

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.575 of 1988 (O&M)**Date of Decision: 07.01.2015**

State of Haryana

. . . . Appellant

VS.

Smt. Sudhi (through LRs) & Ors.

. . . . Respondents

CORAM: HONBLE MR.JUSTICE SURYA KANT

*1. Whether Reporters of local papers may be allowed to see the judgment?**2. To be referred to the Reporters or not?**3. Whether the judgment should be reported in the Digest?*

Present: Mr. RKS Brar, Addl. AG Haryana

None for the respondents

SURYA KANT J. (ORAL)

(1). This Regular Second Appeal by State of Haryana is directed against the judgement and decree dated 11.12.1987 passed by the Additional District & Sessions Judge, Jind whereby the first appeal preferred by the respondent-plaintiffs was allowed in part *qua* respondent No.1 (Sudhi) whereas the suit in respect of other respondents has been dismissed. Consequently, respondent Mst. Sudhi has been held entitled to seek a 'separate unit' of land within the meaning of Section 3(q) of the Haryana Ceiling on Land Holdings Act, 1972.

(2). The core question raised on behalf of the appellant-State is that the jurisdiction of the Civil Court having been expressly barred

under Section 26 of the 1972 Act, the impugned judgement and decree passed by the First Appellate Court are unsustainable.

(3). The facts may be noticed briefly. Mst. Sudhi widow of Biru along with respondent No.2&3 filed a suit for declaration challenging the order dated 11.09.1978 passed by the Prescribed Authority, Narwana under the 1972 Act vide which the land of Sadhu s/o Biru was declared surplus. The case of plaintiffs was that they are legal heirs of Sadhu s/o Biru who died in the year 1959 after the Hindu Succession Act, 1955 had come into force and since each one of them falls in the category of 'Family' as defined under Section 3(f) of the 1972 Act, they are entitled to retain 'separate unit' each at the time of determination of the surplus area case of deceased Sadhu s/o Biru.

(4). The trial Court dismissed the suit against which the first appeal was preferred.

(5). The First Appellate Court vide judgement and decree held that -

- (i) Mst.Sudhi is widow of Biru to whom admittedly no notice of the proceedings held under the 1972 Act was issued only because her name did not figure in the mutation of inheritance.
- (ii) Sadhu died in the year 1959 and the entry to this effect was made in the revenue record on 18.09.1960. Since the Hindu Succession Act had come into force meanwhile, Mst.Sudhi

was concededly one of the legal heirs of her deceased son-Sadhu.

(iii) Mst.Sudhi had succeeded to the extent of 1/4th share in the suit land therefore she was entitled to secure a 'separate unit'.

(iv) Her claim was firstly not considered by the Prescribed Authority and when she moved an application, it was mechanically declined.

(6). On the strength of the above findings, the First Appellate Court allowed the appeal and decreed the suit in part *qua* Mst.Sudhi only whereas suit *qua* remaining plaintiffs who were duly heard by the Prescribed Authority was dismissed.

(7). The substantial question of law which arises for consideration is whether the First Appellate Court was competent to return these findings, notwithstanding the express bar of jurisdiction created by Section 26 of the 1972 Act?

(8). Section 26 of the 1972 Act reads as follows:-

“26. BAR OF JURISDICTION.--(1) No Civil Court shall have jurisdiction to -

(a) entertain or proceed with a suit for specific performance of a contract for transfer of land which affects the right of the State Government to the surplus area under this Act; or

(b) Settle, decide or deal with any matter which is under this Act required to be settled,

decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector, or the Prescribed Authority made under or in pursuance of this Act shall be called in question in any court.”

(emphasis applied)

(9). There can be no quarrel that the claim put forth by Mst.Sudhi before the Civil Court does not fall within the ambit of Section 26(1)(a) of the Act.

(10). In my considered view, the relief sought by Mst. Sudhi does not fall within Clause (b) also for the obvious reason that she sought only a limited declaration of her being one of the legal heirs of Sadhu s/o Biru being his mother. Such a declaration does not amount to settlement/adjudication or decision of “*any matter which is under...*” the Act is required to be adjudicated by an Authority. In other words, the question whether or not a person is ‘legal heir’ is essentially falls within the jurisdictional ambit of the Civil Court as right to inheritance cannot be determined by the Authorities under the 1972 Act. The scope of declaration granted by the First Appellate Court is that Mst.Sudhi is declared as one of the legal heirs of Sadhu s/o Biru. Her resultant entitlement to own a ‘separate unit’ under the 1972 Act is incidental and consequential. The Civil Court has not decided the total area of ‘separate unit’ nor it has identified the land to fall within such unit. Those are the issues to be determined by the ‘Prescribed

Authority' under the 1972 Act. Thus the question decided by Civil Court though is peripheral to the issues determinable under the 1972 Act but actually it does not fall within the scope and ambit of Section 26 of that Act.

(11). For the reasons afore-stated, I decline to interfere in the impugned judgement and decree and dismiss the appeal though with a clarification on the scope of the decree granted by the First Appellate Court. The authority may proceed accordingly.

(12). **Dasti.**

07.01.2015
vishal shonkar

(Surya Kant)
Judge