

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

Regular Second Appeal No.715 of 2015 (O&M)

Date of decision: 17.08.2015

The State of Haryana through Collector, Karnal ... Appellant

versus

Harkesh (now deceased, through his LRs) and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pritam Saini, Additional Advocate General,
Haryana.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The State is in appeal challenging the decisions of the courts below allowing for a decree to be obtained by the plaintiffs who claimed to be the brother's sons of owner of the lands, Jhandu. Jhandu was an occupancy tenant in relation to the suit properties and on his death in the year 1999, the properties were held as escheated to the government for lack of proof by persons claiming to be the legal representatives of Jhandu. The order passed was that the decision taken by the revenue official could be challenged in higher forums of the revenue hierarchy. The plaintiffs decided to seek for

declaration before a civil court through the instant suit which is the subject of appeal and did not challenge the correctness of the order of escheat in higher forums.

2. At the trial, the Tehsildar himself gave evidence in favour of the plaintiffs that the plaintiffs were sons of brother of the deceased Jhandu. If Jhandu did not have wife or lineal descendants or mother, then the brother's sons will figure as class-II legal heirs of the Schedule of Hindu Succession Act relevant for Section 8 of the Act. The proof of heirship is a civil remedy and Section 9 of the Civil Procedure Code will allow for assertion of right through a civil court and there can be no compulsion for the plaintiffs to challenge the correctness of the earlier order of escheat in any higher forum of revenue authority. The choice of forum before the civil court was well founded and the decrees granted are on proof of what was required to be established. I find no error in the decisions for any intervention in second appeal. Second appeal is dismissed as without any merit.

(K.KANNAN)
JUDGE

17.08.2015
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