

RSA No. 2053 of 1990 (O&M)

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

**RSA No. 2053 of 1990 (O&M)
Date of Decision: 18.4.2017**

Suresh Kumari

....Appellant

Vs.

Ram Jiwan and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Shubham Diwakar, Advocate for
Mr. C.B. Goel, Advocate
for the appellant.

Mr. O.P. Sharma, Advocate
for the respondents.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiff is in regular second appeal, against the impugned judgment and decree dated 28.7.1989 passed by the learned first appellate court, whereby first appeal of the defendants-respondents was partly accepted, modifying the judgment and decree dated 20.7.1988 of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that Ram Jiwan was recorded as owner of land measuring 118 kanals 16 marlas situated in the revenue estate of Bapass, Tehsil and Distt. Gurgaon and as detailed in para No.4 of the plaint. He alienated the suit land and suffered decree dated 23.10.84 in favour of defendants Nos. 2 to 6. This decree was sought to be impeached

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by the plaintiff on the grounds; first, that the impugned land was ancestral qua Ram Jiwan and defendants Nos. 2 to 6 and her husband Ram Kishan who died after coming into force of Hindu Succession Act, 1956 and he had 1/7th share in the undivided coparcenary property. Secondly, plaintiff was the widow of Ram Kishan who was not made a party to the suit resulting into decree dated 23.10.84. The alleged family settlement was based on collusion and misrepresentation and it was not a bonafide transfer. Rather, it was devised to deprive the plaintiff of her rights, title and interest in the suit land and family settlement was never acted upon. Lastly, the decree was ineffective and void against her rights and therefore, she commenced this suit seeking a decree for declaration that the decree dated 23.10.84 passed in civil suit captioned Hari Kishan and others Vs. Ram Jiwan, was not binding upon her and that she was entitled to 1/7th share in the suit land.

Having been served, defendants put appearance and filed their written statement, raising more than one preliminary objections. Plaintiff filed replication. On completion of pleadings of parties, learned trial court framed the following issues.

1. Whether the plaintiff is legally wedded wife of Ram Kishan son of Ram Jiwan, defendant No.1? OPP
2. Whether the land mentioned in para No.2 of the plaint was the ancestral or coparcenary property of defendant No.1 and Ram Kishan husband of the plaintiff?OPP
3. Whether the decree dated 23.10.84 passed in suit No. 830/1984 is illegal, invalid and ineffective and not binding upon the right, title and interest of the plaintiff, in the suit, on the grounds mentioned in para No.8 of the plaint?OPP

4. Whether the suit is not maintainable in the present form?OPD

5. Whether the plaintiff has no locus standi to file the present suit?OPD

6. Whether the suit is bad for non-joinder of necessary party?OPD

7. Whether the suit is pre-mature?OPD

8. Whether the plaintiff is barred from filing the present suit by his act and conduct?OPD

9. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction?OPD

10. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has duly proved her case. Accordingly, her suit for declaration and joint possession was decreed, holding her entitled to 1/7th share in agricultural land, as detailed in para 2 of the plaint, vide judgment and decree dated 20.7.1988. Feeling aggrieved, defendants filed their first appeal, which came to be partly allowed by the learned Additional District Judge, holding the plaintiff-appellant as well as her mother-in-law entitled for equal shares, i.e. 1/14th share each in the suit land measuring 118 kanals 16 marals, vide impugned judgment and decree dated 28.7.1989. Hence this regular second appeal at the hands of plaintiff.

Appeal was admitted for regular hearing vide order dated 6.11.1990. That is how, this Court is seized of the matter.

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Heard learned counsel for the parties.

It has gone undisputed before this Court that at the time of death of Ram Kishan, his wife-Suresh Kumari-appellant as well as his mother were alive. Dispute herein is only qua 1/7th share of late Sh. Ram Kishan in the land measuring 118 Kanals 16 marlas. It is also not in dispute that mother of late Sh. Ram Kishan was also class-I heir, as per schedule annexed to the Hindu Succession Act. Ram Jiwan-father of late Sh. Ram Kishan had six sons namely Hari Kishan, Sube Singh, Surender Singh, Bahadur Singh, Sukhram Pal and Ram Kishan, thus, Ram Kishan had 1/7th share in the suit land owned by his father-Ram Jiwan.

It is also not in dispute that suit land in the hands of Ram Jiwan was ancestral in nature. After the death of Ram Kishan, during lifetime of his father-Ram Jiwan, 1/7th share of Ram Kishan would be inherited in equal shares by his mother and widow. That is what has been held by the learned Additional District Judge, while passing the impugned judgment. Having said that, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

Since the learned trial court fell in a serious error of law, while not considering the material and undisputed fact that mother of Ram Kishan was his class-I heir and was alive at the time of death of Ram Kishan, plaintiff-appellant was illegally held entitled to succeed to the total 1/7th share of late Sh. Ram Kishan in the agricultural land, as detailed in para 2 of the plaint. It is so said, because mother of the plaintiff being class-I heir, could not have been excluded, because she was also entitled to succeed to the estate of her son in equal share with his widow, meaning thereby,

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plaintiff-appellant being widow of late Sh. Ram Kishan and his mother would be entitled to equal shares, i.e. 1/14th share each in 1/7th share of late Sh. Ram Kishan in the agricultural land, as detailed in para 2 of the plaint, which was measuring 118 kanal 16 marla.

Since the learned Additional District Judge rightly accepted the first appeal of the defendants partly, modifying the decree passed by the learned trial court, holding widow and mother of late Sh. Ram Kishan entitled to 1/14th share each in the land measuring 118 kanal 16 marla, no fault can be found with the impugned judgment and decree and the same deserve to be upheld, for this reason also.

It is also pertinent to note here that dispute between the parties arose much after coming into force the Hindu Succession Act. The learned first appellate court has specifically recorded in para 11 of its impugned judgment that Suresh Kumari-plaintiff/appellant cannot be said to be the sole heir of late Sh. Ram Kishan. He further recorded that at the time of arguments, mother of late Sh. Ram Kishan was still alive and she would also be entitled to inherit equal share with widow of her deceased son. When confronted with the abovesaid peculiar fact situation obtaining on the file, learned counsel for the appellant had no answer and rightly so, it being a matter of record. In such a situation, it is unhesitatingly held that the learned first appellate court was well justified in passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the impugned judgment passed by the learned first appellate court. He also could not refer to any question of law much less substantial question of law, which is sine

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qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

18.4.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No