

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

1. Regular Second Appeal No.3297 of 2011 (O&M)
Date of Decision: March 10, 2016

Smt. Parveen Bala and another

...Appellants

Versus

Om Parkash (since deceased) through his LRs and another

...Respondents

2. Regular Second Appeal No.3308 of 2011 (O&M)

Smt. Parveen Bala and another

...Appellants

Versus

Om Parkash (since deceased) through his LRs and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Dinarpur, Advocate
for the appellants.

Mr. Sanjay Jain, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J. (ORAL)

By this order, I propose to dispose of two Regular Second Appeals i.e. RSA Nos.3297 and 3308 of 2011 both titled as Smt. Parveen Bala and another Versus Om Parkash (since deceased) through his LRs and another.

Challenge in these appeals is to the judgment and decree dated 03.11.2010 passed by the Civil Judge (Senior Division), Ambala, wherein the appellants challenged the Will dated 25.04.2002 executed by Ajay Kumar by which 80% of his movable and immovable property was given to the respondents-parents namely Om Parkash and Sarla Devi and 20% was given to his son Archak son of Ajay Kumar, whereas a suit was filed by the parents for declaration to the effect that the above-mentioned Will was valid

and they were entitled to the claim as per the said Will. The suit of Parveen Bala and Master Archak was dismissed and that of Om Parkash and Smt. Sarla Devi allowed holding the Will dated 25.04.2002 to be legal and valid and duly executed by Ajay Kumar. Appeals against which preferred by Parveen Bala and Archak were dismissed by the learned Additional District Judge, Ambala, on 28.04.2011 by a common order.

It is the contention of learned counsel for the appellants that the Will would entitle appellant No.2-Archak to 20% of the movable and immovable properties of Ajay Kumar and 80% of the movable and immovable properties to the respondents-parents, however, family pension would be the exclusive right of the appellants on which the respondents (parents of deceased) cannot put forth their claim.

Counsel for the respondents made an effort to dislodge the submission of the counsel for the appellants but he could not support his assertion on the basis of any statutory rules or pleadings. Rather, he states that this issue was never raised before the Courts below.

Even if the assertion made by the counsel for the respondents to the extent that this issue has not been raised before the Courts below is accepted, still it is a pure legal issue with regard to the entitlement of the appellants to the family pension. It has been held by the Division Bench of the Madhya Pradesh High Court in *Sundariya Bai Choudhary Versus Union of India and others* 2009(1)RSJ 400 in para 24 that the family pension would come under the ambit and sweep of property of the widow of the deceased employee but it cannot be equated with that of estate of that employee in view of Section 6(g) of The Transfer of Property Act, 1882.

The other retiral benefits like provident fund, gratuity etc. and other retiral

dues excluding family pension would be of the deceased employee and can be bequeathed by him. The appellants would, therefore, be held entitled to the family pension if they fulfil the requirement of and in accordance with the statutory rules/instructions which are applicable for the said purpose. The judgments and decree passed by the Courts below are modified to the said extent holding the appellants entitled to family pension in accordance with the statutory rules and instructions. However, to clarify, it may be stated again that the respondents-parents and appellant No.2-Archak will be entitled to their respective shares of 80% and 20% as per the Will qua the movable and immovable properties as per the decree impugned.

The appeals stand disposed of accordingly.

In the light of the disposal of the appeals, all the pending applications stand disposed of.

March 10, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE