

RSA No.2367 of 2016 (O & M)
RSA No.2396 of 2016 (O & M)

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

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RSA No.2367 of 2016 (O & M)
Date of Decision:19.04.2018

Murti Devi

...Appellant

Versus

Chhoti (deceased) through LRs

...Respondent

RSA No.2396 of 2016 (O & M)
Date of Decision:19.04.2018

Murti Devi

...Appellant

Versus

Balwan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Garg, Senior Advocate with
Mr. Rajnikant Upadhyay, Advocate
for the appellant.

Mr. Amit Jain, Advocate
for the caveator.

ANIL KSHETARPAL, J.

By this judgment, RSA-2367 and 2396 of 2016 shall stand dispose of as learned counsel for the parties are agreed that both the appeals can be disposed of by a common judgment as the issue, which requires determination, is common and the learned First Appellate Court has also decided the first appeals by a common judgment.

In RSA-2367 of 2016, defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below. Only issue which requires determination is whether a mother, who

had re-married after the death of her first husband would stand disinherited from the property of her son from the first marriage even if the succession has opened after coming into force of The Hindu Succession Act, 1956.

Late Sh. Ganpat, son of the plaintiff-respondent-Smt. Chhoti died on 19.10.2001. He had left behind two class I heirs namely a widow-Smt. Murti and mother Smt. Chhoti. Both the Courts have recorded a finding that late Smt. Chhoti would be entitled to half of the property left behind by Sh. Ganpat. Smt. Murti, the widow claims that the property would exclusively vest in her as Smt. Chhoti had re-married. The issue which has been culled out (supra) is covered against the appellants by the judgment passed by the Hon'ble Supreme Court in the case of **“Atma Singh vs. Gurmej Kaur (Dead) and others”** (2017) 9 SCC 325. Hon'ble Supreme Court was examining the issue in a case almost having identical facts except in that case son who died was unmarried.

Learned senior counsel for the appellant has submitted that as per Section 2 of the Hindu Widows' Remarriage Act, 1956, on re-marriage of the widow, she would be deemed to have died with respect to her first husband's family.

Counsel has further submitted that once all the relationship had been severed on re-marriage, she cannot claim share in the property in the family of her husband.

In the considered opinion of this Court, the argument of learned senior counsel has no substance. Section 2 of the Hindu Widows' Remarriage Act, 1956 is only dealing with rights of a widow in the property of the first husband when she has remarried or the property of her husband's

lineal successors. Section 2 does not deal with the property of the son. Section 2 of the 1856 Act (hereinafter Act of 1956) only creates fiction that the widow has died for the purpose of succession to the property of the previous husband, who is no more in the world. The aforesaid deeming provision is not extended to the property of the entire family. Relationship between mother and child would always remain intact. Merely because the widowed mother had remarried, the relationship between the mother and the child would not come to an end.

In the present case, Ganpat, the son died on 19.10.2001, after coming into force of Hindu Succession Act, 1956. Mother is a Class I heir along with the widow. Hence, both the Courts have correctly held that the mother shall be entitled to half share in the property left by late Sh. Ganpat. No other argument was raised.

In view thereof, there is no scope for interference.

Both the appeals are dismissed.

19.04.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No