

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

1. RSA No.4009 of 2018 (O&M)
Date of decision : 22.01.2019
Lal Chand (since deceased) through his LRs ...Appellant
Versus
State of Haryana and others ...Respondents
2. RSA No.6146 of 2018 (O&M)
Date of decision : 22.01.2019
Smt. Kavita and others ...Appellants
Versus
Lal Chand and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harish Bhardwaj, Advocate for the appellant
(In RSA No.4009 of 2018)
for respondent No.1 (In RSA No.6146 of 2018)

Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Akshay Jindal, Advocate for the appellants
(In RSA No.6146 of 2018)
for respondent Nos.5 to 10 (In RSA No.4009 of 2018)

ANIL KSHETARPAL, J. (ORAL)

CM No.17164-C of 2018 in RSA No.6146 of 2018

For the reasons stated in the application, which is duly supported by an affidavit, delay of 36 days in refiling the present appeal is condoned.

Application is allowed.

MAIN

By this judgment, RSA Nos.4009 and 6146 of 2018

respectively filed by the plaintiff and the defendants shall stand disposed of.

The question which needs consideration is “whether after immovable property had been succeeded by operation of Section 8 of the Hindu Succession Act, 1956, the recipients would be holding the property as coparceners or as individual owners?”.

Dig Raj son of Ganga Dutt did not had any male child. He transferred the property in favour of Lal Chand, his real brother through registered release deed dated 17.09.2008 and possession was handed over. The revenue authorities ignoring the registered release deed, sanctioned the mutation in favour of daughters of Dig Raj forcing the plaintiff to file the present suit for declaration with consequential relief of permanent injunction as also mandatory injunction directing the authorities to correct and update the revenue record.

Daughters defended the suit by claiming that the property was ancestral and the release deed was result of undue influence.

Learned trial Court, on appreciation of the evidence, found that the property is ancestral, therefore, the suit filed by the plaintiff was partly decreed by recording a finding that the release deed is valid with respect to the share of Dig Raj. The Court went on to record a finding that the entire property is coparcenary.

Two appeals were preferred. Learned First Appellate Court, after re-appreciation of the evidence have found that Dig Raj is proved to have received property to the extent of 1/40th share from Khem Chand, his grandfather and, therefore, remaining property is not proved to be coparcenary. Hence, the decree passed by the trial Court was modified by

directing that the release deed is valid to the extent of share of Dig Raj.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the photocopy of the record.

Learned counsel for the appellant(s) submitted that Ganga Dutt, father of Dig Raj died in the year 1964 and his property was succeeded under Section 8 of the Hindu Succession Act, 1956 by male as well as by female legal heirs. He has submitted that on death of Ganga Dutt, his property devolved upon 4 daughters, 5 sons and a widow including Dig Raj.

He has submitted by relying upon the judgment passed by Hon'ble the Supreme Court in the case **Commissioner of Wealth Tax, Kanpur and others Vs. Chander Sen and others, (1986) 3 SCC 567** followed by judgment passed by Hon'ble the Supreme Court in case of **Yudhister Vs. Ashok Kumar (1987) 1 SCC 204** and subsequently followed in the case of **Bhanwar Singh Vs. Puran and others (2008) 3 SCC 87** and recently in the case of **Uttam Vs. Saubhag Singh (2016) 4 SCC 68** that in view of the interpretation, the Court erred in returning a finding that the property to the extent of 1/40th share was ancestral coparcenary property.

On the other hand, learned counsel appearing for the daughters has submitted that since all the daughters of Ganga Dutt after receiving the property had given to the sons (their brothers), therefore, the property was ancestral coparcenary property. He further submitted that on the amendment of the Hindu Succession Act, 1956 in the year 2005, the daughters have become coparceners and, therefore, the judgment passed by the Court is correct to that extent.

This Court has considered the respective submissions of the learned counsel for the parties and gone through the judgments passed by the Courts below.

By now, it is well settled that after coming into operation of Hindu Succession Act, 1956, if the property has devolved upon the heirs in accordance with Section 8 of the Hindu Succession Act, the property in the hands of recipients is not ancestral coparcenary property rather it is his individual property. The judgments which have been relied upon by the learned counsel for the appellant do lay down to that effect.

Learned counsel for the respondent(s) could not draw attention of the Court to any view contrary to the aforesaid judgments.

Counsel for the daughters has also filed an appeal against the concurrent findings of fact that the release deed was not result of fraud. Although, learned counsel appearing made sincere attempt, however, in absence of any substantive misreading or non-reading of the evidence, this Court does not find any reason to differ with the concurrent finding of fact.

In view of the aforesaid, RSA No.4009 of 2018 is allowed whereas RSA No.6146 of 2018 shall stands dismissed.

Resultantly, the suit filed by Lal Chand would stands decreed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

22.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**