

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

105

**CM-8557-C-2016 in/and
RSA-3191-2016 (O&M)
Date of Decision : 02.08.2018**

Malkit Singh Appellant

Versus

Ram Chand (deceased) through LR's. Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Nitin Narula, Advocate
for the appellant.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgments of the courts below decreeing a suit filed by the respondents.

The respondents had filed a suit alleging that the appellant owed certain money to their father and after his death 'they stepped into his shoes and inherited his properties'. They consequently sought recovery of the same alongwith interest. The case of the appellant was that he had taken the loan amount and had signed the pronote but the money was not due since he had paid the due amount to the deceased father of the respondents. The courts below having decreed the suit the appellant is before this Court.

Counsel for the appellant has argued that there was one legal issue which though not taken in the courts below but which arises, and that is that the respondents were obligated to obtain a succession certificate under Section 214 of the Indian Succession Act before their recovery suit for debt owes to their father could be decreed. He has placed reliance on various judgments which so state.

In my opinion, there is no dispute with this proposition of law. However, it would not be possible for me to accept this plea for the reason that when a Hindu dies his property can pass by two methods i.e. either by succession or survivorship. It is trite to say that where the property passes by survivorship the applicability of the Indian Succession Act would not exist and for a person who has come into the property as a survivor and sues for a debt by his predecessor-in-interest, there would be no requirement for obtaining a succession certificate. In the present case, I have quoted the exact averments made by the respondents-plaintiffs above and from there it cannot be inferred that they had inherited the property by succession. It was for the appellant to have taken the objection regarding the respondents being successors. That objection not having been taken, the appellant can not now allege or argue that in fact the respondents had come into the property by succession and not by survivorship. Consequently, the question which has been raised in the facts of the present case is a mixed question of law and fact and not a pure question of law. In the absence of these essential pleadings the judgments which are cited would be distinguishable because in all those judgments there is no dispute regarding the fact that the plaintiffs had inherited by succession.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 02, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No