

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

RSA No.1291 of 2015 (O&M)

Date of Decision: 22.04.2015

Kamaljit Singh and another

.....Appellants

Versus

Surjit Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. Raman Goklaney, Advocate,
for appellants.

SHEKHER DHAWAN, J

The present Regular Second Appeal filed by plaintiffs-appellants who remained unsuccessful before the Courts below.

2. For the sake of convenience, the parties are being referred to as per their status before Court of first instance.

3. Detailed facts have already been recapitulated in the judgments of both the Courts below and relevant facts for the decision of present appeal are that plaintiff filed suit for declaration to the effect that they are owner in joint possession to the extent of 4/5th share of suit land and in the alternative suit for joint possession. The suit land was owned by Inder Singh father of Faqir Singh who was having three sons namely Kamaljit Singh, Kuldeep Singh, Surjit Singh and one daughter Surjit Kaur. However, Surjit Singh

died unmarried on 09.09.1982. Faqir Singh died on 09.03.2003. After death of Faqir Singh mutation No.678 of his estate was sanctioned in the name of plaintiffs, defendant No.1 and Gurbax Kaur in equal share and the same fact was incorporated in jamabandi Ex.P-2. 1/4th share of Gurbax Kaur widow of Faqir Singh had been sanctioned to Kamaljit Singh and Kuldeep Singh and 1/4th share of Surjit Kaur inherited by her from the estate of Faqir Singh was sanctioned in favour of Smadh Baba Naga Tandi (defendant No.2).

4. Facts are not disputed that plaintiffs had earlier filed another civil suit No.167 of 2007 dated 25.01.2007 against Surjit Kaur (defendant No.1) for permanent injunction, for restraining her from selling, alienating the suit property in any manner and the same was dismissed as withdrawn vide order dated 25.04.2008. Gurbax Kaur had sold her share in the land in favour of plaintiffs and as such plaintiffs became owner to the extent of 3/4th share in the property in question and defendants became owner to the extent of 1/4th share.

5. Defendants produced Will dated 29.11.1973 allegedly executed by Inder Singh in favour of Faqir Singh. Mutation No. 495 of inheritance of Inder Singh was sanctioned in the name of Faqir Singh on the basis of said Will which was not challenged by other legal heirs of Inder Singh as well as plaintiffs in the present appeal. The Courts below recorded the finding that chain of succession was broken and as per provision of Section 8 of Hindu Succession Act 2005, Surjit Kaur was entitled to inherit the estate of her share in the suit land in favour of defendant No.2 vide sale deed dated 07.09.2007.

6. First Appellate Court partly allowed the appeal and thereby partly

decreeing the suit that plaintiffs are in joint possession over the suit land to the extent of 3/4th share each and defendants were restrained from restraining their peaceful possession over the suit land but at the time of arguments learned counsel for appellant took the plea that findings of the Courts below are erroneous because the Courts below recorded the finding that “since the mutation No.495 of inheritance of Inder Singh was sanctioned in the name of Faqir Singh on the basis of WILL dated 29.11.1973, so even if land in the hand being ancestral, yet the chain of succession was broken and the provisions of section 8 of the Hindu Succession Act would apply”. Learned counsel for appellant took plea that both the Courts below recorded the finding that suit land was ancestral property after Inder Singh son of Labh Singh and there was ample evidence available on file to establish that suit land was ancestral property inherited by Inder Singh from his direct male ancestor. The findings of Courts below are that succession would be as per Section 8 of Hindu Succession Act and is not tenable. Because Faqir Singh was the only son of Inder Singh and in the absence of execution of any Will, Faqir Singh was to inherit the property and other legal heirs of Inder Singh being married daughter were not entitled for ancestral property as per provisions of Hindu Succession Act before its amendment in 2005.

7. Per contra learned counsel for appellant, in case the property received by plaintiffs which was ancestral property in nature, the alienation of the same is null and void. Learned counsel for appellant also took the plea that the Will, partition or consent decree deliver the nature of ancestral property to serve the Hindu Succession Act. More so amended provision of Section 6 of Hindu Succession Act comes into force. In the present case

admittedly the father of plaintiffs and defendant No.1 Faqir Singh died on 09.03.2003 that in much prior to Amendment Act 39 of 2005 which came into force on 09.09.2005. The Courts below fell in error while recording the findings that property in hand of Faqir Singh was not ancestral property. Law was laid down by learned counsel for appellant in of judgment of Hon'ble Supreme Court in case **Rohit Chauhan Vs. Surinder Singh and others 2013(4) RCR (Civil) 40 SC** and Division Bench judgment of this Court wherein law was laid down in **Asha Rani Vs. Controller of Estate Duty 1997(4) RCR (Civil) 210 P&H** wherein Court observed that a coparcener acquires rights by birth in ancestral property and the property and property inherited from father, grand father and great grand-father is ancestral property whereas any other property inherited from other relations is the separate property of the inheritor. On the same point reliance was placed upon judgment from Hon'ble Delhi High Court in case **Kavita and another Vs. Samunder Singh and ors. 2013(203) DLT 621.**

8. Learned counsel for appellant also placed reliance upon judgment from Hon'ble Supreme Court in case Sheela Devis Vs. Lal Chand and another 2006(4) RCR (Civil) 912 wherein Hon'ble Supreme Court observed that provisions of Section 8 of Hindu Succession Act are not retrospective in operation and wherein a male Hindu died before the Act came into force i.e. where succession opened before the Act, Section 8 of the Act will have no application. Learned counsel for appellant also took the plea that settled proposition of law that succession does not remain in abeyance. It takes effect immediately at the exact moment of death of the person by operation of law. On this point reliance was placed from co-ordinate Bench of this Court in case **Shanti Devi and Suchitra @ Santosh and another 2009(2)**

RCR (Civil) 657 P&H.

9. Having considered the submission made by learned counsel for appellant and the law point raised raised by him, this Court is of the considered view that both the Courts below have recorded the finding of fact that as per the amendment of Hindu Succession Act 2005 the daughters have been equated with the main coparcener that being in the share in the property even if the land is ancestral and as such their means more parity on that point that defendant No.1 is entitled for share in the property. The mutation was duly sanctioned in the light of amended Succession Act and defendant No.1 was well within her rights to execute the sale deed in favour of defendant No.2. Mutation No.678 regarding estate of Faqir Singh was rightly sanctioned in favour of plaintiff as well as Surjit Kaur defendant No.1 and Gurbax Kaur to the extent of 1/4th share. Thereafter Gurbax Kaur sold her 1/4th share in favour of plaintiff and they have become land owner to the extent of 3/4th share. The said finding of facts recorded by both the Court below do not call for any interference and there are no substantial question of law involved in this case, the present Regular Second Appeal being devoid of any merit stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 22, 2015
msd