

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

**RSA No.6325 of 2016 (O&M)
Date of Order:18.12.2018**

Mohinder Kumar and another

..Appellants

Versus

Ramesh Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Raj Kumar Kakkar, Advocate,
for the appellants.

Mr. Mannu Loona, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while dismissing their suit for declaration that they are co-owners being coparceners of the property in dispute to the extent of 374/999 share and transfer deed executed by their father in favour of defendant no.1, his son, and brother of the plaintiffs is illegal, null and void.

Apart from other things, it is not in dispute that when grand father of the plaintiffs died in the year 1973, property was inherited under Section 8 of the Hindu Succession Act and it was divided in 6 share including females. Still further, it has come in evidence that defendant no.2 during his life time had purchased 45 kanals of land.

Both the court have found that the property in dispute is not proved to be coparcenary property. The Hon'ble Supreme Court in the

judgment of *Uttam vs. Saubhag Singh and others (2016) 4 SCC 68* after considering various aspects have culled out following conclusions:-

- (i) *When a male Hindu dies after the commencement of the [Hindu Succession Act, 1956](#), having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).*
- (ii) *To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.*
- (iii) *A second exception engrafted on proposition (i) is contained in the proviso to [Section 6](#), which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.*
- (iv) *In order to determine the share of the Hindu male coparcener who is governed by [Section 6](#) proviso, a partition is effected by operation of law immediately*

before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

- (v) *On the application of [Section 8](#) of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of [Section 6](#) proviso, such property would devolve only by intestacy and not survivorship.*
- (vi) *On a conjoint reading of [Sections 4, 8](#) and [19](#) of the Act, after joint family property has been distributed in accordance with [section 8](#) on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.*

Keeping in view the aforesaid binding precedent, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

December 18, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No