

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2756 of 2014 (O&M)

Date of Decision: August 14, 2015

Deen Mohammad

...Appellant

Versus

Reshmi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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.Jagdeep Singh Virk, Advocate,
for the appellant.

Mr.Saroj Malakar, Advocate,
for respondent Nos.1 to 3.

Mr.Mahavir Sandhu, Advocate,
for respondent Nos.4 to 6.

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the impugned judgments and decrees dated 8.10.2010 and 4.3.2014, whereby the suit filed on behalf of the appellant seeking declaration that he is owner in possession of land measuring 23 kanals 4 marlas, i.e., the suit property and as well as challenge to the decree dated 30.5.1998 passed in Civil Suit No.161 of 1997 has been dismissed by both the Courts below.

Mr.Jagdeep Singh Virk, learned counsel appearing on behalf of the appellant-plaintiff submits that the declaration was sought with regard to the property left by Mol Deen son of Nabia, real uncle of the appellant, on

the basis of customary law, according to which, on death of the owner, the property goes to his male heir, i.e., the appellant being collateral and the same will not be inherited by the daughters/female heirs and, therefore, the appellant is entitled to get the suit property. In this regard, he has referred Para 23 of the Rattigon's Digest, which reads thus:- collateral

“A daughter only succeeds to the ancestral landed property of her father, if an agriculturist, in default (i) of the heirs mentioned in the preceding paragraphs; (ii) of her male collaterals of her father, provided that a married daughter sometime excludes near male collaterals, especially amongst Mohamdan tribes (b) where she has with her husband continuously lived with her father since her marriage looking after his domestic wants and assisting him in the management of his estate, (c) where, being married to a collateral of the father's family, she has been appointed by her father as his heir.”

Learned counsel for the appellant further submits that both the Courts below have misinterpreted the provisions of Rattigon's Digest and, thus, committed an illegality and perversity and, therefore, the following substantial questions of law arise for determination in the present appeal:-

- a) Whether the impugned judgments/decree passed by the courts below without properly appreciating the evidence produced on record is sustainable in the eyes of law?
- b) Whether the findings and observations of the courts below are based on legal provisions and the documentary evidence on the record?
- c) Whether the collaterals, as per the customary law of

Mohammedan, would be entitled to estate and the daughters can be deprived of the same?

Mr.Mahavir Sandhu, learned counsel appearing on behalf of respondent Nos.4 to 6 submits that now it is a settled law that the daughter has a better claim to the property of her deceased parents than a collateral. In this regard, he has cited the following judgments:-

- a) **Taj Mohammad Versus Alyas (Minor), 1997(2) R.C.R. (Civil) 327;**
- b) **Abdul Hasan Versus Smt.Kalsum and others, 2000 (2) R.C.R.(Civil) 200; and**
- c) **Illahi Shamuddin Nadaf Versus Sou. Jaitunbi Makbul Nadaf, 1994(5) SCC 476.**

He further submits that there is no illegality and perversity, much less, no substantial question of law arises and, therefore, the appeal is liable to be dismissed.

I have heard the learned counsel for the parties and have appraised the paper book.

The argument of Mr.Virk, by relying upon Para 23 of the Rattigon's Digest, in my view, has not been able to cut the ice in the light of the ratio decidendi culled out in the judgments (supra), which lay down that a daughter would have a better right to the estate of the deceased person other than collaterals.

There is no doubt that the appellant is the collateral of deceased Mol Deen, whereas respondent-defendants are the first class heirs. Even otherwise, in equity, the first class heirs would have a right than collaterals.

Both the Courts below have rendered a finding of fact, based on the

appreciation of oral and documentary evidence. There is no illegality, much less, perversity in the impugned judgments and decrees. No substantial question of law arises for determination in the present appeal.

There is no merit in the appeal and the same is accordingly dismissed.

August 14, 2015
ramesh

(AMIT RAWAL)
JUDGE