

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

RSA No. 2528 of 2017(O&M)

Date of decision: 25.10.2018

Krishan

.....Appellant

VERSUS

Azad Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. J.S. Cooner, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The precise question involved in the present appeal is, whether Krishan son of Tooli @ Sunehri daughter of Jai Lal is entitle to 1/6th share in suit land of khewat No.72 which is held to be ancestral coparcenary property in the hands of Sh. Jai Lal in the previous litigation initiated by sons of Jai Lal to challenge the sale deeds dated 12.08.1936, 05.05.1937 and 09.06.1938 executed by Sh. Jai Lal that culminated in judgment and decree dated 05.12.1953 whereby sale deeds dated 05.05.1937 and 09.06.1938 executed by Jai Lal were set aside. The Court in appeal has partly decreed claim of the plaintiff/appellant by modifying the judgment and decree passed by the trial Court dismissing the suit by invoking Section 6 of the Hindu Succession Act, 1956. In para 19 of the judgment, the Court has held, reads thus:-

“19. So far as the question no.2 is concerned, in this case it is not disputed fact that the suit property is the ancestral property of respondents and Jai Lal in which they were six coparceners. Tooli @ Sunehri was the daughter of Jai Lal and

had pre-deceased him. As per Section 6 of the Hindu Succession Act, 1956 if a coparcener expires leaving behind a female heir before amendment of Hindu Succession Act, 2005 then the share of that coparcener will devolve in his legal heirs as per Section 8 of Hindu Succession Act, 1956. A perusal of copy of mutation No.4225 Exhibit P1 reveals that after the death of Jai Lal, some of his estate in Khewat No.51 was mutated in favour of Sube Singh, Ramdhari, Azad Singh, Balwan Singh and Mahender Singh to the extent of 5/6 share whereas Krishan has inherited 1/6 share. Meaning thereby on the day of death of Jai Lal, he was survived by five sons and one grandson (son of pre-deceased daughter). On notional partition Jai Lal would have get 1/6th share in the suit property and this 1/6th share has to be inherited by his legal heirs as per Section 8 of Hindu Succession Act, 1956. Since the appellant-plaintiff is the son of pre-deceased daughter of Jai Lal and thus is the class-I heir of Jai Lal and is entitled to inherit 1/6th share of coparcenary interest of Jai Lal, which is to be determined on the basis of notional partition. As per the notional partition, Jai Lal would get 1/6th share in the suit property and his 1/6th share would devolve in his legal heirs equally. In the sense, the appellant-plaintiff has 1/36 share in the suit property after the death of Jai Lal. However, this fact has not been appreciated by learned Additional Civil Judge (Sr. Divn.), Meham in right perspective. So, the question posed before this Court stands answered accordingly.”

The sole submission made by counsel is that since the plaintiff being son of pre-deceased daughter of Jai Lal has inherited $1/6^{\text{th}}$ share in land comprising khewat No.71, he is also entitle to $1/6^{\text{th}}$ share even in khewat No.72, therefore, judgment and decree passed by the Court in appeal are liable to be modified accordingly.

Counsel for the appellant, in response to a query, has not disputed that in the previous litigation that culminated in the judgment and decree dated 05.12.1953 whereby two sale deeds dated 05.05.1937 and 09.06.1938 were set aside by holding that land subject matter of sale is ancestral coparcenary property in the hands of Jai Lal, Sh. Jai Lal was a party in the said suit. As the plaintiff/appellant is claiming his rights in the suit property through Sh. Jai Lal, he cannot escape from findings recorded in judgment dated 05.12.1953. That being so, the Court in appeal has rightly applied Section 6 of the Hindu Succession Act, 1956 to calculate share of Jai Lal at the time of his death in ancestral coparcenary property and entitlement of his class I heirs to said $1/6^{\text{th}}$ share to the extent of $1/6^{\text{th}}$ share each as Jai Lal had 5 sons and a pre-deceased daughter, predecessor in interest of the plaintiff. In this view of the matter, I do not find an error much less perversity in findings recorded by the Court in appeal holding the appellant entitle to $1/36^{\text{th}}$ share in suit property.

As there is nothing on record suggestive of the fact that land comprising khewat No.71 was also ancestral coparcenary property in the hands of Sh. Jai Lal, inheritance to the extent of $1/6^{\text{th}}$ share in favour of the appellant would not enure to his benefit to claim the same share qua khewat No.72, subject matter of present suit.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

OCTOBER 25, 2018	(REKHA MITTAL)
‘D. Gulati’	JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no