
>
> We are satisfied that the trial court was right in upholding the claim of the appellant whereas the lower appellate court and the High Court were in error in taking a contrary view. The appeal is, therefore, allowed. The judg- ment and order of the lower appellate court and the High Court are set aside. The judgment and decree passed by the trial court are restored.

There will be no order regarding costs. P.S.S.

Appeal allowed.