

RSA Nos.2740 & 2512 of 1988 (O&M)

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

Date of decision : 10.04.2019

1. RSA-2740-1988 (O&M)

Balbir Singh

... Appellant

Versus

Paramjit Kaur

... Respondent

2. RSA-2512-1988 (O&M)

Paramjit Kaur

... Appellant

Versus

Pritam Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant in RSA-2740-1988 and
for the respondents in RSA-2512-1988.

Mr. B.R. Mahajan, Senior Advocate with
Ms. Manpreet Ghuman, Advocate
for the respondent in RSA-2740-1988 and
for the appellant in RSA-2512-1988.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing **RSA No.2740 of 1988** titled as **“Balbir Singh V/s Paramjit Kaur”** at the instance of the appellant-defendant, against the judgment and decree of the Courts below, as the trial Court confined the decree of suit to the

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extent of $1/3^{\text{rd}}$, whereas it was reduced to $1/9^{\text{th}}$ by the lower Appellate Court and second appeal bearing **RSA No.2512 of 1988** titled as **“Paramjit Kaur V/s Pritam Kaur and another”**, at the instance of the plaintiff, against the judgment and decree of the lower Appellate Court, reducing the share from $1/3^{\text{rd}}$ to $1/9^{\text{th}}$.

Both the appeals are arisen out of one Civil Suit No.440 of 1984.

The plaintiff-Paramjit Kaur, claiming to be minor daughter of Baldev Singh, through her father Baldev Singh, next friend, sought the joint possession in respect of land measuring 93 kanals 9 marlas to the extent of $1/3^{\text{rd}}$ i.e., 31 kanals 3 marlas, against Pritam Kaur, her maternal grand mother, widow of Tara Singh and Balbir Singh, her maternal uncle. It was alleged that one Smt. Shinder @ Surinder Kaur daughter of Tara Singh, was married to Baldev Singh, father of the plaintiff, having $1/3^{\text{rd}}$ share out of the total land and the defendants to be also owner to the extent of $1/3^{\text{rd}}$ share. Shinder @ Surinder Kaur, died in the year 1975, leaving behind the plaintiff only daughter born out of her wedlock with Baldev Singh, but defendant No.1, maternal grand mother, obtained the mutation of inheritance of Surinder Kaur, which was totally against the provisions of Section 15 of the Hindu Succession Act, 1956 (in short 'the 1956 Act').

The defendants contested the suit by raising numerous preliminary objections and on merits, it was denied that she was the owner to the extent of $1/3^{\text{rd}}$ share. In fact the defendants were owners of the suit property as Pritam Kaur, defendant No.1, was having $1/4^{\text{th}}$ share of the suit land, whereas remaining $3/4^{\text{th}}$ owned by Balbir Singh, brother of Surinder Kaur, defendant No.2. The plaintiff was denied to have born out of the

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wedlock of Surinder Kaur with Baldev Singh. The suit property was ancestral of defendant No.2, Balbir Singh and Tara Singh, found to be co-parcener.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether Shinder Kaur @ Surinder Kaur was the owner to the extent of 1/3rd share of the suit land. OPP*
- 2. Whether the plaintiff is the only legal heir of Shinder Kaur @ Surinder Kaur being her daughter from the loins of Baldev Singh? OPP*
- 3. Whether the plaintiff is entitled to the joint possession, if so, to what extent? OPP*
- 4. Whether the plaint has been properly valued for the purposes of court fee and jurisdiction? OPP*
- 5. Whether the suit is barred by time? OPD*
- 6. Whether the plaintiff has got no locus standi to file the present suit? OPD*
- 7. Relief.*

The plaintiff in support of the pleadings, examined four witnesses and brought on record copy of the jamabandi for the year 1982-83. On the other hand, the defendants examined two witnesses and brought on Ex.D1 to Ex.D8.

PW-2, Mohinder Singh, who was the husband of niece of Tara Singh and PW3- Darshan Singh, deposed that Tara Singh was the real maternal uncle. All of them stated that Paramjit Kaur was born out of the loins of Surinder Kaur with Baldev Singh.

Noticing the aforesaid facts, the trial Court accorded 1/3rd share while decreeing the suit, but the lower Appellate Court, in appeal, reversed the findings of the trial Court and reduced the share from 1/3rd to 1/9th.

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Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, learned counsel appearing on behalf of the appellants-defendants in RSA-2740-1988 and for the respondents in RSA-2512-1988, submitted that the judgment and decree of the Courts below are not sustainable in the eyes of law as Paramjit Kaur except her bald statement that she was born out of wedlock of Surinder Kaur with Baldev Singh, no other evidence has been led. In fact, she was born out of second wife of Baldev Singh, who on the demise of Surinder Kaur in March 1975, contracted.

Mr. B.R. Mahajan, learned Senior Counsel, assisted by Ms. Manpreet Ghuman, learned counsel appearing on behalf of the respondents in R SA-2740-1988 and for the appellants in RSA-2512-1988, submitted that in fact, there was no dispute regarding estate of Tara Singh as he along with his wife had two children and on his demise, the property was mutated in favour of Pritam Kaur, Surinder Kaur and Balbir Singh, being widow, daughter and son. The witnesses PW2 and PW3, testified the plaintiff to be daughter from the loins of Surinder Kaur with Baldev Singh and therefore, there was compliance of Section 50 of the Indian Evidence Act. Section 15 of the 1956 Act would not be applicable as it has to be read in conjunction with Section 9 of the Act.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following 'Substantial Questions of Law' arise for determination:-

Whether the judgment and decree of the lower Appellate Court is confirmity of the provisions of Section 15(2)-a of the 1956 Act or not.

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It would be apt to reproduce Section 15(2)(a) as well as Section 9 of the 1956 Act, which read as under:-

"Section 15 (2)(a) of the Hindu Succession Act, 1956

(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

Section 9 in The Hindu Succession Act, 1956

9. Order of succession among heirs in the Schedule.—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession."

Concededly, Surinder Kaur derived the property from her father and as per rule of succession, it would firstly on the heirs of the father, that would be Pritam Kaur and Balbir Singh. It has not come on record whether Balbir Singh was alive or died. Both the witnesses, PW2 and PW3, testified that the plaintiff was born out of wedlock of Surinder Kaur with Baldev Singh, therefore, the argument of Mr. Bhan that she was born out the second wife of Baldev Singh, must fail. The rule of succession, as enshrined above, noticed by the lower Appellate Court, is the correct interpretation of law. The provisions of Section 9 of the 1956 Act cannot be looked into as it would refer to the Schedule II of Section 8 of the 1956 Act, which deals with the succession of inheritance qua estate of a Hindu male, instead Section 15(2)(a) of the 1956 Act, would apply.

Keeping in view the aforementioned facts, I do not find any

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illegality and perversity in the judgment and decree of the lower Appellate Court and the same is hereby upheld. The Substantial Question of Law, as framed above, is answered in the aforesaid manner.

Resultantly, both the appeals are dismissed.

10.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No