

RSA Nos.3144 & 6343 of 2017 (O&M)

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

Date of decision : 26.03.2019

1. RSA-3144-2017 (O&M)

Madan and another

... Appellants

Versus

Ram Narayan and another

... Respondents

2. RSA-6343-2017 (O&M)

Ram Narayan Singh

... Appellant

Versus

Prem Bai and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Kumar, Advocate
for the appellant in RSA-3144-2017.

Mr. Prashant Singh Chauhan, Advocate
for the appellant in RSA-6343-2017.

AMIT RAWAL, J.

This order of mine shall dispose of two regular second appeals bearing **RSA No.3144 of 2017** titled as **“Madan and another V/s Ram Narayan Singh and another** at the instance of the defendants and **RSA No.6343 of 2017** titled as **“Ram Narayan Singh V/s Prem Bai and others,** at the instance of the plaintiff. Both the appeals are directed against the judgment and decree of the lower Appellate Court dated 04.01.2017, whereby the suit of the plaintiff, though dismissed by the trial Court, has been decreed in part.

The plaintiffs sought the declaration by challenging the

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mutation No.1960 of deceased Champa Devi, sanctioned in favour of Prem Bai, to be illegal, null and void and not binding on the rights of the plaintiff, with consequent relief of permanent injunction restraining the defendants from alienating the property in any manner. It was alleged that the plaintiff and his son, were owner in possession and in cultivation of the land, but the defendants had no concern as they neither cultivated or remained in possession. Uncle of the plaintiff, namely, Kalu Ram, who was married to Champa Devi, died issueless and after his death, the property was inherited by his wife Champa Devi. Mathura Singh was the brother of Kalu Ram. He was married to Dhaka, who died in the year 1984. Both of them had two children, namely, Ram Narain-plaintiff and Rattan Bai. The mother of defendant 1 to 3, died in the year 1957 i.e. pre-deceased Champa Devi, who died on 01.02.1966.

Defendant No.1 was proceeded *ex parte*. Defendant Nos.2 & 3 filed the joint statement and opposed the suit. It was alleged that it was without cause of action. There was no relation of the plaintiff with Champa Devi.

The plaintiff in support of the pleadings examined two witnesses and brought on record Ex.PW1/A, special power of attorney executed by his father, Ex.PX, Mark C, Mark B, photocopy of the mutation. On the other hand, the defendants examined two witnesses and brought on record many documents.

The trial on the basis of the evidence dismissed the suit, however, the lower Appellate Court, as noticed above, decreed the suit in part.

Mr. Prashant Singh Chauhan, learned counsel appearing on

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behalf of the appellant(s) in RSA No.6343 of 2017, submitted that the judgment and decree of the trial Court dismissing the suit in toto was perfectly legal and justified.

Mr. Chauhan, further submitted that the share of Champa Devi could not be inherited by Dhaka as the surviving male heir of Mathura Singh, brother of Kalu Ram, was the plaintiff Ram Narain. In support of his contentions, he referred to the provisions of sub-Clause (b) of sub-Section 2 of Section 15, Section 16, Section 9 and Schedule of Section 8 of the Hindu Succession Act as well as the ***ratio decidendi*** culled out by this Court in ***“Devi Ram V/s Shanti Devi” 2004 (2) RCR (Civil) 821***, thus, urges this Court for setting aside the findings, under challenge.

I have heard learned counsel for the appellant, appraised the paer book as well as records of the Courts below and of the view that there is no merit and force. The finding of the lower Appellate Court, conferring the ownership regarding the share of Champa Devi upon Ram Narain and Dhaka, is the correct view.

It would be apt to reproduce the provisions of Sections 8, 9, 15 and 16 of the Hindu Succession Act, which read as under:-

"Section 8 of the Hindu Succession Act

8. *General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—*

(a) *firstly, upon the heirs, being the relatives specified in class I of the Schedule;*

(b) *secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;*

(c) *thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and*

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

Section 9 of the Hindu Succession Act

9. Order of succession among heirs in the Schedule.—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

Section 15 of the Hindu Succession Act

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 to 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.

Section 16 of the Hindu Succession Act

16. *Order of succession and manner of distribution among heirs of a female Hindu.—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestates property among those heirs shall take place according to the following rules, namely:— Rule 1.—Among the heirs specified in sub-section*

(1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously. Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death. Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) to section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."

On perusal of the aforementioned provisions, it is evident that if the female Hindu inherits the property from her husband or from her father-in-law, in the absence of any son or daughter of the deceased, including the children of any pre-deceased son, the share will be upon the heirs as referred in sub-Section 1 i.e. on the heirs of the husband.

By relying upon the provisions of Section 9, an attempt was

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made to refer to Schedule of Section 8, wherein Dhaka, would fall under six category, viz-a-viz Ram Narain being 4th category i.e. brothers' son and father's widow.

The aforementioned argument would not be sustainable, for the simple reason that the heirs of Mahtura Singh i.e. brother of Kalu Ram, would not be only Ram Narain, but Dhaka as well. The Legislature in its wisdom was clear to confer the status of the devolution by specifying in Clause (b) of sub-Section 2 of Section 15, as heirs of the husband, if import was something else then would have specified as male and not female.

In the judgment cited supra, it was a case, wherein, the successor of Badami was only Radhey Lal and it has not come on record, whether he was married or otherwise. In such circumstances, the situation arisen in the present case, did not arise.

Keeping in view the aforementioned facts, the judgment and decree of the lower Appellate Court, partial decreeing the suit, conferring the share of Champa Devi, upon both Ram Narain and Dhaka, cannot be said to be suffered from illegality and perversity, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, both the second appeals are dismissed.

26.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**