

*The rule of Hindu law is well-settled that the property which a man inherits from any of his three immediate paternal ancestors, namely, his father, father's father and father's father's father, is ancestral property as regards his male issue, and his son acquires jointly with him an interest in it by birth*

## **[Case Brief] Muhammad Husain Khan vs Kishva Nandan Sahai**

<b><u>Case name:</u></b>	Muhammad Husain Khan vs Kishva Nandan Sahai
<b><u>Case number:</u></b>	(1937) 39 BOMLR 979, Allahabad Appeal no. 21 of 1933
<b><u>Court:</u></b>	Bombay High Court
<b><u>Bench:</u></b>	Maugham, S Lal, G Rankin
<b><u>Decided on:</u></b>	7 May, 1937
<b><u>Relevant Act/Sections:</u></b>	Civil Procedure Code, Hindu law

### ➤ **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. This is an appeal from a decree of the High Court of Judicature at Allahabad, dated January 23, 1933, which reversed a decree of the Subordinate Judge of Banda, dated January 17, 1929, and allowed the plaintiff's claim for possession of a village called Kalinjar Tirhati with mesme profits thereof.
2. One Ganesh Prasad, a resident of Banda in the Province of Agra, was the proprietor of a large and valuable estate, including the village in dispute died on May 10, 1914, leaving him surviving a son, Bindeshri Prasad, who was thereupon recorded in the Revenue Records as the proprietor of the estate left by his father.
3. In execution of a decree for money obtained by a creditor against Bindeshri Prasad, the village of Kalinjar Tirhati was sold by auction on November 20, Sir 1924; and the sale was confirmed

on January 25, 1925. Bindeshri Prasad then brought the suit, which has led to the present appeal, claiming possession of the property on the ground that the sale was vitiated by fraud.

4. He died on December 25, 1926, and in March, 1927, his widow, Giri Bala, applied for the substitution of her name as the plaintiff in the suit. She was admittedly the sole heiress of her deceased husband, and this application was accordingly granted. She also asked for leave to amend the plaint.
5. The trial Judge made an order allowing the amendment, and on May 28, 1927, recorded reasons to justify that order. But in July, 1927, when the defendants in their additional pleas again objected to the amendment, the learned Judge framed an issue as to the validity of the amendment.
6. He was, thereafter, transferred from the district; and his successor, who decided the suit, dismissed it on various grounds, and one of these grounds was that the amendment of the plaint changed the nature of the suit and should not have been allowed. The High Court, on appeal by the plaintiff, has dissented from that conclusion, and held that the amendment was necessary for the purpose of determining the real questions in controversy between the parties.

➤ **ISSUE BEFORE THE COURT:**

1. Whether, even if there was a misjoinder, their Lordships should, on that ground, reverse the decree granted by the High Court?
2. Whether Giri Bala has established her title to the village in dispute?

➤ **RATIO OF THE COURT**

1. The court observed that the provisions contained in the Civil Procedure Code do not regulate the procedure of their Lordships in hearing appeals from India, but there can be no doubt that the rule embodied in Section 99 proceeds upon a sound principle, and is calculated to promote justice; and their Lordships are not prepared to adopt a course which would merely prolong litigation. **It was held that the original will of 1914 has been lost, and the plaintiff is, therefore, entitled to produce secondary evidence of its contents.**
2. The court after discussing fact observed that it was enmity which led the father to make the will in 1911, which, as stated, made no provision for either the son or the son's wife, or even his own mistress. It was obviously an improvident will, and when he fell ill, he probably thought that he should, before dying, make suitable provision for his relatives and dependents.

3. The learned Counsel for the appellants argues that the property inherited Khan a daughter's son from his maternal grandfather is ancestral property, and he relies, in support of his argument, upon the expression "ancestral property" as used in the judgment of this Board in **Raja Chelikani Venkayamma Garu v. Raja Chelikani Venkataramanayamma (1902) L.R. 29 I.A. 156, s.c. 4 Bom. L.R. 657** in describing the property which had descended from the maternal grandfather to his two grandsons.
4. Their Lordships decided that the estate was governed by the rule of survivorship, and the claim of the widow was, therefore, negatived. The brothers took the estate of their maternal grandfather at the same time and by the same title, and there was apparently no reason why they should not hold that estate in the same manner as they held their other joint property. The rule of survivorship, which admittedly governed their other property, was held to apply also to the estate which had come to them from their maternal grandfather.
5. The rule of Hindu law is well-settled that the property which a man inherits from any of his three immediate paternal ancestors, namely, his father, father's father and father's father's father, is ancestral property as regards his male issue, and his son acquires jointly with him an interest in it by birth. Such property is held by him in coparceners with his male issue, and the doctrine of survivorship applies to it.
6. The estate, which was inherited by Ganesh Prasad from his maternal grandfather, cannot, in their Lordships' opinion, be held to be ancestral property in which his son had an interest jointly with him. Ganesh Prasad Consequently had full power of disposal over that estate, and the devise made by him in favour of his daughter in-law, Giri Bala, could not be challenged by his son or any other person. On the death of her husband, the devise in her favour came into operation against her husband could not adversely affect her title.

➤ **DECISION HELD BY COURT:**

1. For the reasons above stated, their lordships are of opinion that the decree of the High Court should be affirmed, and this appeal should be dismissed with costs.
2. They will humbly advise His Majesty accordingly.