

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

RSA No.5380 of 2012 (O&M) and
XOBJC-23-C-2014

Date of decision: 22.05.2018

Kamla and others

..... Appellants

Versus

Anil Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. J.S. Chahal, Advocate
for respondents No.1 and 2/Cross-objector.

Mr. Ajit Sihag, Advocate
for respondents No.3 and 4.

ANIL KSHETARPAL, J. (ORAL)

Appeal and cross-objections have been filed against a common judgment. Both the parties are in appeal challenging the judgment passed by the learned First Appellate Court.

Nihala was owner of the property who died in the year 1972. On the death of Nihala, there were five class I heirs namely two sons Lehri and Roshan Lal, two daughters Jawantri and Rekha and Kreshni, the widow. The mutation of inheritance was sanctioned in favour of all the five legal heirs. Lehri, one of the son of Nihala died in the year 1987. On the death of Lehri, the mutation was sanctioned in favour of his son Anil and mother Kreshni excluding Roshni, the widow on the ground that she has

entered into a Karewa marriage and therefore, she is not entitled to the property. It is alleged that she made a statement to that effect also.

Anil and Roshni filed a suit claiming that the property was ancestral and therefore, the mutation of inheritance sanctioned in the year 1972 and mutation of inheritance sanctioned on the death of Lehri in the year 1987-88 are erroneous. It was further pleaded that a Civil Court decree suffered by Jawantri, Rekha and Krehsni in favour of Roshan Lal dated 18.01.1988 was also erroneous.

Both the Courts have concurrently recorded a finding of fact that the property is not proved to be ancestral. However, the learned First Appellate Court has ordered that since Lehri died in the year 1987 after repealment of Hindu Widows Re-marriage (Repeal) Act in the year 1983, therefore, qua the property of Lehri, the mutation has to be in favour of Anil, the son, Roshni, the widow and Kreshni, the mother. That is how the learned First Appellate Court has decided the matter.

Learned counsel for the appellant in RSA No.5380 of 2012 has submitted that since Roshni had performed re-marriage, therefore, she was rightly excluded from inheritance. He further submitted that once she was not part of the family, therefore, she is not entitled to any share in the property.

This Court has considered the submission, however, do not find any substance therein. It is well settled that succession never remains in abeyance. The moment Lehri died, his property devolved upon his class I heirs i.e. Anil, Roshni and Kreshni. Any subsequent act of Roshni does not divest ownership of Smt. Roshni unless there is no statutory provision to that effect. As noticed earlier, there was a provision for divesting of the

property received from the husband on re-marriage, however, the aforesaid Act has already been repealed in the year 1983.

In view of the aforesaid, there is no ground to interfere with the well reasoned judgment passed by the learned First Appellate Court.

Appeal as well as cross-objections are dismissed.

22.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No