IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1305 of 2009 (O&M)
Date of decision: 30.11.2010.

Sada Ram ...
Appellant

Versus

Paras Ram and others ...
Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. K.S.Dhanora, Advocate,
for the appellant.

Mr. Malkeet Singh, Advocate,
for the respondents.

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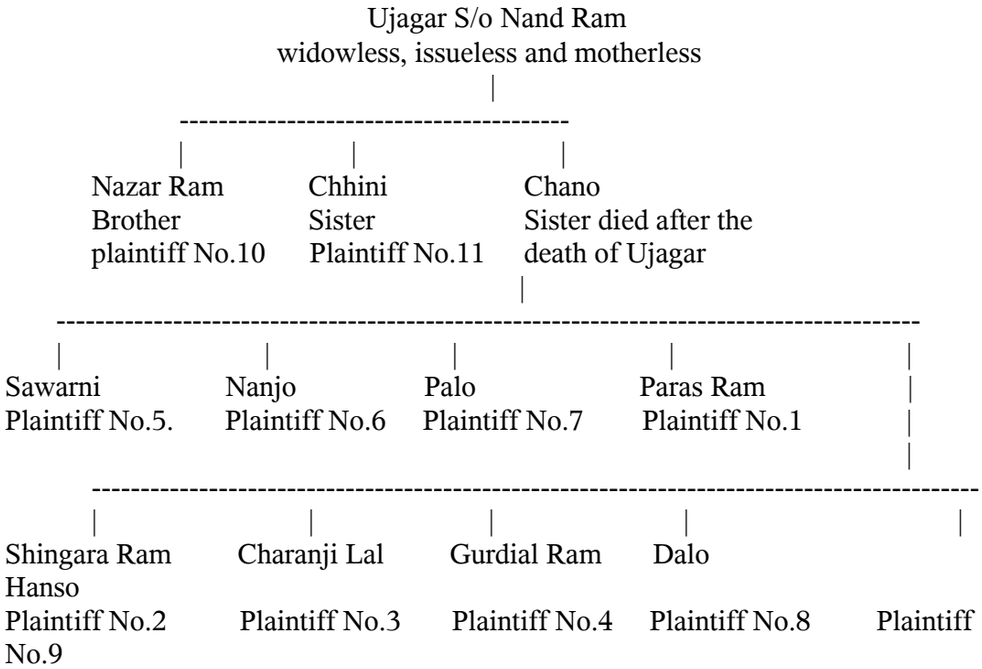
RAKESH KUMAR JAIN, J.

The question involved in this appeal is very short and precise as to whether **"whether a *pichlag or gaillad has a right to the property of his foster father".?***

The present appeal is filed at the instance of defendant No.2 (Sada Ram) against the judgment and decree of the Courts below by which suit filed by the plaintiffs for joint possession as owners to the extent of ½ share of the property in dispute has been decreed and mutation No.3370 qua inheritance of Ujjagar, sanctioned in favour of defendant No.1 (Lal Chand), has been set aside and sale deed dated 01.10.2001 executed by defendant No.1 in favour of defendant No.2 on the basis of which mutation No.3370 was sanctioned, was held to be illegal, null and void.

The few skeletal facts are necessary to unfold the controversy between the parties. As per plaint, plaintiffs have claimed themselves to be the heirs of deceased Ujjagar S/o Nand Ram, resident

of village Bharsinghpura. The pedigree table reproduced in the plaint is as under: -



The dispute is with regard to the estate of Ujagar, who died as a bachelor without leaving behind any widow, issue or even mother, but for his brother Nazar Ram, sister Chhini and the children of his sister Chano who died after his death. Defendant No.1, in connivance with *Halqa Patwari* and 2-3 other persons of the village, got sanctioned a mutation of the estate of Ujjagar claiming himself to be a *pichlag/gaillad.* As soon as the estate of Ujjagar was mutated in his favour vide mutation No.3770, he sold the property in dispute to defendant No.2 on 01.10.2001. It is alleged by the plaintiffs that a *pichlag/gaillad* has no right to the property of his foster father, therefore, the mutation in favour of defendant No.1 and the sale deed in favour of defendant No.2 are illegal. The plaintiffs, thus, prayed for decree for joint possession as owners on the basis of succession as per provisions of the Hindu Succession Act, 1956 [for short "the Act"]. In the written statement filed by the defendants, it was alleged that defendant No.1 is the son of Ujjagar who succeeded to his property after his death and had right to dispose it of in any manner. The plaintiffs filed replication, in which it was categorically pleaded that Ujjagar had never married and since in the mutation, defendant No.1 is recorded as his *pichlag*, he does not enjoy any right unde the Act. On the pleadings of the parties, issues were framed. Both the Courts below decreed the suit of the plaintiffs upholding them to be the heirs

of Ujjagar and that defendant No.1 had no right to succeed to his property under the provisions of the Act.

The subsequent vendee (Sada Ram) appellant, had submitted that he has purchased the property from Lal Chand (defendant No.1) who is the son of Ujjagar being a *pichlag*, therefore, the judgment and decree of the Courts below are illegal.

On the other hand, learned counsel for the plaintiffs have submitted that Lal Chand, while appearing as DW1, has specifically stated in his cross-examination that he is a *pichlag* having been born to one Resham Kaur, who lateron married to Ujjagar after his wife Kartari had died. Thus, learned counsel for the plaintiffs has submitted that the status of defendant No.1 is not disputed but he has no right to the property of Ujjagar.

The question, which has been posed by learned counsel for the appellant in the beginning of this judgment, is considered by this Court in the light of the provisions of the Act. Under the Act, "heir" is defined under Section 3(1)(f), which means any person, male or female, who is entitled to succeed to the property of an intestate under the Act. Term "intestate" is defined under Section 3(1)(g), which means that a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect. The relations have been defined under Section 3(1)(e) of the Act, namely "full blood", "half blood" and "uterine blood" (i) "full blood" means if two persons are related to each other by full blood when they have descended from a common ancestor by the same wife, ii) "half blood" means if two persons are related to each other by half blood when they have descended from a common ancestor but by different wives, and iii) "uterine blood" means if two persons are related to each other by uterine blood when they have descended from a common ancestor but by different husbands. The word "agnate" is defined under Section 3(1)(a) which means that one person is an "agnate" of another if the two are related by blood or adoption wholly through males. As per Section 3(1)(c) of the Act, "cognate" means one person is a cognate of another if the two are related by blood or adoption but not wholly through males.

Interestingly, the Act does not define the term *pichlag*

or gaillad. However, the term *pichlag or gaillad* is used in respect of a person which born to a woman from her earlier husband who takes him/her with her when she remarries after the death of her husband from whose loins the said person was born. To my mind, *pichlag or gaillad* does not fall in any of the relations defined under Section 3 (1) (a) and 3 (1) (e) of the Act and is not an heir as he does not come within the definition of Section 3(1) (f) of the Act, therefore, the said person, namely *pichlag or gaillad* is not entitled to succeed to the property of his foster father when he dies intestate.

In view of the above discussion, the question posed in the beginning of the judgment is answered in affirmative to hold that *pichlag or gaillad* would have no right to the property of his foster father if he dies intestate.

In view of the above discussion, I do not find any merit in the present appeal and the same is hereby dismissed. No costs.

November 30,2010. **(RAKESH KUMAR JAIN)**
rr **JUDGE**