

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

RSA No. 4819 of 2017(O&M)

Date of decision: 10.10.2018

Iqbal Singh

.....Appellant

VERSUS

Jagir Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Narender Pal Bhardwaj, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the plaintiff/appellant seeking declaration that he is the joint owner of land of Sh. Nihal Singh, father of Bhupinder Kaur, situated in village Dulliani and mutation of inheritance dated 13.09.2007 sanctioned on the basis of forged and fabricated registered Will dated 30.07.2007 and sale deed dated 01.03.2012 executed by defendant No.1 in favour of defendants No.4 to 6 and mutation sanctioned on its basis are illegal, null and void, ineffective and not binding upon right of the plaintiff and liable to be cancelled/set aside.

The plea of the plaintiff/appellant is that he was married with Bhupinder Kaur daughter of Nihal Singh. Nihal Singh was the real brother of Jeet Singh, Jagir Singh and Bachan Singh. No child was born out of wedlock of the plaintiff and Bhupinder Kaur. Bhupinder Kaur was admitted in Military Hospital, Ambala Cantt by Smt. Kartar Kaur, mother

of the plaintiff. She was serious and remained admitted in Command Hospital, Chandimandir till 29.07.2007. When Jeet Singh, Jagir Singh, Bachan Singh and their family members went to visit Bhupinder Kaur, they took her from the hospital without intimating the doctor and later she was got admitted in M.M. College and Hospital, Mullana by the defendants. Bhupinder Kaur remained almost unconscious and lastly died on 11.08.2007. Bhupinder Kaur was the only daughter of Nihal Singh and she had 1/4th share in the suit property. The plaintiff is the only legal heir of Bhupinder Kaur and is entitle to joint possession of land inherited by Bhupinder Kaur from Nihal Singh, her father. Defendant No.1 fraudulently got mutation No.859 sanctioned on 13.09.2007 on the basis of forged and fabricated Will dated 30.07.2007. Later, he sold the land in dispute to defendants No.4 to 6 vide sale deed dated 01.03.2012 and mutation was sanctioned on 13.03.2012.

Indisputably, the property which is subject matter of dispute in the present case is the one, allegedly inherited by Bhupinder Kaur from her father Nihal Singh. Section 15 of the Hindu Succession Act, 1956 (in short 'the Act') deals with general rules of succession in the case of female Hindu and a relevant extract therefrom reads as follows:-

“15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters
(including the children of any pre-deceased son
or daughter) and the husband;

- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
- (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

As in the case at hand, suit property is stated to be inherited by Bhupinder Kaur from Nihal Singh, her father, therefore, sub-section (2) of Section 15 is the provision applicable in the given scenario. Admittedly, Smt. Bhupinder Kaur had no issue. That being so, property would revert back to family of her father and inherited by the heirs of her

father and not upon the heirs referred to in sub section (1) in the order specified therein. As Nihal Singh has left behind his brothers, suit property in the hands of Bhupinder Kaur would be inherited by heirs of Nihal Singh on the basis of natural succession in view of the provisions of Section 8 of the Act.

Though the trial Court framed a specific issue with regard to the appellant/plaintiff having no locus standi and cause of action to file the suit but still both the Courts did not bother to examine the provisions of Section 15 of the Act in order to say at the threshold that suit filed by the appellant/plaintiff is not maintainable. The appellant/plaintiff could challenge correctness of the Will dated 30.07.2007 only if he was entitle to inherit to the suit property being husband of Bhupinder Kaur (since deceased). In this view of the matter, this Court needs not to address the question if the registered Will propounded by defendant No.1 is correct or otherwise, an exercise in futility, in view of the discussion made hereinbefore.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 16 days in filing the appeal is of academic relevance only.

OCTOBER 10, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no