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

**RSA-3120-2011 (O&M)
Date of decision : 02.12.2016**

Amarjit Kaur

... Appellant

Versus

Preeto and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aakash Singla, Advocate
for the appellant.

Mr. Ashish Gupta, Advocate
for respondent Nos.7 & 8.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby the relief claiming 1/8th share of total holding of her husband Sadhu Singh, has been declined, but has been held to be entitled to half share in respect of the residential house.

Mr. Aakash Singla, learned counsel appearing on behalf of the appellant-plaintiff submits that Sadhu Singh along with his brothers and co-sharer were having 1/4th share in the land measuring 153 kanals 18 marals. He died on 16.08.2002 having left behind widow and mother. The area of 1/4th share came to 38 kanals 9.5 marlas. It is, in this backdrop of the matter, the appellant-plaintiff along with her mother-in-law was entitled to 19 kanals 5 marlas and half share in respect of the house. The lower Appellate Court has granted the relief in respect of house, but declined on the ground that the registered Will dated 12.08.2002 propounded by the

defendant(s), who are none-else, but the brothers of Sadhu Singh, the limited interest/estate was given to the appellant-plaintiff.

He further submits that the findings aforementioned are totally erroneous, much less, alien to the *ratio decidendi* culled out by the Hon'ble Supreme Court in "V. Tulasamma V/s Sesha Reddy (dead) by LRs" AIR 1977 SC 1944 as the contents of the Will would reveal that the appellant-plaintiff would become absolute owner as per Section 14 (1) of the Hindu Succession Act, 1956, thus, there is a gross illegality and perversity and urges this Court for setting aside the judgment and decree under challenge.

Mr. Ashish Gupta, learned counsel appearing on behalf of the respondent Nos.7 and 8, submits that the Will specified that no doubt during the lifetime of the appellant-plaintiff, she would be having a limited interest in agricultural land to the extent of 16 kanals, but on her demise, the property devolved upon the brothers and therefore, she could not claim the absolute ownership. The registered Will has been proved to the hilt. Even the suspicious circumstances alleged to be pleaded have not been proved and therefore, the judgment and decree under challenge is perfect, legal and justified and urges this Court for upholding the same.

I have heard the learned counsel for the parties and appraised the paper book and of the view that once the interpretation of the registered Will dated 12.08.2002 is not in dispute, giving a life interest to the appellant-plaintiff by the testator Sadhu Singh cannot be construed to be for a limited interest as it would come into absolute ownership in view of the provisions of Section 14 (1) of the 1956 Act. The aforementioned view of mine is being derived from the *ratio decidendi* culled out by the Hon'ble Supreme Court in "Jupudy Pardha Sarathy V/s Pentapati Rama Krishna

and others" 2016 (1) RCR (Civil) 1.

In my view, the claim of the appellant-plaintiff in respect of 1/8th share out of 153 kanals 18 marals i.e. to the extent of 19 kanals 5 marals is totally misplaced. She could be termed as an absolute owner in respect of 16 kanals. Since the other party is not aggrieved with the partial decreetal of the suit qua half share in respect of house, therefore, the finding of the lower Appellate Court to that extent is upheld and modified to the aforementioned extent, in essence, the suit of the appellant-plaintiff is decreed by declaring her to be owner of half share in respect of house and owner of 16 kanals in the agriculture land description of which is given in the suit.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **"Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213"**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **"Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others" 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of

five learned Judges of the Hon'ble Supreme Court in "Pankajakshi 's case
(supra) reads thus:-

"Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled." [at paras 27 - 29]"

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure

(Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

The appeal stands allowed in the aforementioned terms.

Decree sheet is ordered to be prepared.

02.12.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No