

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-1570 of 2017 (O&M)

Date of decision: 05.07.2022

Rajinder and another

...Appellants

Versus

Pooja Rani and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Hooda, Advocate, for the appellants.

Mr. Jagtej Singh Kang, Advocate, for  
Mr. Abhimanyu Batra, Advocate, for respondent no.1.

ANIL KSHETARPAL, J (Oral)

While assailing the correctness of the limited relief granted to the plaintiff by the first appellate court, the defendants have filed the present appeal.

Admittedly, late Smt. Ram Murti was the owner of the property, namely, House No.258, measuring 100 square yards, bearing Municipal No.400/15, Purana Arya Nagar, Rohtak. The plaintiff Pooja Rani is the grand daughter of late Smt. Ram Murti (daughter's daughter).

Defendant no.1 is the son and defendant no.2 is the grand son of late Smt. Ram Murti.

The trial Court dismissed the suit on the ground that the plaintiff has failed to prove the Will. She filed the appeal which has been partly accepted. It has been found by the First Appellate Court that irrespective of the Will, the plaintiff Pooja Rani being the class-I heir of late Smt. Ram Murti is entitled to share in the property as per natural succession.

This Bench has heard the learned counsel representing the

parties at length and with their able assistance perused the paper book.

The learned counsel representing the appellants contends that the First Appellate Court has erred in granting the relief which was never claimed by the plaintiff. He submits that the plaintiff filed a suit claiming ownership on the basis of registered Will which she failed to prove. Hence, the First Appellate Court wrongly accepted the appeal partly, which was filed by the plaintiff. The learned counsel relies upon the judgment passed in *Manohar Lal (D) by Lrs vs. Ugrasen (D) by Lrs and others (2010) 11 SCC 557.*

On the other hand, the learned counsel representing the respondents submits that the plaintiff while filing the suit has claimed decree of declaration that she is owner of the property on the basis of a registered Will. He submits that even in absence of Will, she being class-I heir is entitled to the relief granted.

This Court has considered the arguments of the learned counsel representing the parties.

It is not in dispute that the plaintiff has claimed the relief of decree of declaration that she is the owner of the certain part of the property. Undoubtedly, she based her claim on the basis of the Will which she failed to prove. However, she has claimed decree of declaration that being owner she is entitled to protect her possession. Hence, it would not be appropriate to contend that the plaintiff did not claim the relief which has been granted. Although, while filing the suit she had based her claim on the basis of a Will, however, she has become co-owner by the natural succession. It is a well settled principle that the succession never remains in abeyance. A decree of declaration is only reinforcing her rights in the

property which has been inherited by her by the way of natural succession.

As regards the judgment relied upon by the learned counsel representing the appellants, it may be noted here that the aforesaid case arises from a writ petition filed before the High Court. In that context, the Supreme Court held that the court cannot grant relief which was never prayed for.

Hence, the aforesaid judgment is not applicable.

Keeping in view the aforesaid facts, the First Appellate Court has taken a plausible view of the matter which does not require any interference.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

**July 05, 2022**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned : Yes/No**

**Whether reportable : Yes/No**