

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.478 of 2011 (O&M)
Date of Order: 31st July, 2018

Sukhwinder Kaur and another

..Appellants

Versus

Rajwant Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mohinderjeet Singh, Advocate and
Mr. Kanwardeep Singh, Advocate,
for the appellants.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Varun Issar, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below while dismissing the suit for declaration and a decree for joint possession of the land in question.

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

“Whether on the death of a female intestate, not having her own children including grand children, the property which was inherited from her father would devolve upon the heirs of her father in accordance with section 15 (2) (a) of the Hindu Succession Act, 1956?”

FACTS:-

There is no much dispute about facts. Kapoor Singh was the common ancestor. He initially married with Mangal Kaur, Sukhwinder Kaur and Manjit Kaur,(Plaintiffs-Appellants) daughters were born to the couple. During the life time of Mangal Kaur, Kapoor Singh contracted second marriage with defendant no.1 Rajwant Kaur and another daughter was born i.e. Ramandeep Kaur. It may be significant to note that although, legality of marriage by Kapoor Singh with Rajwant Kaur during the life time of Mangal Kaur has been raised but thereafter it has never been pressed. Hence, in the present case, the aforesaid issue is not being adjudicated upon.

Kapoor Singh died on 17.12.1987 intestate and Late Smt. Mangal Kaur, first wife had predeceased him on 18.08.1978. On the death of Kapoor Singh, property devolved upon four Class-1 heirs, namely, Rajwant Kaur, widow, Sukhwinder Kaur, Manjit Kaur and Ramanadeep Kaur, daughters. Ramandeep Kaur died unmarried on 14.06.1995. Dispute in the present case is with respect to succession to the property of Ramandeep Kaur, which opened on 14.06.1995 on her death. Revenue authorities have sanctioned mutation exclusively in favour of Rajwant Kaur, the natural mother, excluding Sukhwinder Kaur and Manjit Kaur, the sisters.

Both the courts below have taken a view that on the death of Ramandeep Kaur, on conjoint reading of Section 15 and Section 18 of the Hindu Succession Act, since Sukhwinder Kaur and Manjit Kaur, the plaintiffs-appellants, were not related by full blood with Ramandeep Kaur,

therefore, they are not entitled to any share in the property of Ramandeep Kaur. In these facts, question which arises has been extracted above.

“Whether on the death of a female intestate, not having her own children including grand children, the property which was inherited from her father would devolve upon the heirs of her father in accordance with section 15 (2)(a) of the Hindu Succession Act, 1956?”

On careful reading of Section 15(2)(a) and Section 16 Rule 3 and Section 18 of the Hindu Succession Act, 1956, this court is of the considered view that the courts below have committed an error in reading Section 18 of the Hindu Succession Act in isolation. For facility of reference, Sections 15, 16 and 18 of the Hindu Succession Act, 1956 are reproduced 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.

16. Order of succession and manner of distribution among heirs of a female Hindu.—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestates property among those heirs shall take place according to the following rules, namely:— Rule 1.—Among the heirs specified in sub-section

(1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) to section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

18. Full blood preferred to half blood.—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

From plain reading of Section 15, it is apparent that section 15 (1) deals with a normal situation when the property of a Hindu female is self acquired. However, Section 15(2) starts with a non obstante clause. Section 15(2) is in the nature of exception which has been carved out with regard to rules of succession in case of female Hindus. Sub-section 2 of Section 15 is dealing with two eventualities. Clause (a) deals with property which was inherited by the female Hindu from her father or mother. Whereas clause (b) of sub-section 2 deals with the situation where a female Hindu had inherited the property from her husband or her father in law. If one carefully reads Section 16 Rule 3, it is apparent that a fiction is to be created in case of sub-section 2 of Section 15 is applicable and it will be deemed that father or the mother or the husband shall be deemed to have died intestate immediately after the death of a female Hindu to whom Section 15(2) is to apply. Section 18 is dealing with general provision relating to succession and it has been provided that heirs related to deceased, who has died, intestate by full blood shall be preferred, as compared to, related by half blood, if the nature of relationship is the same in every other aspect.

Significant words which have been overlooked by the learned courts below are “the heirs of father or husband” as the case may be with respect to Clause (a) and (b) respectively. So on the death of a female Hindu having inherited the property from her father or mother or husband or her father-in-law in absence of her children or grand children, property would revert back to the father in case Clause (a) is applicable, to husband in case Clause (b) is applicable and it is the heirs of father or husband which has to be seen at the time of death of female Hindu. Rule 3 of Section 16

creates a fiction which has been discussed above. Such fiction has been explained by the Hon'ble Supreme Court in the judgments titled as **Bajaya vs Gopikabai And Anr.,(1978) 2 SCC, 542, Bhagat Ram (dead) by LRs v. Teja Singh (dead) by LRs. (1999) 4 SCC 86** and **State of Punjab v. Balwant Singh and others, AIR 1991 SC, 2301.**

Now let's deal with the facts of the present case.

It is apparent that Late Smt. Ramandeep Kaur, whose estate is in dispute, had inherited the property from her father Kapoor Singh. So, since she was not having any children or grand children, hence property on her death by operation of Section 15 (2) (a) read with fiction under Rule 3 of Section 16 would revert back to Kapoor Singh and on the date of death of Ramandeep Kaur, legal heirs of Kapoor Singh would have to be seen assuming Kapoor Singh has died immediately after the death of the deceased female whose estate is in dispute. Kapoor Singh had left behind on 14.06.1995 three Class-1 heirs, namely Rajwant Kaur, widow, Sukhwinder Kaur and Manjit Kaur, thus, the plaintiffs Sukhwinder Kaur and Manjit Kaur would be entitled to inherit 1/3rd share of the property which was owned by Ramandeep Kaur on her death. Courts below clearly committed an error in overlooking the provisions of Section 15(2) of the Hindu Succession Act read with Section 16. In these circumstances, it is crystal clear that the judgments passed by the courts below are based upon wrong interpretation of provisions of the Hindu Succession Act.

Question of law as framed is answered in favour of the plaintiffs.

Learned senior counsel appearing for the respondents while relying upon a judgment passed by Andhra Pradesh High Court, AIR 1974

(A.P.), 266 has submitted that in Section 15(2)(a) word “husband's heirs” would include the “mother's heirs” also if the property is inherited by the female from her mother.

However, in the present case situation is not similar to preposition of law which was decided by the Andhra Pradesh High Court in the judgment (supra).

Learned senior counsel has further submitted that the suit filed by the plaintiffs is bad for non-joinder of parties as subsequent purchasers have not been impleaded.

This court with the help of learned senior counsel for the respondents have seen the pleadings. No doubt, defendants no.2 to 4 have taken this objection in their written statement and the court had framed issue no.5. However, it is apparent that before the trial court defendants did not press this issue at the time of arguments. Learned counsel admits that this issue was not raised even before the first appellate court also. Still further learned counsel could not point out any evidence available on the file which proves that before institution of the suit, property had been transferred by defendant nos.2 to 4 in favour of some one else. Hence, this court does not find any substance in the submission of learned senior counsel.

Learned senior counsel has further submitted that since the plaintiffs had not claimed relief of possession, therefore, suit was barred as per proviso to Section 34 of the Specific Relief Act. This argument also is to be noted and rejected.

Plaintiffs were co-sharere and would remain co-sharers with Rajwant Kaur. Relief of specific possession cannot be ordered by the courts

in these proceedings. Agriculture land can only be partitioned by the competent authorities as per the provisions of The Punjab Land Revenue Act 1887 as applicable in the State of Haryana. On the death of Kapoor Singh, there were four co-owners. After the death of Ramandeep Kaur, now there are three co-owners, namely Rajwant Kaur, Sukhwinder Kaur and Manjit Kaur. Hence, the suit for declaration with consequential relief of joint possession was very much maintainable and there is no substance in the arguments of learned senior counsel for the respondents.

In view thereof, the judgments passed by the courts below are set aside. The suit filed by the plaintiffs shall stand decreed, leaving the parties to bear their own cost.

31st July, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No