

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

**Regular Second Appeal No.1734 of 2018 (O&M)
Date of Decision: April 23, 2018.**

Mangal (since deceased) through LR Surender

.....APPELLANT(s).

VERSUS

Sharda Devi and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.P. Dangi, Advocate for
Mr. Sanjeev Kumar, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal against the concurrent judgements of the courts below decreeing the suit of plaintiff-respondent No.1 for declaration that she being daughter of Arjun, is entitled to inherit his share as per provisions of Hindu Succession Act and mutation No.1678, which was sanctioned regarding inheritance of her father, is illegal, null and void.

The first Appellate Court while dismissing the appeal observed in para 14 of the judgement as follows:-

“In view of foregoing discussion emanating from record, this court does not see any illegality or infirmity or perversity in the well entrenched findings rendered by learned court below and same is hereby affirmed except some modification in the relief clause. Finding no merit, instant appeal is hereby dismissed with costs. However, it is clarified that land measuring 10 Kanal 6-1/2 marla according to 1/12 share of deceased Arjun, shall devolve among his four first class legal heirs in equal 1/48 share in the property of her father. Further, 1/48 share of

deceased Satbir s/o Arjun died shall go to his mother Smt. Rajo and as such she shall receive $\{1/48 + 1/48=1/24 \text{ share}\}$ in the property of her husband. Rest of $1/48$ share shall go to the mother of Arjun namely Smt. Dhanno Devi. Revenue entries shall be rectified by concerned authority by issuing fresh mutation thereof. Decree sheet be prepared accordingly.”

Learned counsel for the appellant has argued that dispute in this case is regarding the parentage of plaintiff-respondent No.1, who claimed herself to be daughter born from the loins of Arjun. In fact, she is daughter of Rajinder with whom, her mother Rajo had remarried after the death of Arjun. Plaintiff-respondent No.1 in order to prove that she is daughter of Arjun has placed on record several documents but has withheld her date of birth certificate which she could produce to prove that a daughter was born to Rajo from the loins of Arjun.

On going through the submissions of learned counsel for appellant and perusal of paper-book, I find no merit therein. Admittedly, Rajo was married to Arjun, who died somewhere in the year 1974. Birth and death certificates Ex.P6 and P7 produced on record show that a child was born from the wedlock of Arjun and Rajo, who died subsequently. That child was admittedly born on 06.05.1973 while plaintiff is elder to that child born from the womb of Rajo, when marriage of Rajo with Arjun was subsisting.

In order to prove her case, plaintiff has examined her mother Rajo and maternal uncle, who have deposed that plaintiff was born to Rajo from the loins of Arjun. Being near relatives, they are best persons to depose about the relationship of plaintiff with Arjun and their testimony is admissible as per the provisions of Section 50 of Indian Evidence Act on this score. Plaintiff-respondent No.1 has further corroborated her plea by

placing on record gift deed Ex.P8 executed by co-defendants and mutation Ex.P11, wherein she is mentioned as daughter of Arjun. In her school leaving certificate Ex.P1, Arjun is mentioned as her father.

Learned counsel for the appellant has argued that date of birth of plaintiff in the school certificate is mentioned as 06.05.1973 and as per birth certificate of her younger brother who died subsequently, was mentioned as 30.01.1973. The courts below have taken note of this fact and while observing that wrong mentioning of date of birth in the school certificate is no ground to discard plea of respondent no.1 that she is daughter of Arjun. The Courts below have also taken note of the fact that real uncle of plaintiff in his statement dated 29.09.2008, got recorded before the Court, has stated that plaintiff is daughter of Arjun. Her real cousin Ramesh has also stated on 23.04.2009 before the Court that the plaintiff is daughter of Arjun and both have gifted away her share in the suit property to her. Relying on the oral testimony of material witness, along with documents on record, both the Courts have held the plaintiff-respondent No.1 to be daughter of Arjun and held her entitled to inherit his share in suit property with other heirs of Arjun.

On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

April 23, 2018.

Sachin M.

(SURINDER GUPTA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No