

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.363 of 2016 (O&M)

Date of Decision: May 10, 2019

Banwari Lal

...Appellant

Versus

Dev Karan

...Respondent

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr. Harsh Aggarwal, Advocate,  
for the appellant.

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**AMIT RAWAL, J.**

The present Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court, whereby the suit of the appellant-plaintiff seeking declaration decreed by the trial Court, has been dismissed.

Appellant-plaintiff sought the declaration that he is owner of the property mentioned in Para No.1 of the plaint to the extent of 1/18<sup>th</sup> share situated at the revenue estate of Siwana, Village Fatehpur Peepa, Tehsil and District Rewari. It was alleged that real brother of grand-father of plaintiff Jorawar died issueless in the year 1972. Jorawar, plaintiff and his brothers and defendant Dev Karan and his brother Balbir and Ganpat were jointly in possession of the property. After his death, mutation of inheritance of 1/3<sup>rd</sup> share was entered in the names of Dev Karan, Ganpat and Balbir. However, during his life time, Jorawar expressed his desire to distribute the property to the sons of Ramji Lal and Har Lal (brother of Jorawar) equally and in the year 1975, a family settlement was arrived.

Ganpat, Balbir and Dev Karan son of Har Lal (brother of Jorawar) would give half share to the plaintiff and his brothers Chet Ram and Boden. Ganpat and Balbir relinquished their share in favour of Chet Ram and Boden vide decrees dated 24.10.1988 and 24.11.1990 respectively. However, 1/8<sup>th</sup> share was not relinquished by Dev karan in favour of the plaintiff and, therefore, the present suit was filed.

Dev Karan contested the suit and denied all the aforementioned facts. It was stated that he had the preferential right to succeed as his father Har Lal was alive at that time.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is owner in possession to the extent of 1/8<sup>th</sup> share and entitled for correction of revenue record in their favour accordingly? OPP*
- 2. Whether the suit is not maintainable? OPP*
- 3. Relief.”*

Plaintiff, in support of the pleadings, examined five witnesses, namely, PW-1 Yad Ram, PW-2 Hari Chand Record Keeper, PW-3 Raj Kumar, PW-4 Mangtu Ram and himself appeared as PW-5 and also brought on record documents Ex.PA to Ex.PG and Ex.P1 to Ex.P4, i.e., mutations, decision of the Panchayat, certified copies of the plaints titled as `Chet Ram Versus Ganpat` and `Chet Ram Versus Balbir`.

On the other hand, the defendant himself appeared as DW-1.

The trial Court, while accepting the family settlement and as well as the factum of the judgments and decrees whereby Chet Ram and Boden had relinquished the share, decreed the suit by relying upon the decision of the Panchayat dated 03.07.2007. The Lower Appellate Court

reversed the findings.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law, for, it ignored the family settlement of 1975, whereby two brothers of Dev Karan, Chet Ram and Bodan had suffered a consent decree by accepting the plaintiff to succeed the share of Jorawar in equal share. Lower Appellate Court lost sight of the Hindu Succession Act, 1956 (for short, the Act') and did not appreciate the provisions of Section 6 of the Act as the share of Jorawar was to be devolved upon the descendants of his two brothers Har Lal and Gobind Ram in equal shares. The defendant and his two brothers are the sons of Har Lal, whereas the plaintiff and his two brothers are the grandsons of Gobind Ram and they are entitled to 50% share of Jorawar. The reasoning assigned by the Lower Appellate Court by relying upon the provisions of Section 8 of the Act is wholly alien to the settled law.

I am afraid, the aforementioned arguments would not be sustainable. It would be apt to notice that Mukhram was the common ancestor. As per the pedigree table, he had four sons, namely, Keshram, Govindram, Jorawar and Harlal. Jorawar died unmarried. Har Lal was alive at that time. The brother would have a preferential right to succeed as per Schedule of Section 8 of the Act being Class-II heir. The same read thus:-

- i. Father*
- ii. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister*
- iii. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.*
- iv. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.*
- v. Father's father; father's mother.*

- vi. Father's widow; brother's widow.*
- vii. Father's brother; father's sister.*
- viii. Mother's father; mother's mother*
- ix. Mother's brother; mother's sister.”*

In such circumstances, the plaintiff would not have any right to succeed to the share. It was a voluntary act of Chet Ram and Boden to relinquish their share, but the plaintiff by virtue of the suit cannot implore by applying the same ratio upon Dev Karan. Lower Appellate Court, while relying upon Schedule of Section 8 of the Act at Sr.No.2 of Class-II heirs, held that when brother had preferential right, his sons would have a better right than that of the grand-son of Govind Ram, brother of Jorawar and Har Lal. Such finding cannot be said to be perverse.

For the reasons mentioned above, I do not find any illegality or perversity in the findings under challenge. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

**May 10, 2019**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**  
**Whether Reportable:**

**Yes/No**  
**Yes/No**