

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

RSA No.2849 of 2016 (O&M)

Date of Order: 29.11.2018

Babita and others

..Appellants

Versus

Suman Lata

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Khatri, Advocate,
for the appellants.

Mr. Vivek Suri, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court partly decreeing the suit filed by the plaintiff-Suman Lata declaring her to be entitled to 1/5th share in the property.

In the present case, the dispute is only with regard to inheritance of property, which fell to the share of Dhanpati (mother of Narender Singh) (Narender Singh, died on 01.12.2007). Dhanpati has died without leaving any testament on 04.07.2014. In a previous civil court decree which has become final, Dhanpati has been declared owner of 1/25th share in the property left by Narender Singh.

Learned first appellate court after appreciating Sections 15 and 16 of the Hindu Succession Act, 1956 have held that Suman Lata is only entitled to ½ share in the property left by Dhanpati which she received from

Narender Singh. Sections 15 and 16 of the Hindu Succession Act, 1956 are extracted 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.*

Section 15(1)(a) of the Act provides that in case of death of a

Hindu female, property would devolve upon sons and daughters including

children of any pre-deceased son or a daughter and the husband.

In the present case, husband of Dhanpati had pre-deceased her. Therefore, the heirs on the date of death of Dhanpati are Suman Lata ($\frac{1}{2}$ share) Neha, Chirag and Mohit-children of Narender Singh ($\frac{1}{2}$ share).

As per Section 16 Rule 2, in case of female having any son or daughter who had pre-deceased her, the sons and daughters, succession would be determined as if the deceased's child was living on the date of death of female. Accordingly first appellate court has rightly held that daughter would be entitled to $\frac{1}{2}$ share out of $\frac{1}{25}$ th share as held in the decree dated 26.08.2013.

Needless to say that, consequently Neha, Chirag and Mohit would also get share equal to Suman Lata from the estate of Dhanpati which she got from Narender Singh.

With the aforesaid observations, appeal is disposed of accordingly.

C.M.No.7695-C of 2016

Prayer in this application is for condonation of delay of 30 days in filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 30 days in filing the appeal is condoned.

Application is allowed.

November 29, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No