

decision but a decision arrived at judicially. The learned Judge further held that in his opinion 'legal proceeding' means a proceeding regulated or prescribed by law in which a judicial decision may or must be given. It is difficult to see how this decision by a Returning Officer whose duty was to scrutinize nomination papers under the Punjab Co-operative Societies Act, 1961, can be called judgment in a civil proceeding or a judicial decision as commonly understood. Consequently, I decline to accept the recommendation of the learned Additional Sessions Judge and dismiss this revision.

R.N.M.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Prem Chand Jain, J.

SARWAN SINGH AND OTHERS,—Appellants.

versus

DHAN KAUR AND ANOTHER,—Respondents.

Letters Patent Appeal No. 281 of 1966

May 7, 1969

Hindu Succession Act (XXX of 1956)—Section 18—Succession to an intestate male leaving full-sisters and half-brothers—Full-sisters—Whether exclude half-brothers—Nature of relationship between brothers and sisters—Whether the same.

Held, that section 18 of the Hindu Succession Act, 1956 is a substantial reproduction of the rule of Hindu Law whereby relations of the full blood are preferred to those of the half blood and lays down a rule of general applicability to heirs, male and female alike. The applicability of this rule of preference is of course conditioned by the words 'if the nature of relationship is the same in every other respect'. The nature of relationship of the heirs with the intestate has to be taken into consideration. For the purpose of preference the Act makes no distinction between a son and a daughter and the nature of the relationship of the both with the father or the mother is that of a child. Thus the nature of relationship of brothers and sisters, being the children of the father of the intestate, is the same. The nature of relationship is to be reckoned in terms of degrees of ascent or descent or both. The section speaks of the nature of relationship being the same and not the relationship being the same. The meaning of the words 'nature of relationship' must be found in the sense in which they best harmonise with the scheme. The brothers and sisters fall in entry No. II of Clause II of the schedule and the nature of relationship of both must be taken to be the same, being the children of the father of the intestate. All that is meant by saying that the 'nature of relationship should be the

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same' is that they should be equally related. The sisters of full blood of the deceased therefore exclude brothers and sisters of the half blood.

(Paras 3 and 4)

Letters Patent Appeal under clause 10 of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice Harbans Singh, dated the 10th day of March, 1966 passed in R.S.A. 736/64 affirming that of Shri Jasmer Singh, District Judge, Barnala dated the 21st May, 1964 reversing that of Shri V. K. Jain, Sub Judge Ist Class, Dhuri dated the 29th March, 1963 and granting the plaintiff a decree for possession of land in dispute.

J. V. GUPTA, ADVOCATE, for the Appellants.

TIRATH SINGH AND NAGINDER SINGH, ADVOCATES, for the Respondents.

JUDGMENT

Briefly the facts of this case are as follows:—

(2) One Lehna had two wives, Smt. Partapo and Smt. Mehtabo. From Smt. Mehtabo he had one son Babu Singh and two daughters, Dhan Kaur and Ind Kaur. There was another son from Smt. Mehtabo who had predeceased Lehna with whom we are not concerned. From Smt. Partapo, Lehna had two sons, Kishan Singh and Sarwan Singh. Babu Singh died on 25th February, 1961, without leaving any issue or widow. The dispute is about the inheritance of his estate. Kishan Singh and Sarwan Singh claimed that Babu Singh had executed a will Exhibit D. 1 on 28th January, 1961, by which he left his entire property to them. On the basis of the will subsequently a mutation was also effected. Smt. Dhan Kaur respondent brought a suit for possession of one-half of the property left by Babu Singh, against Sarwan Singh and others appellants challenging the genuineness of the will and claiming that she and Ind Kaur were the sole heirs of Babu Singh deceased, being his sisters. Smt. Ind Kaur was impleaded as *pro forma* defendant. The suit was contested by the appellants. The trial Court found that the will was genuine and dismissed the suit. The first appellate Court reversed the finding of the trial Court and held that the will was a piece of forgery. The issue whether Smt. Dhan Kaur and Smt. Ind Kaur were the real sisters of Babu Singh deceased, was decided by both the Courts in favour of the plaintiff. The appeal was allowed by the appellate Court and the suit of Smt. Dhan Kaur was decreed. Feeling aggrieved from the judgment and decree of the first appellate Court, Regular Second Appeal No. 736 of 1964, was filed in this Court which was heard by Harbans Singh, J. The learned Single Judge did not find any merit in the appeal and dismissed the same on 10th March, 1966. Against this decision of the

learned Single Judge, Sarwan Singh and others have filed this appeal under Clause 10 of the Letters Patent.

(3) The only question for determination in this appeal is as to rival claims to succession between sisters and brothers of the half-blood. Section 18 of the Hindu Succession Act, 1956 (hereinafter referred to as the Act) reads as under:—

“18. Heirs related to an intestate by full blood shall be preferred to heirs related by half-blood, if the nature of the relationship is the same in every other respect.”

It was contended by Mr. Gupta, learned counsel for the appellants that on the correct interpretation of section 18, full blood sisters can exclude half blood sisters so also full blood brothers can exclude half blood brothers; but full blood sisters cannot exclude half blood brothers as between sisters and brothers the nature of relationship is not the same in every other respect. According to the learned counsel as between the sisters, i.e., Smt. Dhan Kaur and Smt. Ind Kaur on one side and Smt. Bishan Kaur on the other, Dhan Kaur and Ind Kaur would be preferred, but that when the contest is between the sisters on one side and brothers on the other, the nature of relationship between the two cannot be said to be the same, one set being sisters and the other set being brothers. I am unable to accept this contention of the learned counsel. Section 18 is a substantial reproduction of the rule of Hindu Law whereby relations of the full blood are preferred to those of the half blood and lays down a rule of general applicability to heirs, male and female alike. The applicability of this rule of preference is conditioned by the words ‘if the nature of relationship is the same in every other respect’ and these are the words on which great stress was laid by the learned counsel for the appellants in support of his contention. The nature of the relationship of the heirs with the intestate is to be taken into consideration. For the purpose of preference this Act makes no distinction between a son and a daughter and the nature of the relationship of the both with the father or the mother is that of a child. Thus the nature of relationship of brothers and sisters, being the children of the father of the intestate, is the same. The nature of relationship is to be reckoned in terms of degrees of ascent or descent or both. This section speaks of the nature of relationship being the same and not the relationship being the same. The meaning of the words ‘nature of relationship’ must be found in the sense in which they best harmonise with

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the scheme. For applying the rule of preference given in this section, the nature of the relationship must be the same in every other respect, for example, it would not be applicable if an heir is preferred under any other provision of this Act.

(4) From what I have said above, I feel that no such distinction can be recognised as is being suggested by the learned counsel for the appellants. The brothers and sisters fall in entry No. II of Clause II of the Schedule and the nature of relationship of both must be taken to be the same, being the children of the father of the intestate. I am in full agreement with the observation of the learned Single Judge that looking at the scheme of the entire Act, no such distinction can be recognised and apparently all that is meant by saying that the 'nature of relationship should be the same' is that they should be equally related. In this view of the matter, I hold that Smt. Dhan Kaur and Smt. Ind Kaur would exclude not only Smt. Bishan Kaur but also Sarwan Singh appellant and Kishan Singh, they being sister and brothers of the half blood. Consequently there is no force in this appeal and the same is dismissed. However, there will be no order as to costs.

MEHAR SINGH, C.J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

THE SOHNA STONE CRUSHING PRODUCTION INDUSTRIAL
COOPERATIVE SOCIETY LTD. AND OTHERS,—*Petitioners.*

versus

THE SECRETARY TO GOVERNMENT OF HARYANA
AND ANOTHER,—*Respondents.*

Civil Writ No. 743 of 1968

May 9, 1969.

Punjab Municipal Act (III of 1911)—Sections 5 and 62—Notification for extension of municipal limits for purposes of imposition of octroi duty—Procedure under section 62—Whether to be followed afresh—Existing rules and bye-laws of the Municipality—Whether come into operation in the added areas on the publication of the notification.