

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

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**Civil Revision No. 1555 of 2019
Date of decision: 16.10.2019**

Mamta and Others

...Petitioners

Vs.

Neelam

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sudhir Aggarwal, Advocate
for the petitioners.

None for the respondent.

RAJ MOHAN SINGH, J.(ORAL)

Despite service none has appeared today. Even on the last date of hearing i.e. 30.09.2019, none was present for the respondent.

Notice of motion was issued on 06.03.2019. As per service report dated 25.03.2019, respondent has been duly served in person. Report has been authenticated by Ram Lal, Chowkidar. The plaintiff-respondent filed a suit for declaration and permanent injunction challenging the sale deed dated 23.07.2012 executed by defendant No.2/grandmother namely Santra on the grounds of fraud, coercion and undue influence, insufficiency of stamp duty on the valuation of sale deed and on the ground of her being a coparcener in the suit land. Para No.2 of the plaint reads as under:-

"That upon demise of said Dharampal-grandfather of the plaintiff,

the abovesaid Joint Family Property was inherited in equal shares by his heirs as coparceners namely Smt. Santra (defendant No.2), and sons Satbir (defendant No.3) and Vikram. Thereafter, upon demise of said Vikram – other son of said Dharampal, his share was devolved upon his widow – Smt. Beenu Kumari and his mother – Smt. Santra (defendant No.2) in equal shares. Hence, Smt. Santra (defendant No.2) had inherited 1/6th share in the abovesaid ancestral/Joint Hindu Family property as coparcener and accordingly, plaintiff also has got her rights to the extent of 1/42th share therein by birth. It is not out of place to mention here that as per the customs prevalent in the family of the plaintiff, there remained no distinction in between son and daughter, husband and wife, hence, all the family members stood at equal footing when it came to question of inheritance of the ancestral/Joint Hindu Family Property upon demise of its Hindu owner."

Defendant-petitioner filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint on the premise that the plaintiff has no cause of action on the basis of Hindu Succession (Amendment) Act, 2005 as she cannot claim right of co-parcenary during life time of Satbir Singh(defendant No.3) and, therefore, plaint itself is liable to be rejected in terms of under Order 7 Rule 11 CPC.

According to Section 6 of Hindu Succession Act, when a male Hindu dies after the commencement of Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara co-parcenary property, his interest in the property shall devolve by survivorship from the surviving members of the co-parcenary and not in accordance with the

Act. As per proviso to the aforesaid Section, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under the Act and not by survivorship. The interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. The aforesaid explanation points out towards notional share of Hindu Mitakshara coparcener before his death. The proviso would not be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest.

According to Hindu Succession (Amendment) Act, 2005, where a Hindu dies after the commencement of the Act, his interest in the property of a joint Hindu family shall devolve by testamentary or intestate succession and not by survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place.

In the instant case father of the petitioner is still alive and has been arrayed as defendant No.3. In **Parkash and**

Others Vs. Phulavati and Others 2015 (4) RCR 952 (SC), the controversy has been settled in para Nos. 17, 18, 23 and 24 of the judgment. The ratio of the aforesaid judgment would show that the amendments in question is prospective in nature. Right of living daughter of a coparcener can only be appreciated in terms of Hindu Succession(Amendment) Act, 2005, if the coparcener is also alive on 09.09.2005. Satbir Singh is still alive.

In view of above, the amendment does not apply to the present lis. In view of the aforesaid legal position, it can be seen that the provisions of Hindu Succession (Amendment) Act, 2005 do not apply qua the plaintiff, whose father is still alive as on date.

The expression "law" occurring in Order 7 Rule 11 (d) CPC includes judicial decisions of the Hon'ble Apex Court. The authoritative pronouncement of the Hon'ble Apex Court is the law of land. The law declared by Hon'ble Apex Court under Article 141 of the Constitution of India is the law of land. Law includes not only legislative enactments, but also judicial precedents. Reference can be made to **Virender Kumar Dixit vs. State of U.P., 2014 (9) ADJ 506** and **Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy and others, 2017 (4) RCR (Civil) 359.**

In view of aforesaid legal position the plaintiff cannot maintain a suit on the basis of her being a coparcener on the

strength of Hindu Succession (Amendment) Act, 2005. Moreover, the sale deed executed by grandmother has been assailed, who has derived her title from grand-father of the plaintiff.

For the reasons recorded herein above, I deem it appropriate to accept this revision petition. Normal consequences to follow.

October 16, 2019
Poonam Sharma

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No