

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

**R.S.A No.5125 of 2011 (O&M)
Date of decision :15.02.2016**

Joginder Kaur

..... Appellant

Versus

Paramjit Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.IPS Kohli, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 20.08.2011 passed by the learned Additional District Judge, Hoshiarpur, vide which the appeal preferred against the judgment and decree dated 15.01.2009, passed by the learned Civil Judge (Jr. Division), Dasuya, has been allowed and the suit filed by the appellant-plaintiff has been dismissed with costs.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellant-plaintiff has filed the suit for declaration with consequential relief of permanent injunction on the grounds *inter alia* that previously the land in dispute was owned by her husband Resham Singh, who died in the month of April 2000 by leaving the plaintiff as his widow, defendants no.1 to 4 widow and children of his predeceased son

Amrik Singh, defendants no. 5 to 7 children of her predeceased daughter Jaswinder Kaur and defendant no. 8 as his son. After the death of Resham Singh, the plaintiff and defendants become owners in joint possession of the suit land by operation of law in which the plaintiff has 29/80 share. Defendants no. 1 to 4 have 1/20 share, defendants no. 5 to 7 have 1/16 share each and defendant no. 8 have 1/4 share. But, the share of the plaintiff and the defendants have been incorrectly recorded in the mutation no. 1587 dated 01.08.2007. Hence the suit.

4. The suit was contested by respondents-defendants no.1 to 7 on the grounds *inter alia* that the estate of Resham Singh, who died in the year 2000 was inherited by plaintiff and defendants as per their share. It is further pleaded that the plaintiff along with Jasjit Singh son of Resham Singh had already sold their share to Malkiat Kaur vide registered sale deed dated 06.08.2001. Defendant-Malkiat Kaur has also sold her share to Malkiat Kaur widow of Mangal Singh vide registered sale deed dated 05.08.2002. The children of Jaswinder Kaur had also sold their share of land vide registered sale deed dated 08.12.2003. It was further pleaded that mutation no. 1587 dated 01.08.2007 has been correctly recorded. With these pleas, they pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
3. Whether the plaintiff has no locus-standi to file the present suit?

OPD

4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether the plaintiff has not come to the court with clean hands?OPD
6. Relief.

6. On appreciating the evidence and material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiff vide judgment and decree dated 15.01.2009. She was held to be joint owner in possession to the extent of 29/80 share in the suit property.

7. Aggrieved with the aforesaid judgment and decree dated, defendant no. 7-Paramjit Kaur preferred the appeal, which was allowed by the learned Additional District Judge, Hoshiarpur. The judgment and decree dated 15.01.2009 passed by the learned trial Court was set aside and the suit filed by the appellant-plaintiff was ordered to be dismissed with costs. Hence this Regular Second Appeal.

8. I have heard Mr. IPS Kohli, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the present appeal has been directed against the reversal of the judgment passed by the First Appellate Court. Appellant-plaintiff Joginder Kaur is the mother of deceased-Amarjit Singh son of Resham Singh. She was his class one heir as per the Hindu Succession Act, 1956 (for short 'Act') and was entitled to succeed his estate. He further contended that however the learned First Appellate Court has non-suited

the appellant-plaintiff on the basis of Section 10 of the Act.

10. I have duly considered the aforesaid contentions.

11. The matter in issue in the present case is the succession of Resham Singh, the husband of the appellant-plaintiff and there is no question of succession of Amarjit Singh and Jaswinder Kaur, the predeceased son and daughter of Resham Singh, who had died in his lifetime. So, it was to be seen as to whether the mother (present appellant) will be the legal heir of her predeceased son and daughter with respect to the inheritance of the estate left by her husband (the husband of appellant-plaintiff). Certainly, the matter in issue is the inheritance of the estate left by Resham Singh and not that of the predeceased son and daughter of the appellant. So, we are to see as to who will be the legal heirs of deceased-Resham Singh. As per the schedule appended to the Act, the Class I heirs shall be as under:-

“Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son; 1[son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son]”

The aforesaid schedule clearly indicates that only the son, daughter and widow of the pre-deceased son and similarly the son and the daughter of pre-deceased daughter are entitled to succeed their share. So, the mother nowhere figures as a legal heir along with son, daughter and

widow to inherit the share of the pre-deceased son and daughter. The relevant portion of Section 10 of the Act reads as under:-

“10. Distribution of property among heirs in class I of the Schedule.

—The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:—

Rule 1.— xxxxxxxx

Rule 2.— xxxxxxxx

Rule 3.— The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.— The distribution of the share referred to in Rule—

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters gets equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.”

In the aforesaid provision of law also the mother of predeceased son and daughter nowhere figures. Thus, appellant-plaintiff Joginder Kaur was only entitled to succeed to $\frac{1}{4}$ th share in the estate of Resham Singh-deceased being his widow. She cannot claim herself to be the legal heir of her predeceased son Amarjit Singh and predeceased daughter Jaswinder Kaur to inherit the estate of her deceased husband. Consequently, he is not entitled to the extent of 29/80 share in the estate left by her husband-Resham Singh. The position would have been different if the question would have been with respect to the inheritance of Amarjit Singh, the son of the appellant. But, here the question is with respect to the inheritance of Resham Singh, her husband and she has already been granted $\frac{1}{4}$ th share in his estate being his widow. Thus, I have

no reason to differ with the well reasoned findings recorded by the learned First Appellate Court.

12. In-spite of the settled legal position as per the provisions of the Act, the appellant has preferred this appeal and had try to drag the respondents to the litigation before this Court. So, the present appeal deserves to be dismissed with exemplary costs.

13. Consequently, the present appeal having no merits is hereby dismissed with costs of Rs. 20,000/- to be deposited with the Punjab State Legal Services Authority. Copy of this judgment be sent to the Member Secretary, Punjab State Legal Service Authority, Chandigarh.

February 15, 2016

s.khan

(DARSHAN SINGH)
JUDGE