IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No. 4 of 2017
Reserved on: 02.08.2024
Decided on: 5th August, 2024

Amar Singh and others

.....Appellants

Versus

Kishori Lal (deceased) through his LRs and others

...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?[1] No.

For the appellants:	**Mr. K.D. Sood, Senior Advocate with Mr. Mukul Sood, Advocate.**
For the respondents:	**Mr. Janesh Mahajan, Advocate for respondents No.1(a) to 1(d).**

Tarlok Singh Chauhan, Judge

The instant appeal has been admitted on the following substantial questions of law:-

> *"1. Whether the provisions of Section 15 of the Hindu Succession Act have been misconstrued and wrongly applied when it was proved that the property belonged to Gurditta which was inherited by his son Panju and Tibu and thereafter the appellant and on Panju dying issueless and his*

[1] *Whether the reporters of Local Papers may be allowed to see the judgment? Yes.*

widow Thakuri Devi having re-married Sihnu from whose loins Kishori Lal was born could Kishori Lal inherit the property of Thakuri Devi in preference to the heirs of Panju?

2. *Whether in view of the fact that the property was ancestral and the appellant being co-parceners of Panju, Kishori Lal son of Thakuri from her second husband Sihnu could inherit the property in preference to the appellant-plaintiff?"*

2. Learned counsel for the appellants fairly concedes that the aforesaid questions insofar as this Court is concerned, have been answered against his clients in ***Roshan Lal and another*** vs. ***Dalipa, AIR 1985 H.P. 8***, wherein it has been held that a Hindu widow inheriting land from her second husband as a sole heir dying intestate would be governed by Section 15 of the Hindu Succession Act and her son would succeed to that property notwithstanding that he was from her first husband. It has further been held that it is immaterial, whether he was legitimate or illegitimate. However, Mr. K.D. Sood, learned Senior Advocate assisted by Mr. Mukul Sood, Advocate would argue that there are certain other judgments rendered by the various High Courts and the Hon'ble Apex Court which have taken a contrary view.

3. The learned Senior Counsel would rely upon the judgments in ***Bhagat Ram (D) by L.Rs*** vs. ***Teja Singh (D) by L.Rs, AIR 2002 SC 1*** and ***Dhanistha Kalita*** vs. ***Ramakanta Kalita and others, AIR 2003 Gauhati 92***.

4. I find that apart from the Gauhati High Court, certain other High Courts have also taken a contrary view to the one taken by this Court. Reference can conveniently be made to the judgments rendered by the High Court of Patna in ***Khirodhari Devi*** vs. ***Dharmi Devi and others 1999(1) RCR (Civil) 39*** and the High Court of Chhattisgarh in ***Suldeep*** vs. ***Hira Lal and others, AIR 2017 Chh. 164.***

5. Mr. Janesh Mahajan, learned counsel appearing for respondents No. 1(a) to 1(d) has vehemently argued that the issue in question had not only been decided by this Court in *Roshan Lal's* case (supra), but the same has repeatedly been followed by the various High Courts. Similar view has been taken by the other High Courts and has referred to the judgment of the Punjab and Haryana High Court in RSA No. 40 of 2010 (O&M) titled as ***Surender Singh*** vs. ***Pirthi Singh and others***, the judgment of the Bombay High Court in ***Raman Ananda Patil*** vs. ***Appa Bhima Redekar and others, AIR 1969 Bom, 205***, judgment of the High Court of

Gujarat at Ahmedabad in Second Appeal No.48 of 2014 titled as ***Savitaben @ Nathiben widow of Somabhai Harkhabhai*** vs. ***Legal Heirs of Narsinghbhai Hirabhai Vankar Zaverben widow of Narsinhbhai Hirabhai***, decided on 30.09.2014 and the judgment rendered by the High Court of Madars in ***Mottaiyandi Chettiar and others*** vs. ***Saroja and others, 2017(1) HLR 852***.

6. In addition to above, I find that similar view(s) have been taken as the one taken by the Madhya Pradesh High Court in ***Chintaram and others*** vs. ***Pushibai and others***, ***2000(3) RCR (Civil) 431,*** by the High Court of Punjab and Haryana in ***Sita Devi and others vs. The State of Haryana and others, 2013(3) RCR (Civil) 198,*** by the High Court of Orrisa in ***Rameswar Lal Agarwal vs. Banwarilal Sahu, 2022(I) ILR-CUT572,*** in ***Sashidhar Barik and others*** vs. ***Ratnamani Barik and another, AIR 2014 Orissa 202*** and by the Madras High Court in ***S.A. Ramalingam*** vs. ***Elumalai, AIR 2015 Madras 235***.

7. It is not in dispute that the judgment passed by a learned Single Judge of this Court in *Roshan Lal's* case (supra) would continue to be binding on this Bench, unless this Bench is to take a contrary view.

8. It is also not in dispute that the view taken by this Court in *Roshan Lal's* case (supra) is the solitary view in the matter, rather there are other Courts which have taken a contrary view to the one taken by this Court. But, that by itself is no ground to refer the matter to the Larger Bench.

9. Having further delved into the matter, I find that the judgment rendered by the High Court of Orissa in *Sashidhar Barik's* case (supra) has been assailed before the Hon'ble Apex Court in Civil Appeal No(s). 6107/2016 and the same is pending consideration.

10. Likewise, the judgment rendered by the Gujarat High Court in *Savitaben @ Nathiben's* case, upon which much reliance has been placed by the learned counsel for the respondents, too is under challenge before the Hon'ble Apex Court in Civil Appeal Nos.5859-5860/2015.

11. Further, the judgment rendered by the Hon'ble Supreme Court in ***Arunachala Gouder*** vs. ***Ponnuswamy (2022) 11 SCC 520***, which was not cited or relied upon by both the parties will also have an important bearing on the question poised before this Court.

12. Now, that the issue in question is pending consideration before the Hon'ble Apex Court, I do not find it

prudent or wise to answer the aforesaid questions or refer the matter to the Larger Bench, given the fact that appeals which are nearly one decade old are likely to come up consideration before the Hon'ble Apex Court.

13. Accordingly, list the appeal after the decision in any of the Civil appeal(s) pending consideration before the Hon'ble Apex Court, and in case the same are not decided, then, a year from today, the parties shall be at liberty to move an application for early hearing.

August 05, 2024 (**Tarlok Singh Chauhan**)
(naveen) **Judge**