

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

Date of decision: 13.5.2019

1.

FAO No. 1278 of 2003(O&M)

Murti Devi

.....Appellant

VERSUS

Kartar Singh and others

.....Respondents

2.

RSA No. 1636 of 2015(O&M)

Murti Devi

.....Appellant

VERSUS

Ramesh Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ajay Chaudhary, Advocate for the appellant.

Mr. Ajit Sihag, Advocate for respondents No.1 and 2 (in FAO No.1278 of 2003) and
for respondents No.1 and 5 in RSA No.1636 of 2015.

Respondent No.3 and 4 ex parte in RSA No.1636 of 2015.

REKHA MITTAL, J.

This order will dispose of FAO No.1278 of 2003 and RSA No.1636 of 2015 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.1636 of 2015.

The present lis pertains to inheritance to estate of Bir Singh son of Ratia who died on 01.05.1999. Murti Devi – plaintiff/appellant has staked claim to the suit property on the basis of natural succession by asserting that she is widow of deceased Bir Singh. It is pleaded that she was married to Bir Singh as per Hindu rites and ceremonies. Bir Singh was owner in possession of 7/30 share of the land and after his death, she is entitle to inherit the suit land. Bir Singh was also owner of land of village Julana and after his death, mutation of inheritance of his share was entered in her favour but the same was challenged by the respondents. Vide order dated 02.12.1998, Assistant Collector, IInd Grade, Julana sanctioned the mutation but the appeal filed by respondents was accepted by the District Collector. The order of Collector was set aside by the Commissioner, Hisar on 19.03.2004 holding that the appellant is only legal heir of the deceased.

Counsel for the appellant would argue that the trial Court rightly decreed suit of the plaintiff/appellant and held that she is owner in possession to the extent of 30/180 share of land measuring 30 kanal situated in village Desh Khera, District Julana, as per jamabandi for the years 2002-03 and mutation No.960 is against law and facts. The Appellate Court seriously erred by reversing the judgment and decree passed by the trial Court. It is further argued that Ramesh Kumar – respondent No.1 alleged to be adopted son of Bhagwan Singh, brother of Bir Singh is not Class I heir of deceased Bir Singh, therefore, he is not entitle to inherit to the estate of Bir Singh (since deceased) even if plea of the appellant that she is the widow of deceased does not find favour with the Court.

Counsel representing respondents No.1 and 5 has supported judgment passed by the Court in appeal with the submission that the appellant has failed to adduce sufficient much less cogent and convincing evidence to prove her marriage with Bir Singh or cohabitation with said Bir Singh as a wife or Bir Singh and the appellant had been treating each other as husband and wife. It is further argued that as per plea of the appellant, 4 children were born out of her wedlock with Bir Singh but father's name of those children is recorded to be Ajit Singh who is none else but brother of Bir Singh and arrayed as defendant No.2. However, he has conceded that property left behind by deceased Bir Singh would be inherited by his heirs in accordance with the provisions of the Hindu Succession Act, 1956 (in short 'the Act').

I have heard counsel for the parties, perused the paper-book and records.

Counsel for the appellant has not disputed that four children who are stated to be born out of wedlock of the appellant and Bir Singh have not been impleaded as a party nor they have claimed any right of inheritance to Sh. Bir Singh. The appellant has not examined any of the children stated to be born out of conjugal relationship between the appellant and said Bir Singh. These facts go a long way to negate plea of the appellant that the four children who were recorded to be children of Ajit Singh were born out of the wedlock of appellant and Bir Singh (since deceased).

The appellant examined Suraj Mal PW-1. He tendered into evidence his affidavit Ex.PW1/A. He has stated that Murti Devi was married to Bir Singh approximately 56-57 years ago and he was a member

of the marriage party when he was 10 years old. He has further deposed that after marriage, Murti Devi resided with Bir Singh as his wife in village Julana. In his cross examination, he has expressed his ignorance about number of children of Murti, their names, place of birth etc. He also expressed his ignorance if children of Murti were born out of alliance of Ajit or Bir Singh.

Testimony of Suraj Mal that Murti had been residing with Bir Singh in village Julana gets falsified and belied from the statement of appellant Murti as she admitted in cross examination to the following effect:-

“It is correct that Bir Singh was residing in Safidon and I did not go there. I do not remember the date and year of death of Bir Singh. Voluntarily stated that he died in the month of Chet.”

The other witness examined by the appellant is her real brother namely Bhup Singh. He has also deposed that after marriage, he had gone to the house of his sister in village Julana. Keeping in view the aforesaid serious contradiction in the testimony of two witnesses on one hand and that of Murti – appellant/plaintiff coupled with that children alleged to have born out of wedlock of Murti and Bir Singh are recorded to be children of Ajit Singh and have not claimed right of inheritance to Sh. Bir Singh, the same go a long way to falsify and belie plea of the appellant that she had been residing with Bir Singh as his wife or there was conjugal relationship between them and as a result thereof four children were procreated. The statement of Murti Devi and witnesses examined by her is conspicuously silent as to what ceremonies were performed at the time of

alleged marriage of Murti Devi with Bir Singh. In view of the above, appellant cannot be allowed to find fault with findings recorded by the first Appellate Court, merely by relying upon one document Ex.P4 namely identity card issued by Election Commission of India wherein Murti Devi has been recorded to be wife of Bir Singh. As such, findings of the first Appellate Court negating plea of the appellant that she is widow of Bir Singh and entitle to inherit to his estate are liable to be affirmed and ordered accordingly.

Counsel for the contesting respondents has not raised an issue that estate left behind by Bir Singh would be inherited by his heirs on the basis of succession under the Act. Accordingly, any mutation sanctioned by the Revenue Authorities in respect of land left behind by Bir Singh would not cause prejudice to the rights of heirs of Bir Singh to inherit to his estate on the basis of natural succession, in accordance with the Act.

In view of what has been discussed hereinbefore, the appeals are disposed of with the aforesaid observations.

MAY 13, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no