

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

RSA-2488 of 2016 (O&M)

Date of decision: 19.05.2016

Dev Singh

...Appellant

Versus

Gurmit Singh thr. LR

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Mohit Garg, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The suit for declaration and permanent injunction filed by the plaintiff/respondent (for short 'the respondent') was decreed by the trial Court vide judgment and decree dated 27.08.2014.

2. Aggrieved against the findings of trial Court, the defendant/appellant (for brevity 'the appellant') filed an appeal which was dismissed by the learned first Appellate Court, vide judgment and decree dated 15.01.2016.

3. The 1st Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record, hence, the instant

appeal at the behest of the appellant.

4. It is contended that both the Courts have gravely erred in decreeing the suit of the respondent by placing sole reliance on the pedigree table/kursinama, which has not been proved in accordance with the principles of evidence. The pedigree table has been prepared with malafide intention only to grab the property. Once the suit property has been transferred in the name of Kamla by her deceased husband, the same becomes self acquired and separate property. The appellant being the husband of deceased Kamla is fully entitled to inherit her suit property after her death and the respondent has no right to claim his share over the suit property.

5. I have heard the learned counsel for the appellant and perused the record carefully.

6. It is not in dispute that deceased Kamla was earlier married to Jagir Singh and after his death, she inherited the suit property from Jagir Singh, vide mutation No.2521, duly proved on record as Ex.PA. Jagir Singh died issueless and after his death, Kamla performed second marriage (karewa) with the present appellant. Kamla also died intestate and now being the husband of deceased Kamla, appellant has claimed inheritance over the suit property. The precise question to be determined is that whether

after the death of Kamla, who is the actual inheritor of the suit property. In this context, reliance can be placed upon Section 15 of the Hindu Succession Act, 1956 which provides as under:-

15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

7. Thus, as per above Rules, the appellant will not inherit the property of Kamla. It has been proved on record that the respondent is the legal heir of Jagir Singh, which is clearly established from pedigree table/kursinama, Ex.P1. The argument of learned counsel that as the pedigree table has not been proved on record, therefore, the same cannot be taken into consideration, lacks merit, as Ex.P1, the certified copy of pedigree table, has been issued by the revenue authorities. Otherwise also, the onus to prove the same to be forged and fabricated was upon the appellant, however, he failed to bring on record any evidence in this regard. Thus, in view of the above facts and circumstances of the case, this Court feels that there is no merit in the present appeal and the findings recorded by the Courts below neither suffer from any perversity or illegality nor any material point has been left un-addressed.

8. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed.

19.05.2016
sumit.k

(JITENDRA CHAUHAN)
JUDGE