



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

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**RSA-858-2018 (O&M)
Date of decision : 10.02.2025**

Sunita

..... Appellant

versus

Dharamwati and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Harsh Chopra, Advocate and
Mr. Aman Kumar, Advocate
for the appellant.

Mr. Bharat Bhushan Sharma, Advocate
for respondent No.1.

Respondent No.2 proceeded ex-parte
vide order dated 24.07.2019.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in second appeal.
2. Sisters are at loggerheads with respect to the estate left by their father Ami Ram @ Amar Singh, who owned 33 kanal 02 marlas of property. Ami Ram expired on 08.02.1980 leaving behind a widow, namely, Rameshwari, three daughters, Sunita-the plaintiff, Dharamwati-the defendant, Anita-the proforma defendant. His widow Rameshari filed civil suit No.826 dated 08.06.1989 claiming that all her daughters have relinquished their shares in her favour and she has become absolute owner of the suit property. She sought decree of declaration.
3. Defendant-Dharamwati was minor at that point of time. She was represented through her maternal uncle namely, Subhash. The two daughters namely, Sunita and Anita suffered statement in favour of their



mother. Statement on behalf of Dharamwati was suffered through her guardian Subhash. Suit was decreed on 06.04.1990. Though, Dharamwati was party to the *lis*, however, her name could not be mentioned in decree sheet. Mutation was sanctioned on the basis of decree. Since name of Dharamawati was not mentioned in the decree, estate of Ami Ram was mutated to the extent of 3/4 share in the name of Rameshwari and 1/4 share in the name of Dharamwati.

4. Rameshwari expired on 28.12.2012. Estate left by her was mutated in favour of all three daughters. It led to a situation wherein Dharamwati apart from 25% share that she got in the earlier mutation got another 1/3rd share of 75% share inherited by Rameshwari. She became owner to the extent of 1/2 share of the total estate. Plaintiff Sunita and proforma defendant-Anita became owner to the extent of 1/4 share each.

5. An application was filed by Sunita seeking correction of decree under Section 152 of Code of Civil Procedure, 1908. The decree was corrected, name of Dharamwati was added in the decree sheet.

6. Plaintiff filed present suit seeking declaration to the effect that she alongwith her two sisters are owners to the extent of 1/3 share each. She further sought decree of permanent injunction against her sister Dharamwati from alienating more than 1/3 share each.

7. Suit was resisted by the defendant-Dharawati claiming that she is owner to the extent of 1/2 share. She got 1/4 share after the death of Ami Ram and further 1/4 share after death of Rameshwari. She further pleaded adverse possession. Suit filed by the plaintiff was put to trial by the Court of first instance framing following issues:-



- “1. *Whether the plaintiff is entitled to suit for declaration as prayed for? OPP*
 2. *Whether the plaintiff is entitled to suit for permanent injunction as prayed for? OPP*
 3. *Whether the suit of the plaintiff is not maintainable in the present form? OPP*
 4. *Whether the suit is time barred? OPD*
 5. *Whether the plaintiff has concealed the real and material facts from this Court? OPD*
 6. *Relief.”*
8. Suit filed by the plaintiff was decreed by the Court of first instance holding that plaintiff has successfully proved that parties to the *lis* are owners in possession to the extent of 1/3 share each and no single co-owner has right to alienate more than her 1/3 share.
9. In appeal preferred by the defendant, Lower Appellate Court has reversed findings on issue No.1 and 2 holding that it has come on record that Dharamwati is in exclusive cultivating possession to the extent of 1/2 share. She has appeared in the witness box to prove that the mutation was sanctioned in her favour.
10. While assailing the judgment and decree passed by the Lower Appellate Court, Mr. Chopra submits that the Lower Appellate Court has misdirected itself in accepting the appeal filed by the defendant without recording any reason. No evidence has been discussed by the Lower Appellate Court apart from the testimony of Dharamwati. He thus, submits that Lower Appellate Court erred in reversing well reasoned findings recorded by the Court of the first instance.



11. *Per contra*, Mr. Sharma appearing for the defendant-respondent submits that the decree in favour of Rameshwari, has no effect on the rights of the defendant-Dharamwati. There was no compliance of Order 32 Rule 3. Subhash, maternal uncle, who appeared on behalf of defendant was never appointed as Guardian by the Court. He was brother of Rameshwari and thus, testified in her favour at the time when the defendant was barely 09 years old. Leave of the Court was not obtained while making statement and thus, there was non-compliance of Order 32 Rule 7 as well. He thus, submits that decree passed in favour of another has no bearing on the rights of the parties.

12. I have heard counsel for the parties and have carefully gone through the records of the case.

13. Mr. Sharma is right in contending that at the time defendant Dharamwati was minor, he could not have been represented by anyone, but with the leave of the Court. Thus, this Court is of the opinion that the decree dated 06.04.1990 deserves to be ignored.

14. Admittedly, neither Ami Ram nor Rameshwari executed Will bequeathing property in favour of any of the daughters to the exclusion of the others. Both died intestate. The estate left by them thus has to abide by natural succession. Resultantly, on the death of Ami Ram on 08.02.1980, his estate devolved upon Rameshwari-widow and three daughters namely, Anita, Sunita and Dharamwati. All of them became owner to the extent of 1/4 share each. On death of Rameshwari-the mother on 28.12.2012, her estate will be succeeded by her natural successors i.e. the three daughters. In view of above, all of them became owners to the extent of 1/3 share each on expiry of Rameshwari



on 28.12.2012.

15. In view thereof, this Court finds that the judgment and decree passed by the Lower Appellate Court cannot be sustained and deserves to be set aside. Judgment and decree passed by the Trial Court is maintained.

16. Consequently, the present appeal is allowed.

17. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

10.02.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No