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

**RSA No.2031 of 2010 (O&M)**
**Date of Order: 18.03.2019**

**Puran Singh**

**..Appellant**

**Versus**

**Jagar Singh and others**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Vijay Sharma, Advocate,
for the appellant.

Mr. Umesh Kumar Kanwar, Advocate
for respondents no.1 to 4, 6 and 7.

**ANIL KSHETARPAL, J(Oral)**

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below dismissing the suit filed by him for declaration that he is exclusive owner in possession of land measuring 11 bighas 10 biswas which is undivided share in the land measuring 23 bighas and 10 biswas.

It is pleaded case of the plaintiff that Nazool Land(escheated land) was allotted to the Harijan Cooperative Society, Boharpur Janherian. Plaintiff claims that he got his father's name incorporated and the plaintiff being nominee of his father is exclusively entitled to the property in dispute.

In the written statement, contesting defendants are i.e. his brothers contested the suit and pleaded that late Sh. Rala Singh, father of the parties was owner and therefore as per the Hindu Succession Act,1956,

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everyone would inherit the property.

Both the courts after examining the evidence have found that nomination cannot be treated as a testamentary disposition and the nomination is only name of the representative who would receive the benefit on behalf of the successors.

Learned counsel appearing for the appellant has submitted that it is the Society which is owner of the property and under the aegis of the society, members cultivate the land. He further submitted that remaining brothers are already members of the Society in their own right and therefore the courts below have committed an error in rejecting the claim of the plaintiff. Learned counsel has further pointed out that the application for permission to amend the plaint has been filed and the plaintiff now wants to plead that the plaintiff does not claim ownership because late Sh. Rala Singh was not the owner and he used to cultivate the land as a member.

This court has considered the submissions.

It may be noted that the Society has been formed by the members. No doubt, as per the provisions of the Punjab Co-operative Societies Act,1961, Society is a legal entity. However, Society is a association formed by various members to collectively move and carry out all the activities. In the present case, it has come in evidence that being a member, a person is entitled to cultivate the land without any restriction as an owner. Thus, the cultivation of the land by a member is akin to ownership. In such circumstances, the membership is an estate which has to be succeeded in accordance with the provisions of Hindu Succession Act, 1956. It is not disputed before this court that the members are not required to pay any lease money. Learned counsel for the appellant has pointed out

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that every member contributes towards an installment, which is paid to the government. It is also not disputed by learned counsel that the ownership rights have been transferred by the government in favour of the Society.

In these circumstances, the rules framed by the Society providing for nomination would not supersede the provisions of the Hindu Succession Act, 1956.

On 03.12.2015, when the appeal was admitted, following substantial questions were framed:-

"a) *Whether the judgment & decree dated 22.11.2004 passed by the Civil Judge (Jr. Division) Patiala and judgment & decree dated 30.09.2009 passed by the Additional District Judge, Patiala are perverse, illegal, erroneous in law and against the principles of natural justice?*

*b) Whether the plaintiff is entitled to 1/12 share of Ralla Singh after his death, being member of the society, as the said land was given to Ralla Singh being head of family of plaintiff?*

*c) Whether the judgment & decree dated 22.11.2004 passed by the Civil Judge (Jr. Division) Patiala and judgment and decree dated 30.09.2009 passed by the Additional District Judge, Patiala are result of misreading of evidence?"*

As regard question No.(a), learned counsel failed to point out that how the judgments and decrees passed by the courts below are perverse. As regards question no.(b), the answer has already been given. As regards question no.(c), counsel for the appellant has failed to point out

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as to how the judgments and decrees passed by the courts below are result of misreading of evidence.

For record, it may be noted that the Nazool Land (transfer Rules, 1956) has been amended and provisions of Hindu Succession Act has been made applicable.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the courts below.

The regular second appeal is dismissed.

**March 18, 2019** **(ANIL KSHETARPAL)**
**nt** **JUDGE**

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

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