

CASE NO.:
Appeal (civil) 7162 of 2005

PETITIONER:
Bant Singh & Anr.

RESPONDENT:
Niranjan Singh (D) by Lrs. & Anr.

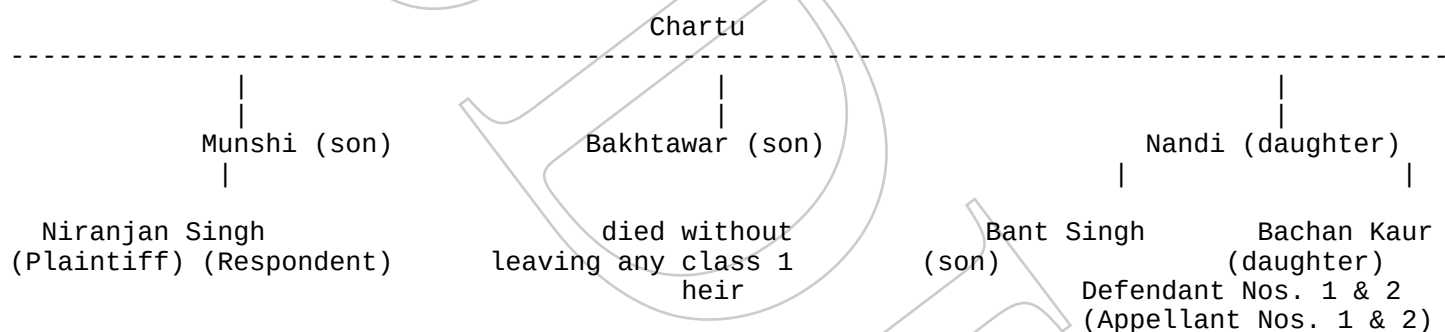
DATE OF JUDGMENT: 15/01/2008

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

1. Application of Section 50 of the Indian Evidence Act, 1872 is involved in this appeal which arises out a judgment and order dated 27.8.2003 passed by a learned Single Judge of the Punjab and Haryana High Court in Regular Second Appeal No. 1290 of 1982 allowing the appeal from a judgment and order dated 12.3.1982 passed by the Additional District Judge, Patiala setting aside the judgment and decree dated 31.3.1981 passed by the Subordinate Judge, First Class, Patiala decreeing the suit of the respondents. Before embarking upon the said question, we may notice the genealogical tree of the parties.



2. Chartu died in 1935. According to the appellants upon death of Chartu, the properties devolved upon his sons Munshi and Bakhtawar in equal shares. Entries in that behalf in the revenue records were made showing interest of Munshi and Bakhtawar in equal shares.

3. On or about 16.6.1956, Munshi Singh died. His share in the property was inherited by his son Niranjan Singh. To the same effect allegedly mutation in the revenue records was carried out. Bakhtawar, the other son of Chartu died on 25.10.1972. The share of Bakhtawar Singh in the said property was mutated in favour of Niranjan Singh, son of Munshi Singh and Bant Singh and Bachan Kaur, son and daughter of Nandi, being his class two heirs. On or about 28.7.1978, the respondent herein filed a suit challenging the said order passed by the Revenue Officer in the mutation proceedings, inter alia, claiming that the property was a joint coparcenary property and, thus, Nandi did not derive any interest therein. It was furthermore contended that Nandi was not the daughter of Chartu. The learned Trial Judge in view of the pleadings of the parties framed the following issues :
\023i) Whether the disputed property is joint Hindu Family coparcenary property of the plaintiff and the deceased Bakhtawar Singh and his ancestors?
OPP

ii) Whether deceased Nandi was the daughter of Chartu as alleged? OPD

iii) Whether defendant No. 1 and 2 are the son and daughter of aforesaid Nandi and are heirs of deceased Bakhtawar Singh? OPD

iv) Whether the plaintiff is in possession of the suit land? If not its effect? OPD

v) Relief.\024

4. In its judgment and order dated 31.3.1981, the learned Trial Judge held that the property in suit being joint coparcenary property, Nandi did not inherit any interest therein. However, in regard to the status of the appellants, it was held that Nandi was the daughter of Chartu and sister of Bakhtawar Singh.

5. Appellants preferred an appeal thereagainst which, by a judgment and order dated 12.3.1981, was allowed.

6. While upholding the findings of the learned Trial Judge in regard to the relationship of the appellants vis-à-vis the said Bakhtawar Singh holding that Nandi, was the mother of the appellants was the daughter of Chartu and the sister of Bakhtawar Singh. It was also held that the property in suit was not a coparcenary property and, thus, Niranjana Singh and Bakhtawar Singh had half shares each therein.

7. Cross objection of the respondents in regard to the finding of the learned Trial Judge on issue Nos. 2 and 3 was also dismissed.

A second appeal was preferred thereagainst.

The following substantial questions of law were formulated by the High Court:-

\023a) Whether the evidence led by the defendants conforms to the requirements of Section 50 of the Indian Evidence Act, 1872 and as such can be taken to have proved the relationship of Smt. Nandi, mother of defendants No. 1 and 2 with Bakhtawar Singh deceased?

b) As to whether the learned courts below have returned their findings on the basis of such evidence which is not admissible in view of Section 50 of the Indian Evidence Act, 1872 and are also based upon the mis-reading of the evidence led by the parties?

c) Whether the courts below having not dealt with the matter in controversy in correct perspective, the judgments are liable to be set aside being judicially perverse?\024

8. The High Court, in its judgment, entered into the question of fact and sought to appreciate the evidence of D.W.-1, Jhaggar Singh and D.W.2 Hajura Singh and opined that the evidence led by them was not in conformity with Section 50 of the Indian Evidence Act. On the said finding, the Second Appeal was allowed.

9. Mr. P.N. Puri, the learned counsel appearing on behalf of the appellants, submitted that the High Court committed a serious error of law in interfering with the findings of fact arrived at by the courts below.

10. Mr. Manoj Swarup, learned counsel appearing on behalf of the respondent, on the other hand, took us through the depositions of DW-1 and DW-2 as also the decision of this Court in *Dolgobinda Paricha Vs. Nimai Charan Misra* [AIR 1959 SC 914] to contend that the evidence of the said witnesses was rightly held to be not conforming to the requirements of Section 50 of the Evidence Act.

The learned counsel also made an endeavour to raise a contention that the property, in question, being a coparcenary property, Nandi, in any event, did not inherit any right, title or interest upon the death of Bakhtawar Singh.

11. Relationship of Nandi as sister of Munshi Singh and Bakhtawar Singh was sought to be proved by Jhaggar Singh, DW-1, Hajura Singh, DW-2, Bachan Kaur, DW-3 and Bant Singh, DW-4.

12. The learned Trial Court in its judgment on issue Nos. 2 and 3 analysed the evidences of the said witnesses in great details.

13. It does not appear from the judgments of the learned Subordinate Judge as also the learned Additional District Judge that any evidence was adduced on behalf of the respondent to establish as to whose daughter Nandi was. Plaintiffs/Respondents, furthermore failed to establish as to how the order of the revenue authorities directing mutation of the name of the appellants herein was illegal.

14. An entry made in the revenue records may not be decisive to as regards the status of the parties but a presumption in regard to possession can be raised on the basis thereof.

15. The High Court, unfortunately did not refer to the depositions of the witnesses examined on behalf of the appellants at all. It proceeded only on the basis that the oral evidence of DW-1 and DW-2 do not pass the tests of Section 50 of the Indian Evidence Act.

16. DW-1, at the time of his deposition, was aged 80 years. He is the brother of Baksha Singh, husband of Nandi. He proved the geneology of the family of Chartu. Nandi, was the wife of his brother. He, therefore, had special knowledge in regard to relationship between her, on the one hand, and Munshi and Bakhtawar Singh, on the other.

17. He attended the marriage of Nandi. Bakhtawar and Munshi, according to him, used to come to their house. The relationship between the appellants and the said Munshi Singh and Bakhtawar Singh was, thus, within his special knowledge. He categorically stated the manner in which the appellants used to be treated by Munshi Singh and Bakhtawar Singh.

In answer to a question put to him in cross-examination, he, in no uncertain terms, categorically stated that he had heard as well as saw Nandi calling Munshi Singh and Bakhtawar Singh as "brother". He attended the marriage of Nandi when he was only 15 years old.

18. To the similar effect is the evidence of DW-2, Hajura Singh who was another brother of Baksha Singh. He was aged 75 years on the date of his deposition.

DW-2 is a resident of the same village. He had also watched the parties from a close quarter and, thus, could depose about the conduct of Nandi vis-à-vis Munshi Singh and Bakhtawar Singh.

He apart from other things testified that Bakhtawar Singh had come to attend the marriage of Bachan Kaur. He stated in detail about the family of both the parties. He deposed that he had old dealings with Baksha Singh, being of the same village. He also attended the marriage of the brother of Baksha Singh, being a close relative.

19. In *Dolgobinda Paricha* (supra), this Court relied upon the evidence of

two witnesses who had attended the marriage of Haripriya and the Lokanath which was in dispute. In that case, the relationship of Ahalya and Malabati as the daughter of Lokanath was in dispute.

Interpreting Section 50 of the Evidence Act, this Court held :

\023\0050n a plain reading of the section it is quite clear that it deals with relevancy of a particular fact. It states in effect that when the court has to form an opinion as to the relationship of one person to another the opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact. The two illustrations appended to the section clearly bring out the true scope and effect of the section. It appears to us that the essential requirements of the section are \027 (1) there must be a case where the court has to form an opinion as to the relationship of one person to another; (2) in such a case, the opinion expressed by conduct as to the existence of such relationship is a relevant fact; (3) but the person whose opinion expressed by conduct is relevant must be a person who as a member of the family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfill the condition laid down in the latter part of the section. If the person fulfils that condition, then what is relevant is his opinion expressed by conduct. Opinion means something more than mere retailing of gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. Now, the \023belief\024 or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion. What the section says is that such conduct or outward behaviour as evidence of the opinion held is relevant and may, therefore, be proved.\024

It was furthermore held :

7\005If we remember that the offered item of evidence under Section 50 is conduct in the sense explained above, then there is no difficulty in holding that such conduct or outward behaviour must be proved in the manner laid down in Section 60; if the conduct relates to something which can be seen, it must be proved by the person who saw it; if it is something which can be heard, then it must be proved by the person who heard it; and so on. The conduct must be of the person who fulfils the essential conditions of Section 50, and it must be proved in the manner laid down in the provisions relating to proof. It appears to us that that portion of Section 60 which provides that the person who holds an opinion must be called to prove his opinion does not necessarily delimit the scope of Section 50 in the sense that opinion expressed by conduct must be proved only by the person whose conduct expresses the opinion. Conduct, as an external perceptible fact, may be proved either by the testimony of the person himself whose opinion is evidence under Section 50 or by some other person acquainted with the fact which express such opinion, and as the

testimony must relate to external facts which constitute conduct and is given by persons personally acquainted with such facts, the testimony is in each case direct within the meaning of Section 60. This, in our opinion, is the true interrelation between Section 50 and Section 60 of the Evidence Act.

20. Applying the aforementioned tests in regard to the evidences of \021Janardan Misra\022 and \021Dharanidhar Misra, the two witnesses who were examined to prove the relationship between Ahalya and Malabandi, it was opined;

\0239. The first question which we must consider is if Janardan Misra and Dharanidhar Misra had special means of knowing the disputed relationship.

Janardan Misra was aged about 62 in 1946, and he was related to the family of Baidyanath Misra. Kashi Nath Misra was his grandfather and was a brother of Baidyanath Misra. Obviously, therefore Janardan Misra had special means of knowing the disputed relationship, being related to Baidyanath and therefore to Haripriya, who was the second wife of Lokenath. He said in his evidence that he knew Lokenath Parichha, had seen his first wife Satyabhama and remembered the marriage of Haripriya with Lokenath Parichha. Obviously, therefore, he fulfilled the condition of special knowledge. He further said that he attended the marriage of Malabati, daughter of Lokenath, when Lokenath was living. That marriage took place in the house of Lokenath. He also said that he was present when the first two daughters of Malabati were married and also at the time of the upanayan ceremonies of Plaintiffs 1 and 2. According to the witness, Shyam Sundar Pujari, a son of a sister of Lokenath, acted as a maternal uncle at the time of the marriage of the eldest daughter of Malabati and Dayasgar Misra carried Radhika, second daughter of Malabati, at the time of her marriage.\024

See also Shantinath Ramu Danole and Anr. Vs. Jambu Ramu Danole and Ors. [(1996) 11 SCC 88] and Munshi Singh Vs. Mal Dass [(1977) 4 SCC 65].

21. Applying the same tests, we have not doubt that the evidence of DW-1 and DW-2 are admissible in evidence being in conformity with the provisions of Section 50 of the Indian Evidence Act. It will bear repetition to state that the High Court, for the reasons best known to it, did not advert to the depositions of the witnesses examined on behalf of the appellants at all. The High Court could have interfered with the finding of fact in a second appeal provided it applied the right tests, but it failed to do so.

22. The submission of Mr. Manoj Swarup, learned counsel for the respondent that this Court should enter into the question as to whether the suit property was an ancestral property or not, in our opinion cannot be accepted. No substantial question of law in that behalf was raised. Out of the three substantial questions of law, as referred to hereinbefore, only the first two questions related to application of Section 50 of the Indian Evidence Act. The third question formulated was not a substantial question of law at all.

As the respondent failed to persuade the High Court to formulate any substantial question of law on that point vis. that the property, in question, was a coparcenary property, it is too late in the day to ask this Court to formulate such a question and remit the matter to the High Court.

23. Whether there has been a severance of the joint family property between Munshi Singh and Bakhtawar Singh is essentially a question of fact

and, thus, in our opinion, the said question cannot be permitted to be reopened before us.

24. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no order as to costs.

JUDIS