



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-3104-2015(O&M)

Reserved on : 13.05.2025

Date of decision:27.05.2025

Tikka Vikrant Singh

..Petitioner

Versus

Mian Yoginder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Kumar Jindal, Sr. Advocate
with Mr. Akshay Jindal, Advocate
Mr. Abhishek Shukla, Advocate
for the petitioner

None for respondent no.12 and 13

ANIL KSHETARPAL, J.

1. Plaintiff no.2 assails the correctness of the orders passed on 05.05.2012 by Additional Civil Judge, Jr. Division, Panchkula resulting in rejection of the plaint, which in appeal has been affirmed by the appellate court.

2. In substance, two sons of Mian Yoginder Singh filed a suit for the grant of decree of declaration, mandatory and permanent injunction on the basis of rule of Primogeniture. The plaintiffs claim that under the rule of Primogeniture only the eldest male heir of the deceased is entitled to exclusively inherit the property because Hindu Succession Act, 1955 is not applicable.

3. Learned senior counsel representing the petitioner has made the following submissions:-



i) In view of the judgment passed by the Supreme Court in **Satinder Singh vs. Umrao Singh 1961 AIR (SC) 908** rule of Primogeniture is applicable to jagir property

ii) As per Section 5 (ii) of Hindu Succession Act, 1956, Act is not applicable where rule of Primogeniture is applicable.

iii) The plaintiff was not party to the settlement dated 27.06.1996 which resulted in decree dated 02.11.1996.

iv) There is no prohibition in filing the fresh suit to challenge the decree passed on the basis of compromise because the plaintiffs were not party to the same. Hence, it will be governed by Order XXIII Rule 3B of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

4. This Court has considered the submissions made by the learned counsel representing the parties.

5. The reliance placed on **Satinder Singh's case (supra)** is misconceived because the aforesaid judgment arose from acquisition of land for construction of new capital for the State of East Punjab. In para 11 of the judgment the Supreme Court noticed that applicability of rule of Primogeniture was never seriously debated before the Supreme Court. Hence, reliance placed on observation made in para 12 does not act as a ratio decidendi to the effect that rule of Primogeniture is applicable. It may be noted here that recently in **Talat Fatima Hasan through her constituted Attorney Syed Mehdi Husain vs. Syed Murtaza Ali Khan (dead) by Legal Representatives and others (2020) 15 SCC 655** the Supreme Court



has held that succession to properties declared by an erstwhile ruler to be his private properties in the agreement of succession will not be governed by the rule of succession applicable to Gaddi/Rulership. The right of rulership and incident thereof is distinguished from ownership of the private properties of the ruler which will be governed by the succession as per personal law applicable to the ruler. Moreover, in this case, the plaintiffs have themselves averred that on the death of Mian Goverdhan Singh, the great great grandfather of the plaintiffs, some part of the property was mutated in favour of widow Radhika Rani, who in turn sold the property, which resulted in multiple litigations. Ultimately, all the suits were decided by a common judgment passed by Sub Judge, First Class Ambala City, on 26.10.1993. It was held that the Mian Yoginder Singh failed to prove that the disputed land was a part of jagir. Various appeals were filed before the appellate authority, however, Mian Yoginder Singh entered in various settlements with several defendants on 27.06.1996, which resulted in judgment dated 02.11.1996. Thus, it is evident that the court found that the property is not part of the jagir. Hence, in any case rule of Primogeniture will not be applicable.

6. Similarly, second argument also lacks substance because Section 5(ii) of Hindu Succession Act, 1956 lays down that if by terms of any Covent or agreement or by terms of any enactment passed before the commencement of Hindu Succession Act, 1956 rule of Primogeniture is applicable. It is not averred in the plaint that there was any covent or agreement or any enactment. Moreover, as already



noticed, there is a finding by the Sub Judge First Class to the effect that the suit property is not jagir property.

7. The next argument of the learned counsel also lacks substance because the plaintiffs are claiming to be two sons of Mian Yoginder Singh, who entered into a settlement. Thus, the plaintiffs, being the successors in interest of Mian Yoginder Singh, are not entitled to claim that they are not party to the settlement.

8. The last submission is not applicable in view of the forgoing observation made. Order XXIII Rule 3B CPC is applicable when the suit is filed in representative capacity. It is not the case of the plaintiff that Mian Yoginder Singh filed the suit in representative capacity.

9. Keeping in view the aforesaid facts and discussion, the revision petition lacks merit. There is no ground to interfere with the concurrent orders passed by the courts below. Hence, the revision petition is dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

27.05.2025

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No