Supreme Court of India
Sewa Singh & Ors vs Jangir Singh & Ors on 15 December, 1954
Bench: M.C. Mahajan (Cj), N.H. Bhagwati, B. Jagannadhadas, T.L.V. Aiyyar

CASE NO.:
Appeal (civil) 115 of 1953

PETITIONER:
SEWA SINGH & ORS.

RESPONDENT:
JANGIR SINGH & ORS.

DATE OF JUDGMENT: 15/12/1954

BENCH:
M.C. MAHAJAN (CJ) & N.H. BHAGWATI & B. JAGANNADHADAS & T.L.V. AIYYAR &
B.P. SINHA

JUDGMENT:

JUDGMENT AIR 1956 SC 1 The Judgment was delivered by :

MAHAJAN C. J. : The facts giving rise to this appeal lie within a narrow compass, and can be shortly stated. One Bishan Singh, a Sikh Jat belonging to the Dhande tribe, was the owner of the land in dispute which is situated in Patti-Gainda of village Naraingarh in the State of PEPSU.

On 8-4-1935 he adopted Jangir Singh, the plaintiff in the suit, by means of a registered deed and declared therein that Jangir Singh would inherit to all his movable and immovable properties after his death. Bishan Singh died sometime in April 1944. The mutation of the land, after his death, was entered in the name of Jangir Singh but possession of it was taken by the defendants who are direct descendants of Gainda and are collaterals of Bishan Singh in the fifth degree.

In this situation Jangir singh filed the present suit for possession alleging that he being the adopted son of Bishan Singh was entitled to succeed to the property. The defendants denied the factum and validity of his adoption, and further pleaded that the land in suit was ancestral property of Bishan Singh and under custom he had no right to dispose it of.

2. On the pleadings of the parties the trial Judge framed four material issues :

(1) Whether the plaintiff was adopted by Bishan Singh?

(2) Whether the adoption was valid?

(3) Whether the defendants were collaterals of Bishan Singh?

(4) Whether the property in dispute was ancestral qua the defendants?

Issue No. 1 was decided in favour of the plaintiff but all the other issues were decided against him. In the result the plaintiff's suit was dismissed, the parties being left to bear their own costs. On issue No. 4 the learned Judge held that from the extract of the record of rights placed by the defendants on the record and the copy of the pedigree table it was clear that the land in dispute was ancestral qua the descendants of Gainda, the common ancestor of this family.

The adoption of the plaintiff was held invalid on the ground that according to custom Bishan Singh could not adopt a descendant of his maternal grandfather and it was only a collateral or an agnatic relation who could be adopted amongst the Jats of these parts.

3. The decision of the trial Judge was affirmed in appeal by the District Judge who also took the view that a stranger to the family of the adopter could not be adopted under custom by which the parties were governed. On the ancestral nature of the property the learned District Judge observed as follows :

> "The pedigree table of family No. 9 shows that the defendants are collaterals of Bishan Singh deceased in about the 5th degree. The common ancestro was Gainda, who had seven sons, namely, Chandu, Nagahia, Raja Ram, Himmata, Samonda, Lakha and Dayala. The holdings shown are Chandu 122 bighas 15 biswas, Nagahia 115 bighas 8 Biswas, Raja ram 123 bighas 2 Biswas, Himmata 115 Bighas 11 Biswas, Samonda 122 bighas 16 biswas, Lakha 125 bighas 11 biswas and Dayala 129 bighas. It will be observed that the holdings of Chandu, Raja Ram, Samonda and Lakha are almost equal, and those of Nagahia and Himmata are again almost equal, and that of Dayala is somewhat larger than the others.
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> In the Pemana Haqiat the descendants of each branch are shown to hold land as 1/7th share of the total area. This leads to the conclusion that the land of Gainda, the common ancestor, was divided into seven shares and each one of the seven sons got 1/7th share of the whole and consequently the descendants of each son are shown to possess shares of the that 1/7th. The slight disparity in the areas held by these seven brothers must be due to the quality of the land, because out of seven brothers two hold almost equal areas and again three hold equal areas."

The plaintiff having been unsuccessful in the first two courts preferred a second appeal to the High Court of PEPSU. This appeal was in the first instance heard by a single Judge who expressed of doubt as to the correctness of the opinion of the two courts below regarding their decisions on the ancestral character of the land.

A new point was urged before him that even if the adoption was invalid, the property being self-acquired Bishan Singh could make a gift in favour of Jangir Singh and Bishan Singh having declared in the deed of adoption that Jangir Singh would inherit to his movable and immovable properties after his death, Jangir Singh was entitled to them.

The learned Judge thinking that this question was of sufficient importance to be decided by a larger bench directed the case to be laid before the Chief Justice for constituting a bench. The appeal was then heard by a Division Bench of the court. The bench reversed the concurrent finding of the first two courts on the question of the nature of the property and held that it had not been proved to be ancestral. The decision on this point was stated in these terms :

> "The copy of the pedigree table produced by the defendants goes to show that Gainda Singh was the common ancestor and Bishan Singh was his descendant in the fifth degree. Gainda Singh had seven sons. Of these Samonda was the ancestor of Bishan Singh, and the defendants are the descendants of his other sons, some in the fifth degree and some in the sixth.
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> At the time of the first regular settlement which took place in 1962 (1905-6 A. D.) the land held by Bishan Singh and other descendants of Gaina Singh were almost equal and it was from this fact that the Courts below appear to have drawn the presumption that the whole of the land was once owned by Gainda Singh and it devolved upon his descendants by succession.
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> This is my opinion, and to the same extent was the opinion of my learned brother as expressed in the referring order, that the mere fact that remote descendants of a person are found to hold equal or almost equal amount of land at the time of first settlement, cannot by itself raise the presumption that the land came from the common ancestor. In the present case a reference to the copy of the Kafiat Delhi would go to show that the land was probably not owned by Gainda. According to that document the village was originally owned by two tribes, Rajputs and Dhande Jats. Later on the Rajputs' Patti was abolished and the entire land of the village was taken hold of by the Jats.
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> Afterwards certain other Jats and one family of Brahmans and one Guosains was allowed to settle in the village and in Samvat 1888 when a part of the village land was given to village Sangatpura, which then came into existence, there was a fresh allotment of lands and after that possession became the measure of right. In view of this fact, it is impossible to hold that the land of which every descendant of Gainda Singh was in possession at the time of first settlement, had devolved upon him from Gainda."

The Division Bench having decided that the land was not proved to be ancestral proceeded to refer the following questions to a Full Bench :

"(1) Does the term" kinsman "used in paragraph 35 of Rattigan's Digest of Customary Law mean a collateral and if not, can a distant relation like the great-grandson of the adopter's mother's father's brother be regarded a "kinsman".

(2) If a person governed by Customary Law adopts another person as his son and the adoption is later on set aside as invalid according to custom, can the adopted son succeed to the non-ancestral property of the adoptive father on the ground that his adoption was tantamount to a gift or bequest"

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The Full Bench answered both these questions in the affirmative. In other words it held that the expression "kinsman" referred in the Customary Law had reference to and meant agnatic relation and that a distant relation like that of the adopter's mother's father's brother could not be included within it. It further held that even if the adoption was invalid, the adopted son could succeed to self-acquired property of the adopter on the basis that the adoption in these parts in tantamount to a gift or a bequest.

In the result the appeal was allowed and the plaintiff's suit was decreed as laid. The case was however certified to be a fit one for appeal to this court under Art. 133 (a) of the Constitution of India. This appeal is now before us in view of that certificate.

4. In our judgment the appeal can be disposed of on the short ground that there was no justification whatsoever for setting aside the concurrent finding of the first two courts on the question of the character of the land in dispute, and there is thus no necessity to resolve the legal question raised, as in that view of the case the plaintiff's suit is admittedly bound to fail. It appears from the entries in the pedigree table prepared at the settlement of 1907-09 that Gainda, the common ancestor of Bishan Singh and of the defendants, had seven sons and Bishan Singh and the defendants represent the line of these sons, Bishan Singh having descended from Samonda, while the defendants being the descendants of the other brothers of Samonda.

Bishan Singh at the time of the regular settlement held 122 bighas 16 biswas of land which was described as being 1/7the share of the total family holding. The shares of the descendants of the other sons of Gainda Singh were also described in similar terms. Some of them held one-half of 1/7th, others held one third of 1/7th and so on. This subdivison was in accordance with the number of the descendants of each one of the seven sons. An explanatory note is appended to this pedigree and it is in these terms :

> "This Patti Gainda is known after the name of the ancestor of the proprietors and they are in its possession and pay land revenue. However, for division of Shamlat deh Rs. 8/2/6 in all according to the ancestral shares is entered in column....."

From these entries which carry a presumption of truth it is clear that the whole of the land which was once owned by the common ancestor was at the time of the regular settlement in possession of his descendants according to ancestral share and the shamlat deh which is also in suit was also divisible according to ancestral shares.

It has not been suggested that any to the descendants of Gainda Singh acquired any land in this Patti by purchase of introduced strangers in it by selling any portion of their ancestral holding. That being

so, the learned District Judge was justified in drawing the inference from the circumstance of equality of holdings and the reference to these in terms of ancestral shares, that the land in suit had develved on Bishan Singh by descent from Gainda, and there were no valid grounds for referring that decision.

The circumstances established in the case are compatible only with the theory that this land came to his sons from Gainda and these circumstances cannot be explained on any other reasonable hypothesis.

5. The High Court for its conclusion placed reliance on the "Kafiat Dehi"(village history) as given in the settlement record, this is what is stated therein :

> "Originally Tooni Rajputs, and our ancestors, that is, the ancestors of the proprietors Jat Dhande were in possession of the estate of this village in equal shares. In the times of Muslim Rulers the land revenue fell in arrear against Tooni Rajputs who absconded out of fear of harassment and violence at the hands of the then ruler. The common ancestor of Jats Dhande on payment of the arrears of land revenue acquired possession of the whole village and called the following families also and distributed them land as owners ..... Since the village had passed into the ownership of a sole owner, the families who migrated afterwards got land according to their means.
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> In 1831-32 A. D. some area of this village was set apart and a separate village named Sangatpura came into being, whereby the remaining scale of holding (Raha Saha Paimana Haqiyat) was also disturbed. It has been decided that the enhancement or reduction will depend upon the possession. That is to say, at present the revenue of Rs. 7-15-9 is paid on the land of ten dirams. As a matter of fact previously the sale was Rs. 8/2/6; ..... for the division of the Shamlat deh the original scale of Rs. 8/2/6 was entered in the pedigree table. The following six Pattis are named after the names of the ancestors; Sangu, Piru, Jalla, Malla, Hari Chand and Gainda."

There is nothing in this document from which an inference could be drawn that there was any disturbance in the scale of holding in Patti Gainda. On the other hand the "Paimana Haqiyat"(measure of right) as given in the records clearly indicates that the Patti is being held by the descendants of Gainda according to ancestral shares. In these circumstances there was no reason for doubting the ancestral character of the land in dispute in this case.

We are further of the opinion that this was not a fit case in which a concurrent finding of the first two courts should have been set aside on further appeal even if the finding was not binding under the law then prevailing in PEPSU and the High Court could re-examine the finding in second appeal.

6. The result is that this appeal is allowed, the judgment of the High Court is set aside, and that of the trial judge dismissing the plaintiff's suit is restored. In the circumstances of this case, we make no order as to costs.