

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

**RSA-1967-2013 (O&M)
Date of decision : 30.09.2016**

Krishan Gopal and another

... Appellants

Versus

Raj Kakkar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Talwar, Advocate
for the appellants.

Mr. Avnish Mittal, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellants-defendants in regular second appeal against the concurrent findings of fact, whereby the suit at the instance of respondent-plaintiff No.2 for possession by way of partition and consequential relief of permanent injunction has been decreed.

Mr. Ashwani Talwar, learned counsel appearing on behalf of the appellant-defendant submits that Thakar Dass Grover was the owner of the property and on his demise, survived by two sons and widow. The respondent-plaintiff No.2 was none-else, but the married daughter. As per the provisions of Section 23 prior to the amendment caused on 09.09.2005, the married daughter did not have any right to claim the partition as Thakar Dass Grover had died on 09.04.1996 and therefore, the judgment under challenge is not sustainable.

He further submits that the family settlement had also been effected, therefore, the respondent-plaintiff was neither the owner nor in

possession of the suit property, in fact, her interest was taken care of at the time of marriage. No doubt, Thakar Dass Grover had died in the year 1996, at that time, no right has accrued in favour of the respondent-plaintiff, thus, urges this Court for setting aside the judgment and decree under challenge.

Per contra, Mr. Avnish Mittal, learned counsel appearing on behalf of the respondents-plaintiffs submits that the suit aforementioned was filed on 26.11.2005, whereas the amendment in Section 23 of the Hindu Succession Act, 1956 (hereinafter called 'the 1956 Act') was caused on 09.09.2005 and therefore, right had accrued in favour of the married daughter. In support of his contentions, he relies upon the judgment passed by this Court in **“Swaran Singh V/s Charanjit Kaur and others” 2009 (2) RCR (Civil) 80** and also the judgment of the Hon'ble Supreme Court in **“G. Sekar V/s Geetha and others” (2009) 6 Supreme Court Cases 99**, wherein, it has been held that though the amendment caused in Section 23 of the 1956 Act, is in the year 2005, but has been held to be prospective, but the suit, in case, instituted thereto, and decreed subsequently, therefore, the benefit of amendment in Section 23 of the 1956 Act would be applicable, thus, urges this Court for affirming the under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and substance in the submissions of Mr. Ashwani Talwar, for, the appellants-defendants cannot take the benefit of un-amended provisions of Section 23 of the 1956 Act. In **“G.Sekar's case** (supra), an occasion arose in respect of the matter, where the suit had been filed prior to the amendment caused in Section 23 of the 1956 Act, but the suit was decreed subsequent thereto, it was held that the suit at the instance of the female heir, even married was also maintainable.

In the instant case, the aforementioned suit was filed on 26.11.2005, whereas the amendment in Section 23 of the 1956 Act was caused on 09.09.2005, thus, the appellant-plaintiff No.2 being married daughter had a full right, even this fact has reiterated by this Court in “Swaran Singh's case” (supra).

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

30.09.2016
yogesh

(AMIT RAWAL)
JUDGE

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