
(1986) 04 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1347 of 1977

Hazara Singh alias Hazari and others

APPELLANT

Vs

Shrimati Chawli

RESPONDENT

Date of Decision : 09-04-1986

Acts Referred:

Citation : (1986) 04 P&H CK 0007

Hon'ble Judges : G.C. Mital, J

Bench : Single Bench

Advocate : B.S. Gupta, for the Appellant; O.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Gokal Chand Mital, J.—To understand the case, the following pedigree table would be helpful:-

Ghula's estate is in dispute who died on 19.7.1953. On his death the mutation of the entire agricultural land held by him was sanctioned in favour of sons and grandsons of Ram Rikh as collaterals. Smt. Chawli daughter of Ghula filed a suit for possession of the estate left by Ghula on the plea that she was the sole heir and was entitled to succeed. The collaterals contested this suit and pleaded that the entire land was ancestral in the hands of Ghula as it had come from the common ancestors of the parties and under the Riway-i-am of the Hissar District to which the parties belong the ancestral as well as non-ancestral land had to go to the collaterals to the exclusion of the daughters. Both the courts below held that the two Khatas were ancestral and the other two Khatas were non-ancestral. Regarding the non-ancestral the suit was decreed and qua ancestral it was held that under the general custom the collaterals were preferential heirs. As a consequence, the suit qua ancestral land was dismissed. R.S.A. No. 1347 of 1977 has been filed by the collaterals whereas R.S.A. No. 1495 of 1977 has been filed by Smt. Chawli. Since they arise out of the same suit, they are disposed of by this common judgment.

2. After hearing the learned Counsel for the parties, I am of the view that there is no scope for interference in these appeals. Since Ghula had died before the Hindu Succession Act came into force, succession has to be traced under the agricultural custom as the parties are governed by the same.

3. Under the general agricultural custom regarding non-ancestral property daughters are preferred to the collaterals but regarding ancestral property the collaterals within five degrees are preferred.

On behalf of Smt. Chawali no argument worth noticing was raised for decreeing her suit in regard to the ancestral property. Hence here appeal has no merit.

4. As regards collaterals their counsel has vehemently argued that as held in *Jai Kaur and Others Vs. Sher Singh and Others*, that there is no presumption of correctness of *Riwaj-i-am* even if it is in variance with the general custom. It was further held that even regarding non-ancestral property if there is a special custom against the females, there will be presumption in favour of the custom which may be very weak and rebuttable by slight evidence to the contrary.

5. The aforesaid argument was controverted by the other side and it was argued that *Riwaj-i-am* or general Customary Law is generally regarding ancestral property and not regarding non-ancestral property. Moreover there is no instance quoted in the *Riwaj-i-am* to support the answer contained in it. On the contrary, there is judicial instance of Hissar District contained in *Jiram and Ors. v. Lokram and others* A. I. R. 1936 Lah. 200., where for non-ancestral property daughter was preferred to collaterals and, therefore, in view of this judicial instance the presumption, if any, in favour of the *Riwaj-i-am* stood rebutted. I am in agreement with the argument raised on behalf of the counsel for Smt. Chawali that in view of the judicial instance, the presumption, if any, stands rebutted. Hence, the decision of the Courts below in regard to the non-ancestral property deserves to be upheld.

6. For the fore going reasons recorded above, both these appeals are dismissed leaving the parties to bear their own costs.