

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

**RSA No.5968 of 2018(O&M)
Date of Decision: 24.01.2019**

Beant Kaur	Appellant
Versus	
Harbans Kaur and others	Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Amandeep, Advocate for
Mr. R.S. Pandher, Advocate
for the appellant.

RAJ MOHAN SINGH, J.(Oral)

[1]. Appellant has preferred the present regular second appeal against the concurrent judgments and decrees passed by the Courts below.

[2]. The estate of Gurbaksh Singh was involved in the suit who died on 12.04.1981. Plaintiff filed a suit for declaration and permanent injunction staking her claim to get possession of 1/8th share of 205 kanals, 10 marlas in agricultural land. Plaintiff also challenged mutation in favour of Ajaib Singh etc. on the basis of Will dated 22.08.1977 executed by Gurbax Singh, sale deed executed by defendant No.1 in favour of defendant No.13, sale deed executed by defendant No.5 in favour of defendants No.7

to 10 along with their mutations. Mortgaged deed executed by defendants No.1 to 3 in favour of Co-operative Society vide rapat No.134 dated 21.12.1990 and mortgaged deed executed by defendant No.5 in faovur of Union Bank of India vide rapat No.131 dated 22.10.1990 were also assailed. Other challenges were made in the suit as depicted in the head note of the plaint.

[3]. As per nomenclature of the case, the plaintiff pleaded herself to be daughter of Natha Singh son of Gurbax Singh. Natha Singh had died prior to the death of Gurbax Singh. Plaintiff had staked her entitlement on the basis of land being ancestral in nature.

[4]. Evidently, the rights of female coparceners came to be recognized only after Amendment Act, 2005 incorporated in Hindu Succession Act. Prior to the aforesaid Act, the property was to be devolved upon male coparceners as per survivorship in terms of Section 6 of the Hindu Succession Act. Gurbax Singh died on 12.04.1981. The right of such alleged female coparceners cannot be recognized prior to the Amendment Act of 2005. The original owner was not alive on the date of enforcement of the Act.

[5]. In **Parkash and others Vs. Phulavati and others,** **2015 (4) RCR (Civil) 952**, the controversy has been set at naught in the following manner in para Nos.17, 18, 23 and 24 :-

*“17. The text of the amendment itself clearly provides that the right conferred on a 'daughter of a coparcener' is 'on and from the commencement of Hindu Succession (Amendment) Act, 2005'. Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective **Shyam Sunder Vs. Ram Kumar, 2001(3) R..C.R. (Civil) 754 : (2001) 8 SCC 24, Paras 22 to 27.** In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the Amendment will be considered a little later. On this finding, the view of the High Court cannot be sustained.*

18. Contention of the respondents that the Amendment should be read as retrospective being a piece of social legislation cannot be accepted. Even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature. In the present case, the legislature has expressly made the Amendment applicable on and from its commencement and only if death of the coparcener in question is after the Amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso keeping dispositions or alienations or partitions prior to 20th December, 2004 unaffected can also not lead to the

inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, Explanation has to be read harmoniously with the substantive provision of Section 6(5) by being limited to a transaction of partition effected after 20th December, 2004. Notional partition, by its very nature, is not covered either under proviso or under sub-section 5 or under the Explanation.

23. Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9th September, 2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20th December, 2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation.

24. On above interpretation, Civil Appeal No.7217 of 2013 is allowed. The order of the High Court is set aside. The matter is remanded to the High Court for a fresh decision in accordance with law. All other matters may be listed for hearing separately for consideration on 24th November, 2015.”

The aforesaid judgment was followed by the Hon'ble Apex Court in **Danamma @ Suman Surpur and another Vs. Amar and others, 2018(1) RCR (Civil) 863.**

[6]. The execution of Will was allowed to be proved on the strength of secondary evidence which was allowed by the trial

Court and the same has already attained finality. The execution of Will dated 22.08.1977 has been proved with reference to statement of DW 5 Kewal Krishan, Registration Clerk of Sub Registrar Office who produced the original record of the Will. DW 6 Vinay Kumar had identified the signatures of his grandfather Nand Lal who had scribed the Will being a deed writer. Similarly, Mohinder Singh (DW 7) and Ajaib Singh (DW 8) have also proved execution of Will in the capacity of attesting witnesses.

[7]. The expressions '*onus probandi*' and '*animo attestandi*' being the basic features in testamentary depositions are proved in the present case. The witnesses have attested the Will with an input animus to attest. The attesting witness must subscribe with the intent that the subscription of the signature made on the deposition stood by way of a complete attestation of a testamentary deposition and such evidence is admissible in evidence.

[8]. The findings recorded by the Courts below in respect of execution of Will are not proved to be the result of misreading of evidence or suffered with any perversity. The appreciation of evidence done by the Courts below is not open to be re-appreciated, particularly when no question of law worth consideration is involved in the present appeal. The present

appeal is found to be totally devoid of merits and the same is accordingly dismissed in *limine*.

[9]. Since the appeal has been dismissed, therefore, there is no necessity to pass any order in the application for condonation of delay in re-filing the appeal. All other pending applications are accordingly disposed of.

24.01.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No