

**C.M.No.3392-C of 2018 in/and
RSA No.6557 of 2016 (O&M)**

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

**C.M.No.3392-C of 2018 in/and
RSA No.6557 of 2016 (O&M)
Date of decision:19.03.2018**

Smt. Rajo and others

... Appellants

Vs.

Nawal Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Suresh Kumar Kaushik, Advocate
for the appellants.

AMIT RAWAL J.

C.M.No.3392-C of 2018

For the reasons stated in the application which is duly supported by an affidavit, order dated 06.02.2018 is recalled and the appeal is restored to its original number and the appeal is taken on board for hearing today.

C.M. stands allowed.

C.M.No.17178-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 377 days in re-filing the appeal, is condoned.

C.M. stands allowed.

RSA No.6557 of 2016 (O&M)

The appellant-plaintiffs are in Regular Second Appeal against the judgment and decree dated 19.12.2012, whereby, suit claiming

declaration and permanent injunction to the extent of 1/8th share in equal share of the suit property by challenging the Will dated 08.10.2004, had been dismissed and judgment and decree dated 30.10.2014, whereby appeal preferred against thereto, had been dismissed by affirming the judgment and decree of the trial Court.

It would be apt to give few facts emanating from the pleadings of the respective parties to the lis.

The plaintiffs instituted the suit claiming aforementioned share by challenging the Will, ibid and mutation bearing No.1097 with consequential relief of permanent injunction restraining the defendants from interfering into peaceful possession on the premise that father Charan Singh of plaintiffs no.1 to 5, husband of plaintiff no.6, father of defendant no.1 and grandfather of defendants no.2 and 3 was owner in possession of the agricultural land measuring 57 kanals 9 marlas situated at village Dhamaka, Tehsil and District Palwal as per jamabandi for the year 2002-03. Charan Singh died on 05.12.2004. The property at the hands of Charan Singh was ancestral, therefore, all the parties, as per Hindu Succession Act, 1956 (in short "1956 Act") were legally entitled to equal share in the estate of Charan Singh after his death. The Will allegedly executed by deceased Charan Singh in favour of the defendants qua his movable and immovable properties was a result of fraud and mis-representation as the plaintiffs had been totally ousted from the property without any justifiable cause. The plaintiffs acquired the knowledge of alleged Will and mutation for the first time on 18.08.2007, thereafter, the suit was filed on 27.08.2007.

Defendant No.1-Naval Singh filed the separate written statement and admitted that plaintiffs No.1 to 5 are the daughters, plaintiff no.6 is the widow of deceased Charan Singh, who was father of defendant no.1 and grandfather of defendants No.2 and 3. He also admitted the ancestral nature of the suit property.

Defendants No.2 and 3 filed joint written statement by taking various preliminary objections vis-a-vis locus standi, maintainability, estoppel, cause of action and limitation. On merits, it was submitted that they were owners in possession of the suit land and mutation had rightly been sanctioned in their favour. The Will was executed by Charan Singh out of his own free will and disposing mind. It was denied the Will was result of fraud and mis-representation.

The trial Court on the basis of pleadings of the parties framed the following issues:-

- “1. Whether the Will dated 08.10.2004 is illegal, null and void?OPP*
- 2. Whether the plaintiffs and defendants are required for 1/8th share each in suit property? OPP*
- 3. Whether the suit of the plaintiffs is not maintainable? OPD*
- 4. Whether plaintiffs have no locus standi to file the present suit? OPD*
- 5. Whether the plaintiffs have no cause of action to file the present suit? OPD*

6. *Whether the defendants No.2 and 3 are minor and proper as required under Order 32 Rule 7 CPC? OPD*

7. *Relief.”*

The plaintiffs in their evidence examined plaintiff Kirpa as PW1, Ramwati as PW2 and attesting witness as PW3, Balwant Sigh Patwari Halqa as PW4 and Ram Kishore ARC as PW5, who tendered the following documents:-

Ex.P1	Will dated 8.10.2004
Ex.P2	Mutation no.1097
Ex.P3	jamabandi for the year 2002-03
Ex.PW4/A	Application
Ex.PW4/B	Report
Ex.P5	Jamabandi for the year 2002-2003
Ex.P6	Jamabandi for the year 1963-64
Ex.P7	Jamabandi for the year 1954-55
Ex.P8	Jamabandi for the year 1954-55
Ex.P9	Jamabandi for the year 1951-52 (Urdu alongwith Hindi Translation)
Ex.P10	Jamabandi for the year 1951-52 (Urdu alongwith Hindi Translation)
Ex.P11	Jamabandi for the year 1951-52 (Urdu alongwith Hindi Translation)
Ex.P12	Mutation No.229
Ex.P13	Mutation No.1097

On the other hand, defendants in their evidence examined mother and natural guardian of defendants No.2 and 3 Bimla as DW1 and evidence was closed by tendering the following documents:-

Ex.D1 Jamabandi for the year 2007-08

Ex.D2 Certified copy of statement dated 21.9.2012.

The trial Court on the basis of aforementioned evidence dismissed the suit and appeal filed before the Lower Appellate Court also met with the same fate.

Mr. Suresh Kumar Kaushik, learned counsel appearing on behalf of the appellants submitted that judgments and decrees of both the Courts below are wholly erroneous and perverse. The Will propounded by the defendant had erroneously been held to be admissible in evidence, for, executant had not kept the interest of plaintiff no.6-wife of the deceased with whom he had cordial relation. No evidence has come on record as to whether Charan Singh was having good relationship with his wife or not. The Will was bereft of any explanation ousting the right of wife. The appellant-plaintiff no.1 to 5 are the married daughters, who had right by birth in the property owing to amendment caused in Section 6 of 1956 Act.

No doubt, testator had bequeathed the property in favour of his one son, i.e., defendant no.1 and defendants no.2 and 3, i.e., sons of deceased son of Charan Singh. The impugned Will was executed two months prior to death of Charan Singh which itself showed that executant was not having good health and sound disposing mind. There was no cross-examination on the point raised by the defendants with regard to the

categoric statement. Even the beneficiary had taken active participation in execution of the Will as defendant no.1 was witness of the Will. It is settled law that onus to prove the Will is always upon the propounder of the Will but the propounder miserably failed to prove the same. No independent witness has been examined and thus, urged this Court for setting aside the judgments and decrees of both the Courts below. The trial Court on the basis of appreciation of documentary evidence found the property to be ancestral but denied the claim to the daughters.

I have heard the learned counsel for the appellants, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in submissions of Mr. Kaushik, for, the appellant-plaintiffs proved the Will through the testimony of attesting witness-PW3, who identified the signatures and thumb impression on the photograph which was executed by his own brother Charan Singh in his presence. The said Will was dictated and executed by him. In cross-examination, he submitted that Will was written by deceased Charan Singh. The Will was proved by the plaintiffs by examining Ram Kishore, Assistant Registration Clerk, who proved the certified copy of Will, Ex.P1 which was a registered document. The appellants have not been able to belie the contents of Will.

The aforementioned view of mine is derived from the ratio decidendi culled out by the Supreme Court of India in **Satya Pal Anand Vs. State of MP and others 2016(4) Civil 904.**

There is another aspect of the matter. The beneficiary of the Will, Ex.P1 is none else but defendant no.1 with whom plaintiff no.6, according to statement made by counsel to a specific query is residing with him, i.e., Naval Singh, in essence, Charan Singh had divided the property between two sons.

The question which now arises for adjudication of the lis is whether plaintiffs no.1 to 5 would have a right in the estate of deceased Charan Singh, in case the property at his hands was ancestral, in view of the amendment caused in Section 6 of 1956 Act. For deciding the aforementioned question, it would be apt to reproduce amended provisions of Section 6 of Hindu Succession Act which read as under:-

“ 6 Devolution of interest in coparcenary property. —

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005*, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect

or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted

to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. —For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005*, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005*, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the

same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. —For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005*.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004. Explanation. —For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.”

The aforementioned Act, came into force w.e.f. 09.03.2005, whereas deceased Charan Singh died on 05.12.2004. The right accrued to the married daughters only w.e.f. 09.03.2005 and not before that. From the clear language of the aforementioned Act, it is crystal clear that it does not have retrospective applicability. By filing a suit in the year 2007, the plaintiffs would not have a cause of action to succeed in the estate of Charan Singh by challenging the Will.

In my view, Charan Singh, during his life time, had divided the property between living son and grandsons of pre-deceased son. No doubt, the Will did not disclose about the right of wife-plaintiff no.6, who is still alive. As indicated above, widow of the deceased is living with defendant

no.1, who had admitted the claim of plaintiffs. The case of the plaintiffs was based on the premise that suit property at the hands of Charan Singh was ancestral. As the amendment caused in Section 6 of 1956 Act, is w.e.f. 09.03.2005, therefore, the plaintiffs would not have stake in the property of deceased Charan Singh. All these factors have been taken into consideration by both the Courts below.

As an upshot of my findings, I do not find any illegality and perversity in the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 19, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No