

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 40 of 2010 (O&M)

Date of Decision: 02.04.2019

Surender Singh

...Appellant

VERSUS

Pirithi Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Tacoria, Advocate
for the appellant.

None for respondents.

SURINDER GUPTA, J.

The short question, which has been raised in this appeal is as to how property of a female Hindu after her death will devolve as per provisions of Section 15 of the Hindu Succession Act, 1956 (later referred to as 'the Act') on her heirs, which include children from her first marriage?

2. The case of plaintiff-respondent no. 1 as enumerated by learned counsel for the appellant during arguments is that Asha Ram had two sons, namely, Ganesha and Arjun Singh. Ganesha was married with Daulatia and from this marriage two sons, namely, Pirithi Singh and Kalu Singh were born. After death of Ganesha, Daulatia entered into *kareva* married with his brother Arjun Singh and from this marriage, respondent no. 2-Kamla and Kasturi, mother of respondent no. 3-Panna were born. After death of Daulatia, property inherited by her from her husband Arjun Singh was mutated in the name of Kamla and Kasturi. Respondents no. 2 and 3 sold the suit property vide sale deed dated 22.11.2001 to appellant.

3. Taking note of above facts, learned Additional Civil Judge (Sr.

Division), Hisar while dismissing suit for plaintiff observed in para 16 of his judgment as follows :-

“16. On the other hand, defendant no. 3 has come up with a specific stand that defendant no. 1 and Kasturi, both were daughters of Daulatia, though, Kasturi Devi might have been born from other wife of Arjun Singh. But since the property in question was inherited by Daulatia from her husband certainly after her death, it would go to the legal heirs of her husband Arjun Singh from whom she has acquired this property. Both Kamla and Kasturi Devi being daughters of Arjun Singh were entitled to inherit the estate of deceased Daulatia and thus, mutation has been rightly sanctioned in their favour. Subsequent transfer of their share in favour of defendant no. 3 is also thus legal and valid one. Moreover, defendant no. 3 is also a bona fide purchaser for consideration, who has purchased the property in question from defendant no. 1 and 2 and it is also so evident from the revenue records Ex. P1 Jamabandi, Ex. P2 Mutation and Ex. P3 Khasra Girdawari of the suit property.....”

4. Judgment of learned Additional Civil Judge (Sr. Division) was set aside and the appeal was partly accepted by Additional District Judge, Hisar with observations in para 9 of his judgment as follows:-

“9.In this way, there is no dispute, Smt. Kasturi, mother of respondent no. 2, born from the loins of Arjun

son of Aasa Ram (name of her mother is not disclosed). Smt. Kamla, born from the loins of Arjun Singh and womb of Smt. Daulatia. The court below, declined relief prayed, to the appellant, on the ground, Smt. Daulatia, inherited the property from her second husband Arjun Singh son of Aasa Ram, therefore, after the death of Smt. Daulatia, only respondents no. 1 and 2 were entitled to succeed to her estate. Here, the court below, has committed error on the point of law. The estate of Hindu female, who died, intestate, is to be devolved as per section 15 of the Hindu Succession Act, 1956 (for short Act) and is to be divided as per section 16 of the Act. The view of this court is fully supported by the law cited by the counsel for the appellant, referred in para no. 6 of this judgment. The estate of Smt. Daulatia, was to devolve upon the children, born from the loins of her first husband Ganesha son of Aasa Ram. The view of the court below is contrary to the provisions of section 15 and 16 of the Act as well as contrary to the law, cited (supra) by the counsel for the appellant. The court below, while appreciating the evidence on record, has also committed grave error. Appellant, who appeared in the witness box on 13.8.2007, as PW-1, admitted, he had three sisters, namely, Shanti, Chandro and Kamla (respondent no. 1). He admitted his sisters, Chandro and Shanti expired and their children are alive. As per

section 15 of the Act, had Chandro and Shanti been alive, then, they would have also entitled to inherit the estate of deceased Smt. Daulatia, at par with the appellant and the respondents, meaning thereby, appellant, respondent no. 4, respondent no. 1, Smt. Kasturi, mother of respondent no. 2, Smt. Chandro, sister of the appellant and Smt. Shanti, sister of appellant, all would have been entitled to inherit the estate of Smt. Daulatia, to the extent of $1/6^{\text{th}}$ share each. Likewise, respondent no. 2, children of Smt. Chandro and Shanti, would have been entitled to inherit to the property of $1/6 + 1/6$ share of their mother Chandro and Shanti. The total share of respondent no. 1, would have been $1/6^{\text{th}}$ in the estate of deceased Smt. Daulatia. Similarly, the total share of respondent no. 2, through her mother, would have been $1/6^{\text{th}}$ share. In this way, respondents no. 1 and 2, would have been entitled to inherit the property of Smt. Daulatia, to the extent of $1/3^{\text{rd}}$ share, each in equal share of the suit land only. Sanction of mutation of inheritance, beyond their $1/3^{\text{rd}}$ share and consequently, any sale of the suit land, beyond their $1/3^{\text{rd}}$ share in favour of respondent no. 3, is illegal, same is not binding on the rights of the appellant and respondent no. 4 and the children of deceased sister of appellant and respondent no. 4, namely, Chandro and Shanti.”

5. Learned counsel for the appellant has argued that the dispute pertains to estate of Arjun Singh and as per provisions of Section 15 (2) of the Act, the property left by Arjun Singh, which devolved upon his wife, Daulatia, after her death, will devolve upon legal heirs of Arjun Singh and not on children of Daulatia from her first marriage.

6. To understand the devolution of estate of Daulatia, it will be relevant to have note of the fact that property of Arjun Singh had fallen to her share and as per provisions of Section 14 of the Act, it became her absolute property. The general rules of succession in case of female Hindu as incorporated in Section 15 of the Act are as follows:-

“15. General rules of succession in the case of female Hindus.— (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

- (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 in sub-section (1) in the order specified therein, but upon the heirs of the father; and
- (b) any property inherited by a female Hindu from her husband or from her father-in-law 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 husband.”

7. As per above provisions, the property of which a female Hindu was absolute owner, as per Section 15 (1) (a) of the Act shall fall upon her sons and daughters and son and daughter of pre-deceased son and daughter. This provision does not make any distinction of sons and daughters born to female Hindu from different husbands. The question is of succession to estate of Daulatia and not of her husband. The property, which she has inherited from her first husband, second husband or acquired by her from any other source will devolve as per provisions of Section 15 (1) (a) of the Act, meaning thereby the sons and daughters born to her from her first and second marriage will inherit the property left by Daulatia in equal shares. To further understand this proposition, it will be relevant to look into an example. Suppose a lady is married to 'A' and from this marriage two children were born to her. On death of 'A' she married 'B' and no children was born from that marriage. After death of 'B', she became owner of entire property left by him. After her death intestate succession of that lady will devolve upon to her children from her first marriage and the property will not revert to heirs of 'B'.

8. Before proceeding further it will be relevant to take a note of the fact that after death of Ganesha his share of property, which came to Daulatia will also be inherited by her children from both the marriages and not by children born to her from Ganesha only.

9. Now I come to provisions of Section 15 (2) (b) of the Act, which provides that any property inherited by female Hindu from her husband or her father-in-law **in the absence of any son or daughter of the**

deceased shall not devolve upon heirs referred to in sub-Section (1) of Section 15 of the Act in the orders specified therein but on the heirs of husband. The above proviso so far as it provides devolution of the property of a female upon the heirs of husband is relevant only when she had not left behind any son or daughter of her own. In this case Daulatia had left behind children from her first marriage as well as second marriage and devolution of her estate shall be as per provisions of Section 15 (1) (a) of the Act.

10. Learned counsel for the appellant while arguing that the property inherited by Daulatia from Arjun Singh will devolve upon her children from marriage with Arjun Singh, has relied on observations in case of **Bhagat Ram (D) by L.Rs vs. Teja Singh (D) by L.Rs, 2002 (1) SCC 210**, wherein Hon'ble Supreme Court in para 14 of the judgment observed as follows:-

“14. The source from which she inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit that property. That would defeat the intent and purpose of sub-Section 2 of Section 15, which gives a special pattern of succession.”

11. The brief facts of the above case as enumerated in para 6 of the judgment are reproduced as follows:-

“6. One Kehar Singh was the owner of the land measuring 280 kanals and 18 marlas in the village Antowali (now in Pakistan). He died prior to partition of India. His

widow, Smt. Kirpo and two daughters Smt. Santi and Smt. Indro migrated to India. In lieu of the property owned by Kehar Singh in Pakistan, his widow, Kirpo was allotted some land in India. Kirpo died on 25.12.1951 leaving behind her two daughters Smt. Santi and Smt. Indro. They inherited the property equally. Smt. Santi died in 1960. The property left by her was thereafter mutated in the name of her surviving sister, Smt. Indro. The original appellant, Bhagat Ram (deceased) who had entered into an agreement with Smt. Indro on 12.3.1963, filed a suit for specific performance, which was decreed in his favour. The original respondent in the appeal, Shri Teja Singh (deceased) is the brother of Smt. Santi's pre-deceased husband. He filed a suit alleging that, on the death of Smt. Santi in 1960, the property in question devolved on him by virtue of clause (b) of Sub-section (1) of Section 15 of the Hindu Succession Act, 1956. The Trial Court decreed the suit filed by Teja Singh. The appeal filed against the said decree was dismissed. Bhagat Ram (deceased) then preferred the second appeal before the High Court, which was also dismissed. The High Court held that the property held by Smt. Santi on her death devolved on Teja Singh who was the brother of the pre-deceased husband of Smt. Santi. However, on appeal, this Court by its Judgment dated 31.3.1999 held that the property

held by Smt. Santi was the property inherited by her from her mother; therefore, clause (a) of sub-Section (2) of Section 15 is the relevant provision which governed the succession and Teja Singh had no right in the property left by Smt. Santi and that it would only devolve on her sister Smt. Indro.”

12. It is evident that the dispute in that case was with regard to the property inherited by female from her mother and in that eventuality provisions of Clause (a) of sub-Section 2 of Section 15 of the Act were made applicable. The above citation in no manner is applicable to facts and circumstances of this case.

13. Learned counsel for the appellant has also referred to observations in case of **Mohinder Singh vs. Joginder Singh, 2009 (3) RCR (Civil) 632**, wherein it was observed that a son born to a lady from her previous marriage is not entitled to succeed to the estate of step father. In that case, the dispute was with regard to property left by husband and not of the share inherited by his wife, as such, the above citation is not applicable to facts and circumstances of present case.

14. Learned counsel for the appellant has further referred to observations in another case of **Sita Devi and others vs. The State of Haryana and another, 2013 (3) RCR (Civil) 198**. In that case also a coordinate Bench of this Court has observed that *pichhlag* son cannot be given right to inherit the property of second husband of his mother.

15. The legal provisions relating to rules of succession in case of female Hindu as incorporated in Section 15 of the Act clearly lay down that absolute property owned by a female, shall devolve according to rules as

laid down under Sections 15 and 16 of the Act. The words 'sons' and 'daughters' used in Section 15 (1) (a) of the Act include the children of a female whether born to her from first marriage or second marriage or even illegitimate. They are sons and daughters of the female for the purpose of succession of her absolute property, as such, observations of Ist Appellate Court calls for no interference on this score.

16. Learned counsel for the appellant has argued that plaintiff-respondent no. 1 had not alleged that Daulatia left behind six children but Ist Appellate Court has observed that she left behind six heirs, despite case of defendant no. 1 herself that Kasturi was born from first wife of Arjun Singh.

17. Findings of fact as recorded by Ist Appellate Court that Kasturi is also entitled to inherit share in the property left by Daulatia are based on no evidence and are against pleadings. Panna defendant had not appeared as witness to allege that her mother was born to Daulatia from her marriage with Arjun Singh. As per defendant no. 1-Kasturi, she was born to first wife of Arjun Singh. As Kasturi is not the daughter of Daulatia, she is not entitled to any share in her property, which will fall on other five legal heirs of Daulatia i.e. plaintiff, defendants no. 1 and 4 and sons/daughter of Shanti and Chandro.

18. Learned trial Court has also observed that appellant is *bona fide* purchaser. Defendant no. 3 Surender while deposing as DW-1 has nowhere claimed himself to be *bona fide* purchaser of suit land as such there was no basis for learned trial Court to record such finding in his favour.

19. As a sequel of my above discussion, this appeal is partly

allowed to the extent that property of Daulatia shall be devolved in equal share on her five legal heirs as mentioned in judgment of Ist Appellate Court, except Smt. Panna, respondent no. 3 daughter of Kasturi, who was not born to Daulatia from the loins of Arjun Singh. Rest of the judgment of Ist Appellate Court is upheld.

April 02, 2019
jk

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>