

RSA-2303-2017 (O&M)

135

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

RSA-2303-2017 (O&M)

Date of decision : 29.11.2018

Charan Kaur (deceased) through LRs

... Appellant

Versus

Ujjagar Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagdeep S. Virk, Advocate
for the appellant.

AMIT RAWAL, J.

CM-5621-C-2017

For the reasons stated in the application, the delay of 83 days in
refiling the appeal is condoned.

CM stands disposed of.

RSA-2303-2017

The appellant-plaintiff has not been successful in claiming the relief of declaration to be co-owner along with defendant Nos.1, 2 & 3 in respect of land measuring 42 kanals 16 marlas. It was alleged that Sawan Singh was owner in possession of land as "Occupant Tenant" along with his brothers and Kirpal Singh. He had only one son, namely, Ujjagar Singh/defendant No.1 and other wife and the daughter. On death of Sawan Singh, the property was liable to be inherited by all legal representatives, but the same was mutated in favour of only Ujjagar Singh. In fact, It was ancestral property and therefore, daughters had a right by birth.

RSA-2303-2017 (O&M)

The suit was dismissed by the trial Court and affirmed by the lower Appellate Court.

Learned counsel for the appellant-plaintiff submitted that the defendant failed to establish on record that the property at the hands of Sawan Singh was self-acquired, even if the property was not ancestral as Sawan Singh had died prior to the amendment of 2005 in Section 6 of the Hindu Succession Act. In the absence of any testamentary document, he deemed to have been died intestate.

I am afraid the aforementioned argument is not sustainable as it would not be a question of ownership, but inheritance of *marusi* rights. Daughters cannot be *marusi*, but only the sons, who had already inherited. Both the Courts examined aforementioned aspect threadbare

As an upshot of my finding, I do not subscribe to the submissions of Mr. Virk to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

29.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**