

Mst. Dani and another v. Natha Singh etc. (Surinder Singh, J.)

that in the event of any defect in the title of the vendor in regard to the whole or any part of the property, the vendor shall be liable to pay compensation to the transferee. On the strength of this stipulation in the sale-deed, Mr. Nehra urged that discretionary remedy of injunction ought not to be granted to the plaintiffs.

(10) I do not think this can be validly suggested on behalf of the defendant-respondents, for the equity is in favour of the plaintiffs who had acquired the land after payment of money, and merely because they could have their rights enforced against the vendor, the Court will not deny them the relief that they are seeking in the suit.

(11) Mr. Nehra, next urged that since action of the Union Government in auctioning a part of the property to defendants 6 to 8 is an action under the Rehabilitation Act, so the civil court by virtue of the provisions of section 36 of that Act is debarred from restraining the defendants from taking that action.

(12) This is arguing in circles, because once it is held that the property in question by virtue of the provisions of section 41 of the Property Act had become the absolute property of the plaintiffs and nobody could touch it, not even the original owner, then the action on the part of the original owner of auctioning or taking possession thereof cannot stand on a better footing.

(13) In the result, these appeals are dismissed with no order as to costs.

(14) On the oral request of Mr. Nehra, the leave to file a Letters Patent Appeal is granted.

N. K. S.

APPELLATE CIVIL

Before Surinder Singh, J.

MST. DANI AND ANOTHER,—Plaintiffs-Appellants.

versus

NATHA SINGH, ETC.,—Respondents.

Regular Second Appeal No. 597 of 1964

January 21, 1976.

*Hindu Succession Act (XXX of 1956)—Section 15(1) (a)—Offspring of a deceased female from her previous husband—Whether included in the term 'sons', . . .*

*Held* that under section 15(1) (a) of the Hindu Succession Act, 1956, the property of a female Hindu dying intestate has to devolve firstly upon her sons. A son born from wedlock with a previous husband can by no means be said to be an illegitimate son for the purposes of succession under the Act. A son would be a son if he is the offspring of a valid marriage. The Legislature did not intend to deprive the sons and daughters from inheritance of the property left by a female Hindu dying intestate, merely because they were born to her from some other husband than the one from whom the property was inherited by her.

(Paras 5 and 6)

*Regular Second Appeal from the decree of the Court of Shri Jasmer Singh, District Judge, Barnala, dated the 4th day of December, 1963, reversing that of Shri Nirpinder Singh Sub Judge 1st Class, Malerkotla, dated the 28th December, 1962 and dismissing the suit of plaintiffs and leaving the parties to bear their own costs.*

Y. P. Gandhi, Advocate, for the appellants.

Rajinder Krishan, Aggarwal, Advocate for respondent No. 1.

I. S. Karewal, Advocate, for Respondents 2 & 3.

#### JUDGMENT

*Surinder Singh, J. :*

(1) For a better appreciation of the dispute, a short pedigree table to connect the parties may be recited. Two brothers Mihan Singh and Ram Singh, owned half share each in land measuring 75 Bighas and 19 Biswas. Mihan Singh was previously married to Mst. Punjab Kaur and out of this wed-lock was born a daughter Harnam Kaur. The latter after her marriage with one Gajjan Singh had four children, namely, Mst. Dani, Man Singh, Pal Singh and Gurdev Singh. These four children are the plaintiffs in the suit. Their case as set out in the plaint is that Mihan Singh, after the death of their maternal grand mother Punjab Kaur, had contracted a second marriage with Mst. Mahan Kaur. Mihan Singh had died and his property had devolved upon his widow Mahan Kaur. Mahan Kaur also died, but after her death, her property had been mutated in the name of Natha Singh, defendant-respondent, son of Ram Singh, who, in turn, was the brother of Mihan Singh. The plaintiffs claimed that their mother Harnam Kaur, having already died, they were preferential heirs to the property of Mahan Kaur deceased as against Natha Singh, who was Mahan Kaur's husband's brother's

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son. The plaintiffs, therefore, claimed possession of the property left by Mahan Kaur.

2. The party arrayed on the other side, i.e., Natha Singh had a different story to tell. According to him, the deceased Mahan Kaur was previously married with his father Ram Singh and he (Natha Singh) was their offspring. After the death of his father Ram Singh, his mother Mahan Kaur contracted a marriage with Mihan Singh, brother of Ram Singh, Natha Singh, therefore, asserted that being the son of Mahan Kaur deceased though from the loins of her earlier husband Ram Singh, he had a preferential right to the property in dispute as against the plaintiff-appellants, who were not direct descendants of Mahan Kaur. Apart from this contention, as is usual in such suits, the relationship of the plaintiffs with Mihan Singh, through his first wife Punjab Kaur was also disputed. As a counter-blast, the plaintiffs disputed the relationship of Natha Singh as a son of Mahan Kaur deceased. The confrontation between the parties led to the framing of the following issues:—

- (1) Whether the plaintiff No. 1 (Mst. Dani) is the daughter and other plaintiffs are the sons of Harnam Kaur, the daughter of Mahan Singh, the last male holder of the property in dispute and hence, they are nearest heirs.
- (2) Whether the defendant is the son of Mahan Kaur from Ram Singh, whom she is alleged to have married before marrying Mihan Singh, if so, what is its effect ?
- (3) Whether the defendant has not been in possession of the land in dispute as an owner after the death of Mihan Singh, husband of Mahan Kaur deceased, if so, what is its effect ?

3. The trial Court found issue No. 1 in favour of the plaintiffs and under issue No. 2 it was concluded that Natha Singh was not proved to be the son of Mahan Kaur. Issue No. 3 which appears to have been wrongly worded, was also decided in favour of the plaintiffs with a finding that Mahan Kaur was in possession of the land in dispute as owner, after the death of her husband Mihan Singh. The suit of the plaintiffs for possession of the property in dispute was consequently decreed. Against the judgment and decree of the trial Court, Natha Singh pressed an appeal and was duly rewarded with a reversal of the decree of the trial Court and dismissal of

the suit of the plaintiffs. While declaring the same, the lower appellate Court came to a concrete finding that Natha Singh was proved to be the son of Mahan Kaur from the loins of her first husband Ram Singh. On the basis of this finding, it was further held that by virtue of the provisions of section 15(1)(a) of the Hindu Succession Act, 1956, Natha Singh being the son of Mahan Kaur deceased would be her sole heir on her death intestate and the plaintiffs, who are daughter's children of Mahan Kaur's co-wife, had no claim to the inheritance in the presence of Natha Singh. The present is a second appeal in which the claim in the suit is reiterated by the plaintiffs.

4. At the outset it may be observed that the finding of the Courts below on issue No. 1 in regard to the relationship of the plaintiffs with Mihan Singh, the last holder of the property, is not disputed. Similarly, the finding under issue No. 2 by the lower appellate Court about the paternity of Natha Singh has not been contested though a faint and futile attempt has been made to impugn the fact that Natha Singh is the son of Mahan Kaur from her previous marriage with Ram Singh. In this behalf, a reference is made to the report, dated May 10, 1960 (Exhibit P. 1), wherein Natha Singh had averred that he was the sole heir to the estate of Mahan Kaur, widow of Mihan Singh, who had died leaving no issue. This report has been very rightly construed by the lower appellate Court to mean that Natha Singh was obviously making a reference to Mahan Kaur having left no children from the loins of Mihan Singh. The report does not, therefore, in any way contradict the stand taken by Natha Singh in this litigation. The finding of the trial Court in this behalf is, therefore, affirmed.

(5) The controversy boils down to the solitary point as to whether Natha Singh can be termed as a son of Mahan Kaur so as to be entitled to inherit her estate. Under section 15(1)(a) of the Hindu Succession Act, the property of a female Hindu dying intestate has to devolve firstly upon her son/s. Shri V. P. Gandhi, learned counsel for the appellants has vehemently urged that the term 'sons' which finds place in the aforesaid provision has reference only to the offspring of the deceased female from the loins of the husband from whom she inherited the property and not to the previous husband. The submission is that if every offspring of the deceased female could claim a right of inheritance, then even an illegitimate son could assert his right to the same. The learned counsel has

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pressed into service a reported decision of this Court in *Mota Singh and others v. Prem Parkash Kaur and others*, (1), which was affirmed by the Supreme Court in *Gulraj Singh and another v. Mota Singh and others*, (2). This case is, however, of no advantage as it is distinguishable by the glaring fact that it was a case under the Punjab Pre-emption Act for which the considerations are quite different. In any case the point under consideration in that authority, was, whether an illegitimate son or daughter of the female vendor could be said to be a 'son or daughter' as mentioned in the Pre-emption Act. While delivering the judgment of the High Court, Dua, J. (as he then was) observed that for interpreting statutory instruments one must get at the intention of the legislature expressed by the words used in the enactment. It was also noticed that the predominant idea as disclosed from the language of clause (a) of sub-section (2) of section 15 of the Punjab Pre-emption Act appeared to be that the property must not go outside the line of the last male holder and the right to pre-empt is given to his male lineal descendants. In view of this and the other considerations it was held that the words 'son or daughter' as used in the Pre-emption Act cannot be held to include an illegitimate son or daughter. This view was upheld by the Supreme Court in appeal as already noticed but a clear observation was made by the Supreme Court in this behalf as follows:—

"No doubt, there might be express provision in the statute itself to give these words a more extended meaning as to include also illegitimate children and section 3(j) of the Hindu Succession Act (Act XXX of 1956) furnishes a good illustration of such a provision. It might even be that without an express provision in that regard the context might indicate that the words were used in a more comprehensive sense as indicating merely a blood relationship apart from the question of legitimacy."

6. Section 3(J) of the Hindu Succession Act, to which a reference

has been made by the Supreme Court extracted above, defines the word 'related' as to mean related by legitimate kinship. Viewed in the light of this definition, a son born from wedlock with a previous husband can by no means be said to be an illegitimate son for the purposes of succession under the Hindu Succession Act. A son would be a son if he is the offspring of a valid marriage

(1) 1961 I.L.R. Pb. 614:

(2) 1964 Cur. L. J. (S.C.) 181:

and this is what Natha Singh is in the present case. This point was directly under consideration in a Bombay case in which the facts were absolutely on all fours. The reference is to *Ram Ananda Patil v. Appa Bhuma Redekar and others*, (3). Deshpande, J. delivering the judgment for the Division Bench thrashed out the objection that the heirs of the Hindu female from the husband from which such female inherited the property should oust the heirs from her earlier husband as they were not blood relations of the husband from whom the property had devolved, as the same was not found to be impressive and it was concluded that there was no warrant to assume that the Legislature intended to deprive the sons and daughters from inheritance of the property left by a female Hindu dying intestate, merely because they were born to her from some other husband than the one from whom the property in dispute was inherited by her. In another case reported as *Gurbachan Singh alias Gurbux Singh v. Khichar Singh, etc.*, (4), a single Judge of this Court expressed the same view and in fact went a step further to hold that even an illegitimate or an adopted son would also fall within the expression 'son' as used in section 15(1)(a) of the Hindu Succession Act. There is no need to go into this extended scope in view of the facts of the present case. To conclude, therefore, there is no difficulty in holding that Natha Singh is without doubt a preferential claimant to the property left by Mahan Kaur deceased, to the exclusion of the plaintiffs, two of whom are appellants and the other two as pro-forma respondents in this appeal.

7. The appeal is dismissed but with no order as to costs.

N. K. S.

REVISIONAL CIVIL.

Before R. S. Narula, C.J.

J. D. DHANDA,—Petitioner.

versus

DES RAJ AND ANOTHER,—Respondents.

Civil Revision No. 598 of 1974

January 23, 1976.

*Code of Civil Procedure (V of 1908)—Order XI, Rules 11 and 21—Interrogatories delivered to the opposite party with leave of the*

(3) A.I.R. 1969 Bomb. 205

(4) 1971 Cur: L J. 10(A.I.R. 1971 Pb: and Har: 240):