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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1879-2014 (O&M)

Reserved on: 06.02.2025

Pronounced on: 11.02.2025

Chaman Lal and another

...Appellants

Vs.

Ram Parshad and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate
for the appellants.

Mr. G.S. Punia, Sr. Advocate with
Mr. P. S. Punia, Advocate
Ms. Harveen Kaur, Advocate
for the respondents.

ANIL KSHETARPAL, J.

1. After hearing learned counsel representing the parties on
20.01.2025, the following order was recorded:-

“This regular second appeal has been filed by the plaintiffs to challenge the correctness of judgments passed by both the Courts below. In fact, counter claim filed by defendants was also dismissed, however, they have not filed any second appeal. Sh. Amarnath and Sh. Paras Ram were two brothers. Sh. Paras Ram was unmarried and issueless. He died somewhere in the year 1938. His property was mutated in favour of Sh. Har Sukh, predecessor of the plaintiffs on the basis of testamentary succession. In the Will, it was recited that



his brother Sh. Amarnath is missing for the last 12 years. The property of Sh. Amarnath was mutated in favour of defendants in the year 1980. The defendants are Sh. Amarnath's father's sister's grand-son. The plaintiffs filed suit claiming that Sh. Amarnath shall be presumed to be dead on completion of 7 years period from the date he went missing. Both the Courts did not agree with the plaintiffs.

In this case, the issue which requires adjudication is "whether the date of presumption of death of a missing person would relate back to the date when 7 years are complete, or the Court will assume the death as and when such presumption is sought to be raised?"

Learned counsel for the respondents relies upon B.B. Bhagwat Vs. The Oriental Fire & General Insurance Co. Ltd. and others, 1993(2) PLR 96, LIC of India Vs. Anuradha, 2004 AIR (SC) 2070, Board of Trustees of Port of Kandla Vs. Hargovind Jasraj and another, 2013 (3) SCC 182, Shyam Lal @ Kuldeep Vs. Sanjeev Kumar and others, 2009 AIR (Supreme Court) 3115, Marru Ram Vs. Kheta Ram (since deceased) through LRs and others, 2016 AIR (P&H) 187 and L.C. Hanumanthappa (since dead) represented by his LRs. Vs. H.B. Shivakumar, 2015 AIR (Supreme Court) 3364.

Learned counsel for the appellant prays for some time to examine before assisting the Court.

List on 03.02.2025, in the urgent list."

2. Learned senior counsel representing the parties have again been heard at length.



3. In substance, the plaintiffs (appellants herein) claimed that this Court should presume that Sh. Amar Nath died more than 07 years before the year 1938. Hence, the property of Sh. Amar Nath was inherited by his brother Sh. Paras Ram. Consequently, the plaintiffs (heirs of Sh. Harsukh Ram) are also entitled to succeed to the property of Sh. Amar Nath on the basis of Will executed by Sh. Paras Ram.

4. Learned counsel representing the parties do not dispute that Hon'ble Supreme Court in 'N. Jayalakshmi Ammal vs. R. Gopala Pather', 1995 (Sup1) SCC 27 and 'Ram Bilas vs. Jagat Narain Shrivastava' 1994(Sup2) SCC 113, has repeatedly held that date of death cannot be presumed in absence of cogent evidence. It has conclusively held that Sections 107 and 108 of the Indian Evidence Act, 1872 enable the Courts to presume that a person who has not been heard for the last 07 years as dead. It nowhere indicates that the Courts shall assume so on completion of 07 years from the date individual went missing.

5. In this case, the plaintiffs have not led any evidence to prove the date of death of Sh. Amar Nath. Moreover, the property left behind by Sh. Amar Nath was mutated/entered in the Revenue Record in the year 1980, whereas, the plaintiffs filed the suit on 25.05.2004 i.e. after a period of 24 years. It is not the case of the plaintiffs that they are related to Sh. Amar Nath. Their predecessor, Sh. Harsukh Ram had claimed the property of Sh. Paras Ram on the basis of a Will, wherein it is recited that Sh. Harsukh Ram has taken care of Sh. Paras Ram. Hence, on the basis of natural succession, the plaintiffs do not have any superior right over the defendants.

6. Consequently, finding no merit, the appeal is dismissed.
7. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

11.02.2025

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No