

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3182 of 2003 (O&M)

Date of decision: 25.02.2019

Abdul Wahid and others

..... Appellants

Versus

Wahida Begum and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Virendra Rana, Advocate
for the appellants.

Mr. Satish Chaudhary, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the judgment passed by the First Appellate Court reversing the judgment and decree of the trial Court.

Dispute in the present case is with regard to the property of late Sh. Abdul Rashid, father of the parties to the litigation. He left behind seven sons and three daughters. The seven sons are the defendants-appellants.

Two daughters-plaintiffs filed a suit claiming that they along with defendant No.8 (third sister) are entitled to inherit 1/3rd share of the property left behind their father whereas defendants No.1 to 7 are entitled to 2/3rd share in the property.

The defendants-appellants claim that they belong to agriculture tribe of District Gurgaon and therefore, they are governed by special

custom under which daughters of a male proprietor are excluded from inheritance.

Learned trial Court dismissed the suit filed by the plaintiffs whereas First Appellate has reversed the judgment of the trial Court.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

In the considered opinion of this Court, the present appeal has no merit for the following reasons:-

1. It has been admitted by the defendants-appellants as well as his witness while appearing in evidence that late Sh. Abdul Rashid, apart from being owner of the agriculture land, was also running a shop in general merchandise, therefore, it cannot be said that the family was dependent exclusively on agriculture income.

2. When PW-2 Safia appeared in evidence, a suggestion was given to her by learned counsel for the appellants that on the death of her uncle (elder brother of her father), his land was mutated in favour of his daughters. She conceded to the suggestion and added that thereafter, the daughters were paid money in lieu thereof. In view of the aforesaid suggestion, it is apparent that there was no custom in the family that the daughters are excluded. The defendants have also examined Maulvi Siddique Ahmed as DW-1. He feigned ignorance when during cross-examination asked about whether at the time of inheritance of the estate of late Sh. Sadik (the elder brother of Abdul Rashid) succeeded by three sons and daughters. He was a local Maulvi and was examined by the defendants to prove local custom. However, failed to prove any local custom.

3. Still further, with respect to meo in the area of Gurgaon, a Coordinate Bench in the judgment reproted as Abdul Hasan Vs. Smt. Kalsum and others Vol. CXXV-(2000-2) PLR 523 has held that the daughters and grand-daughters are entitled to inherit the property.

4. In another judgment in the case of Mohammad Yunis Vs. Malooki, AIR 2004 P&H 115, this Court examined the broader issue with regard to exclusion of the daughters and it was held that such custom cannot be recognized by the Courts after the world has witnessed a sea change. The Hon'ble Judge relied upon various precedents including the judgments of the Hon'ble Supreme Court.

In view thereof, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

25.02.2019
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No