

**Cross Objection No.1-C of 1989 and
RSA No.2312 of 1988 (O&M)**

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

**Cross Objection No.1-C of 1989 and
RSA No.2312 of 1988 (O&M)
Date of Decision.01.05.2019**

Joginder Singh (since deceased) through LR's and another

...Appellants

Vs

Bhagat Singh (deceased) through LR's and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Umesh Aggarwal, Advocate
for the appellants.

Mr. P.S. Jammu, Advocate
for respondent No.2(ii)(a).

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AMIT RAWAL J. (ORAL)

C.M. No.5940-C of 2019

The application for impleading the legal representatives of deceased-respondent No.1 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of present appeal.

The amended memo of parties is taken on record and the registry is directed to put the same at appropriate place.

RSA No.2312 of 1988

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby plaintiff's suit dismissed by the trial Court has been partly allowed and decree for possession of 1/6th share in the land in dispute has been passed.

The case revolves around succession of shop of one

Dalipa. Plaintiff is nephew from the maternal side of Dalipa i.e. sons of sister of Dalipa whereas defendants are nephews i.e. sons of Dalipa's brother. Plaintiff propounded the registered Will dated 20.04.1981 alleged to have been attested by PW4 Rajinder Mehta, Municipal Commissioner, Sunder Nagar and J.C. Khanna, PW5 whereas defendants also propounded registered Will dated 08.09.1977.

Both the parties led extensive evidence.

Mr. Umesh Aggarwal, learned counsel appearing on behalf of the appellant submitted that the Will dated 08.09.1977 was duly registered and attested by two witnesses DW3 Kabal Singh and Amar Singh, DW4 and scribed by DW5 Ajit Singh whereas the beneficiaries were defendants. Dalipa died on 19.05.1981. The plaintiff had managed to procure the Will in their favour as from cross-examination of PW4, it revealed that Dalipa was admitted in hospital at Sunder Nagar on 18.04.1981 and the Sub Registrar was brought to the hospital. A complaint was registered qua his abduction, resulting into registration of FIR. The testimony of witnesses brought by defendants in support of Will was in compliance of requirement of Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act but the lower Appellate Court discarded the Will in the manner aforementioned. In the subsequent Will propounded by the plaintiff, there was no reference of beneficiary of the first Will or its revocation.

Per contra, Mr. P.S. Jammu, learned counsel appearing for legal representative of plaintiff submitted that the aforementioned

witnesses Rajinder Mehta and J.C. Khanna complied with the provisions of law aforementioned and had been coherent and categorical with regard to attestation of the Will in the presence of each other i.e. witnesses and on direction of the testator. PW2 also admitted that he had appeared before the Assistant Collector for the purpose of effecting the mutation. In fact, he was keeping ill health and was resident of Dharampur. Dalipa was taken to Sunder Nagar with Bhagat Singh whose relative was residing where testator's health deteriorated, resulting into admission in the hospital. The execution of Will is always a deviation from the line of succession. Non-mentioning of the previous Will is not *sine qua non* for rejecting the Will. There was hardly any suspicious circumstances. The accused in the FIR had already been acquitted, thus, urges this Court for dismissal of the appeal and acceptance of the cross objection by taking into consideration the Will Ex.P1.

I have heard learned counsel for the parties, appraised the paper book and of the view that following Substantial Question of Law arises for determination:-

“Whether as per the natural succession, children of brother of Dalipa vis-a-vis children of sister of Dalipa would have a right as per Schedule 1 of Section 8 of the Hindu Succession Act and judgment and decree of the trial Court and lower Appellate Court discarding the 'Will' suffer from illegality and perversity?”

It would be apt to reproduce Schedule of Section 8 of

Hindu Succession Act, which reads as under:-

THE SCHEDULE

[Section 8]

HEIRS IN CLASS I AND CLASS II

CLASS I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a predeceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a predeceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son.

CLASS II

I. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI.. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

Explanation : In this Schedule, references to a brother

*or sister do not include references to a brother or sister
by uterine blood.”*

From the perusal of Schedule, it is evident that on demise of male Hindu, his property would devolve upon the brother and in his absence, children of brother whereas children of sister are much below. They would acquire the right in the absence of any persons referred to above.

Coming to the Wills, acquittal and discharge in criminal case is meaningless but gave suspicious circumstance, for, no explanation has come forward qua medical record of ill-health of Dalipa for which he was alleged to have been taken to hospital on 18.04.1981. Even if he was stated to be ill, the nature of ailment has not been brought on record. It appears to be an attempt to get the benefit particularly when Dalipa had already made the defendants as beneficiaries, in view of the registered Will dated 8.9.1977. The lower Appellate Court, in my view, has correctly discarded the Will, for, in the absence of Will, credence would be given to defendants as per Schedule of Section 8 of the Hindu Succession Act. Dalipa concededly died on 19.5.1981. PW2 in cross-examination admitted that he appeared before the Assistant Collector where Dalipa did not make any mention with regard to Will of 1977 but when confronted, it was recorded so. It is not explained as to how Municipal Commissioner was known to Dalipa as he had never visited Sunder Nagar. No evidence has been led regarding his prior visit to Sunder Nagar. All these factors weighed in the mind of the lower Appellate Court while reversing the judgment and decree of the trial Court.

In view of such circumstances, finding of lower Appellate Court discarding both the Wills is perfectly legal and justified. The appellant ought not to have challenged the finding in view of the definition of Class II heirs in Schedule of Section 8 of Hindu Succession Act. The substantial question of law is answered in the aforementioned manner. The second appeal is dismissed while upholding the judgment and decree of the lower Appellate Court and the cross-objection is also dismissed.

**(AMIT RAWAL)
JUDGE**

May 01, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No