

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

**RSA No.441 of 2012 (O&M)**

**Date of Decision.14.02.2018**

Mukhtiar Kaur and others

.....Appellants

Vs

Mohinder Kaur and others

.....Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Amit Aggarwal, Advocate  
for the appellants.

Mr. Kashish Garg, Advocate  
for respondent Nos.1 to 6.

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**AMIT RAWAL J.(ORAL)**

The appellants, who are legal heirs of the plaintiffs, are aggrieved of the determination of share by the lower Appellate Court while partly decreeing the suit seeking possession by way of partition of 1/3<sup>rd</sup> share of building bearing M.C. No.3340 situated in Court Road, Mehna Chowk, Bathinda with the consequential relief of permanent injunction.

Before advertng to the rival contentions of the parties, it would be apt to give preface of the matter. The suit was instituted by the plaintiffs claiming the aforementioned share on the premise, that the house was owned by Jawant Singh son of Partap Singh and on his demise in the year 1946, the property devolved upon his three sons namely Major Singh, Gurjant Singh and Kaka Singh @ Gurcharan Singh, who was in fact in the womb. In this respect mutation bearing No.531 was also sanctioned in favour of the plaintiff and defendant No.1 but the defendants denied the aforementioned claim. It is in this backdrop of the matter, the suit aforementioned was filed.

The defendants contested the suit by taking the customary pleas of maintainability, limitation, locus standi and non-joinder of necessary party. On merits, it was contended that suit property was not owned by Jaswant Singh but by Gurnam Kaur, who had purchased the same from her brother Dial Singh. The trial Court on the basis of the aforementioned evidence dismissed the suit but the lower Appellate Court partly decreed the same to the extent that plaintiff Major Singh (since deceased) represented through LRs will be co-sharer to the extent of 1/5<sup>th</sup> share and remaining 4/5<sup>th</sup> share by defendants and their sister, on the premise that the defendants failed to place on record any documentary evidence to show that whether Dial Singh was the owner he could have passed on the title to Gurnam Kaur.

Mr. Amit Aggarwal, learned counsel appearing on behalf of the appellants submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law as Gurnam Kaur was not their mother as she was second wife of Jaswant Singh, therefore, did not have got right in the property as she had no pre-existing right. As per the Hindu Succession Act, 1956, the ancestral property devolves upon only sons and therefore, the sons are entitled to 1/3<sup>rd</sup> share instead of 1/5<sup>th</sup> share, thus, the finding of the lower Appellate Court is liable to be set aside.

Per contra, Mr. Kashish Garg, learned counsel appearing on behalf of respondent No.1 to 6 submitted that the judgment and decree passed by the Courts below are based upon the preponderance of evidence. Even the daughter born from the second wife would be entitled to succeed to the share of her father, thus, urges this Court for upholding the judgments and decrees under challenge.

I have heard learned counsel for the parties and appraised the

paper book. I am of the view that there is no force and merit in the submissions of Mr. Aggarwal. The Hindu Succession Act came into force in the year 1956. If at all, the appellants-plaintiffs had to claim share in the property as prayed in the suit, they ought to have pleaded and proved the custom regarding transfer of the share of father on the basis of the survivorship/natural succession. Having failed to do so, in my view, the lower Appellate Court has rightly distributed the share of Jaswant Singh as per the provisions of Hindu Succession Act as the wife-Gurnam Kaur would have also succeeded to share, much less, the daughter born from said loin.

In my view, the lower Appellate Court has distributed the property in a most reasonable and equitable manner, which does not call for any interference. The judgment and decree passed by the lower Appellate Court is based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. The second appeal stands dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**February 14, 2018**  
Pankaj\*

Whether reasoned/speaking      Yes

Whether reportable      No