
(2013) 01 P&H CK 0211

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 805 of 2010 (O and M)

Sita Devi and Others

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Hindu Succession Act, 1956 — Section 15, 15(1), 15(1)(a), 15(1)(b), 15(1)(f)

Citation : (2013) 01 P&H CK 0211

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : Ashish Aggarwal, with Ms. Ritu Pathak, for the Appellant; Ajay Gupta, Additional Advocate General, Haryana and Mr. Sanjay Chauhan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—The estate of Takhat Ram, an employee of the Municipal Committee, Nilokheri, District Karnal, is in dispute. The trial court had decreed the suit of the plaintiff Diwan Chand (since deceased), now represented by his legal representatives and the respondents were directed to release the payment alongwith interest @ 12% per annum. The facts are not much in dispute. Takhat Ram was married to Ram Piari, who had already a son born from the lions of her first husband. Takhat Ram, who was working as a peon, died on 22.1.1990. On his death, Ram Piari being his wife sought succession certificate, which was granted to her. She had become entitled to receive Rs. 10,766/- on account of provident fund, Rs. 8,680/- on account of leave pay, Rs. 7,695/- on account of gratuity and Rs. 5,000/- on account of life insurance. However, before Ram Piari could withdraw the said amount, she died on 19.8.1994, leaving behind Diwan Chand, as her sole legal successor (now represented by the appellants). He also obtained succession certificate qua the aforesaid amount through court. However, the said amount was not released, therefore, he filed the present suit.

2. The respondents contested the suit. The main plea of the respondents was

that Diwan Chand being not heir of the Takhat Ram was not entitled to have released the said amount. Ultimately suit was decreed.

3. The State of Haryana as well as the appellants filed appeals against the said order. The appellants also filed cross-objections.

4. The first Appellate Court accepted the appeal of the State of Haryana and dismissed the cross-objections filed by the appellants.

5. Arguments heard.

6. The prime question which arises for determination is, "whether the appellants were entitled to the release of the amount as left by Takhat Ram, in light of Section 15(1)(b) of the Hindu Succession Act, 1956 (for short "the Act")?"

7. It is not disputed that the plaintiff Diwan Chand had no relation with Takhat Ram and he was the son of Ram Piari from the lions of her first husband and Diwan Chand had only accompanied Ram Piari when she had married to Takhat Ram. It is also a fact that Diwan Chand was not born from the lions of Takhat Ram. Therefore, Diwan Chand could be said to be phichlag son but not son of the deceased. Section 15 of the Act reads as under:-

15. General rules of succession in the case of female Hindus. (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in subsection (1),

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in subsection (1) in the order specified therein, but upon the heirs of the husband.

8. The only question which now needs to be determined is whether the

expression "son of the deceased" in clause (b) of Section 15(1) of the Act includes step son also i.e. son of the wife from first husband. In order to decide it, it would be necessary to refer to the judgment of Mallappa Fakirappa Sanna Nagashetti and Others Vs. Shivappa and Another, wherein it was observed as under:-

According to the decision of the Bombay High Court in Rama Ananda Patil Vs. Appa Bhima Redekar and Others, the emphasis in clause (a) of Section 15(1) of the Act is one the aspect that the sons or the daughters are of her own body and not so much on the husband who was responsible for their birth and that therefore children of a female though by different husbands inherit her estate simultaneously.

9. This Court in the case of Gurnam Singh Vs. Smt. Ass Kaur and Others, , while repeating the view expressed in Rama Ananda Patil Vs. Appa Bhima Redekar and Others, , held as under:-

The exclusion of the words "of the deceased" from sub-clause (a) of sub-section (1) was only a matter of convenience and to avoid repeated use of this phraseology in all the sub-clauses of the sub-section, that is, (a) to (e). Section 15(1) has obviously a reference to the property of female Hindu dying intestate and it enumerates the list of persons upon whom the property is to devolve in the order as shown. There would have been no purpose to use the words, "of the deceased", every time a reference was made to the heirs of the Hindu female and if it had been done, it would have served no useful purpose. The omission of the words "of the deceased" in sub-section (1) is therefore, hardly of any significance. On the other hand, if these words had not been used in sub-section (2), there could be a likelihood of confusion which has been avoided. There is another reason for the conclusion which I seem to draw in this behalf. If Section 15(1)(a) is to be interpreted to mean that all sons and daughters of the husband of the deceased Hindu female are to be considered under its purview, it would cover not only sons and daughters but even step children and illegitimate children of the husband who can all claim to be "sons and daughters". I am sure this was not the intention of the Legislature.

10. Nevertheless, the Section 15(1)(a) and (b) were interpreted in one way or the other. But in the present case, the status of the appellant is that of Pichhlag. He was not born from the lions of the deceased husband so as to inherit his property. Therefore, the words "son of the deceased" cannot be interpreted to mean the sons of deceased wife from the husband or other person than the deceased whose property, he was to inherit, as such the pichhlag son cannot be given the right to inherit the property who was never adopted otherwise accepted by the deceased husband. Similar observations were made by this Court in case of Mohinder Singh v. Joginder Singh, 2009 (3) R.C.R. (Civil) 632, which reads as under:- The first question of law, arises from an admission allegedly made by Joginder Singh before the Assistant Collector, 1st Grade that Mohinder Singh is the "pichhlag son" of Saon Singh deceased. The question posed

is the import of this admission and whether it would confer any right upon Mohinder Singh, to assert his status as the son of Saon Singh and as a result his right to inherit the estate of his step father. The words "pichlag son" mean a son from a previous marriage and when used in the context of a wife mean a son born to the wife from a previous marriage. The admission, if accepted, appears to suggest that Mohinder Singh is the son of Smt. Sardari wife of Saon Singh from a previous marriage. The admission, therefore, can at best be pressed into service to hold that Saon Singh was married to Smt. Sardari and Mohinder Singh is her son from a previous marriage. The admission cannot be pressed into service to hold that Mohinder Singh is the natural born son of Saon Singh from his marriage to Smt. Sardari. The list of heirs, entitled to succeed to the estate of a deceased male Hindu are enumerated in Section 8 of the Hindu Succession Act, 1956 and do not include the son of a wife from a previous marriage. As a result, even if it is to be held that Joginder Singh has admitted that Mohinder Singh is the "pichlag son" of the deceased, it would not confer any right upon Mohinder Singh to succeed to the estate of Saon Singh as his natural born son. The first question of law is, therefore, answered by holding that the admission made by Joginder Singh that Mohinder Singh is the "pichlag son" of Saon Singh would not confer a right upon Mohinder Singh to succeed to the estate of Saon Singh or estop Joginder Singh or the respondents from asserting that Mohinder Singh is not the natural born son of Saon Singh and, therefore, not entitled to succeed to the estate of Saon Singh.

Thus, for the aforesaid discussion, it would be inappropriate to hold that pichhlag son cannot be said to be an heir of the deceased husband Takhat Ram whose property Dewan Chand deceased (now represented by the appellants) so as to inherit his property u/s 15(1)(f) of the Act.

For the afore-stated reasons, this appeal is dismissed.