

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

**RSA No.1213 of 1991 (O&M)
Date of Order:23.04.2018**

Net Ram

..Appellant

Versus

Smt. Kalla and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lakshman Sharma, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Defendant no.1-appellant is in regular second appeal against the judgment passed by the learned first appellate court reversing the judgment passed by the learned trial court.

The dispute in the present litigation is with regard to estate of Duleh Ram, who was common ancestor of the parties. Plaintiff and defendant nos.2, 3, 4 and 5 are daughters of Duleh Ram, whereas defendant no.1-appellant is the only son and defendant no.6 is widow.

Duleh Ram had executed a Will-testamentary document bequeathing his entire property in favour of his only son i.e defendant no.1-appellant on 15.08.1972. Plaintiff, the daughters challenged the aforesaid Will by filing a suit on 08.05.1986, although Duleh Ram had died on 07.04.1980.

Both the courts after appreciation of the evidence available on the file, have returned a concurrent finding that execution of the Will has been proved. The Will is signed by all the legal heirs of Duleh Ram

including the plaintiff except the beneficiary i.e. Net Ram. However, first appellate court has modified the judgment passed by the trial court by returning a finding that the property is ancestral property and the Will could only operate qua the share of Duleh Ram in the property.

In the considered opinion of this court, following substantial question of law arises:-

- (i) *Whether in the absence of any issue, the court can record a finding that the property is ancestral.*

Plaintiff when filed the suit pleaded in para 4 of the plaint that as per the provisions of Hindu Succession Act, all the legal heirs are entitled to equal share in the property. In para 5 of the plaint, it was pleaded that parties are Jats by caste and governed by custom and the Will-a testamentary document is unknown to the custom. Of course, it was pleaded that ancestral land could not be willed away.

On consideration of the pleadings, learned first appellate court framed the following issues:-

- “1. *Whether the plaintiff has locus-standi to file the present suit?OPP*
2. *Whether the deceased Duleh Ram adopted son of Kanbi Ram bequeathed al his properties in favour of defendant no.1 vide Will dated 15.8.72 is so its effect?OPD*
3. *Whether the parties being Jat are governed by the customary law in matters of alienation and succession, if so to its effect?OPD*
4. *Whether the suit is bade for non-joinder of necessary party? OPD*
5. *Whether the suit is not maintainable in the present form?OPD*
6. *Whether suit is time barred?OPD*
7. *Whether plaintiff has no cause of action to file the present suit?OPD*
8. *Relief.”*

Plaintiff failed to lead any evidence to prove that there was any custom with regard to non-execution of the will amongst Jats. It is not the finding of the first appellate court that in Jats there is any custom which debars execution of the Will. Learned first appellate court has merely recorded a finding assuming the property to be ancestral.

In the considered opinion of this court, in the absence of any evidence of custom, even if it is assumed that the property was ancestral, execution of the Will was not prohibited.

Still further as noticed, there was neither any issue on the property being ancestral in nature nor evidence was led to that effect. The Hindu Succession Act came into force in the year 1956. Dule Ram died on 07.04.1980. Dule Ram was exclusively recorded as owner of the property. Plaintiff in the plaint itself pleads that the parties are entitled to the share in the property as per Hindu Succession Act.

Such being the position, applicability of the Hindu Succession Act, 1956 was not in question. As per the Hindu Succession Act, 1956 bequeathing of property through Will is not prohibited. At the cost of repetition, both the courts have recorded concurrent finding that the execution of the Will has been proved.

Learned first appellate court has also erred in considering the Will as relinquishment deed. The will dated 15.08.1972 is a Will executed by Duleh Ram. Duleh Ram only with a view to exclude the possibility of any challenge to the will got signatures of all his legal heirs except Net Ram. Such signatures of the legal heirs including the plaintiff would not make the testamentary document a relinquishment deed. The wording of the Will has been reproduced in paragraph 8 of the judgment. It has been

noticed that other legal heirs of Duleh Ram including plaintiff has stated that except Net Ram no one would have any right, title or interest in the property.

In view of the above, the judgment passed by the learned first appellate court is set aside. The question of law framed earlier is answered in favour of the appellant. The suit filed by the plaintiff shall stands dismissed.

The regular second appeal is allowed.

April 23, 2018

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(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No