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

1.

RSA-58-2022 (O&M)**Reserved on : 09.01.2025****Date of Decision : 21.01.2025**

Avninder Kaur

... Appellant(s)

VERSUS

Jaswinder Kaur & Anr.

... Respondent(s)

2.

RSA-78-2022 (O&M)

Balwinder Kaur

... Appellant(s)

VERSUS

Jaswinder Kaur & Anr.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Umesh Kumar Kanwar, Advocate for the appellant.

ALKA SARIN, J.

1. The present judgement shall dispose off **RSA-58-2022** filed by Avninder Kaur (defendant No.2-appellant) and **RSA-78-2022** filed by Balwinder Kaur, legal representative of Jaswant Kaur (defendant No.1-appellant).

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 - Jaswinder Kaur wife of late Bhinder Singh - filed the

present suit seeking declaration to the effect that the plaintiff-respondent No.1 had 102/3666 share i.e. 1/3rd share from 305½ share from Bhinder Singh's property mentioned in head note "A" of the plaint after the death of Bhinder Singh as also challenged the mutation No.1054 dated 15.06.2009 as being illegal, null and void. The suit was also filed for permanent injunction restraining the defendant-appellants from alienating the suit property. The case set up by the plaintiff-respondent No.1 was that Bhinder Singh was her husband, son of Jaswant Kaur (defendant No.1) and father of Avninder Kaur (defendant No.2). Bhinder Singh was owner in possession of the suit property, and he died intestate on 01.10.2002. On his death, the plaintiff-respondent No.1 was turned out of the matrimonial home and the defendant-appellants succeeded in getting the mutation of the suit property sanctioned in their names showing the plaintiff-respondent No.1 as Harpreet Kaur and her status as married whereas the plaintiff-respondent No.1 never named herself Harpreet Kaur nor had remarried. On the basis of this the mutation in favour of the defendant-appellants was sanctioned. In the written statement it was admitted that Bhinder Singh was the husband of the plaintiff-respondent No.1 and the relationship of Bhinder Singh with defendant Nos.1 and 2 was also admitted. It was further admitted that he died on 01.10.2002 without executing any Will. However, the stand taken was that the plaintiff-respondent No.1 had left the matrimonial house and had remarried and changed her name to Harpreet Kaur and had two children from her second marriage. In the replication, the contents of the plaint were reiterated and those of the written statement were denied.

3. On the basis of the pleadings of the parties the following issues were framed :

- I. Whether the plaintiff is entitled to declaration as prayed for ? OPP
- II. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
- III. Whether the suit is not maintainable ? OPD
- IV. Relief

4. The Trial Court vide judgment and decree dated 19.01.2017 decreed the suit of the plaintiff-respondent No.1. Aggrieved by the same, an appeal was preferred by defendant No.1 through her legal representatives and defendant No.2. The said appeal was also dismissed by the First Appellate Court vide judgment and decree dated 16.09.2021. Now two regular second appeals have been filed before this Court : one by Avninder Kaur i.e. **RSA-58-2022** and the other by the legal representative of Jaswant Kaur i.e. **RSA-78-2022**.

5. Learned counsel for the defendant-appellants would contend that both the Courts have erred in decreeing the suit of the plaintiff-respondent No.1. It is urged that once the plaintiff-respondent No.1 – Jaswinder Kaur – had remarried after the death of her husband, she would not be entitled to any right, title or interest in the estate of her husband. It is further the argument of the learned counsel that as per Section 2 of the Hindu Widows' Remarriage Act, 1856, the plaintiff-respondent No.1 would have no right in the suit property.

6. I have heard the learned counsel for the defendant-appellants.

7. In the present case the only argument raised by the learned counsel for the defendant-appellants is that the plaintiff-respondent No.1 was not entitled to any share in the property left behind by Bhinder Singh as after

the death of Bhinder Singh she had remarried. Reliance by the counsel has been placed on the provisions of the Hindu Widows' Remarriage Act, 1856 which was, however, repealed by the Act of 24 of 1983. On the death of Bhinder Singh, who died intestate on 01.10.2002, admittedly the suit property would devolve upon the legal representatives as per Section 8 of the Hindu Succession Act, 1956. It is not the case set up by the defendant-appellants that the plaintiff-respondent No.1 had ceased to be the wife of Bhinder Singh during his lifetime. The case set up by the defendant-appellants was that the plaintiff-respondent No.1 had remarried after the death of Bhinder Singh. Firstly, the Hindu Widows' Remarriage Act, 1856 stood repealed by the Act 24 of 1983. Secondly, the property would devolve as per the rules of succession laid down in Section 8 of the Hindu Succession Act, 1956, which reads as under :

“Section 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.”

A widow falls in the category of Class I heirs as per the Schedule and would be entitled to the share of her husband.

8. In view of the above, I do not find any merit in the present appeals. No question of law, much less any substantial question of law, arises in the present cases. Both the appeals being devoid of any merit are accordingly dismissed. Pending applications, if any, also stand disposed off.

21.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO