

SUPREME COURT OF INDIA

Parshotam Singh (Dead) Through Lrs.

Vs.

Harbans Kaur

(K Ramaswamy and G Pattanaik JJ.)

18.11.1996

ORDER

Leave granted.

We have heard learned counsel on both sides. This appeal by special leave arises from the judgment of the High Court of Punjab & Haryana at Chandigarh, made on July 26, 1995 in RSA No. 575/95.

The admitted position is that one Mukhtiar Singh was the original owner of the property. He died in 1966 leaving behind him was his son Harsukhjrit Singh and his widow Pritam Kaur. Pritam Kaur died in 1971. Harsukhjrit Singh has two sons, viz, Parshotam Singh and Lakhmir Singh . The respondents are the widow and sons of Lakhmir Singh and the appellants are the heirs of Parshotam Singh. The appellant- plaintiff had filed a suit for joint possession and declaration that they are entitled to half the share in the property succeeded by Harsukhjrit Singh. The trial Court decreed the suit. But, on appeal, it was reversed. The High Court dismissed the appeal on the ground of delay. Thus, this appeal by special leave.

On the facts and circumstances, the High Court was not justified in dismissing the appeal on the ground of mere delay. The High Court would have gone into the question of the right to the succession of the property. It is seen that the appellate Court had recorded a finding of fact that Harsukhjrit Singh had succeeded to not only the property of his grandfather but also a part of the property heeded by his mother, Pritam Kaur. Under these circumstances, the property which he inherited from his mother, Pritam Kaur would be his self-acquired property. But the property succeeded through his grand-father, Bakhtawar Singh would assume the character of joint property. The appellate Court had recorded a finding that since Harsukhjrit Singh had blended his private property and the joint family property, it assumed the character of self-acquired property. Therefore, it is not partible between the appellants and the respondents. The view taken by the appellate Court is clearly wrong in law. Though Harsukhjrit Singh had blended the joint family property with his private property inherited from his mother, the joint family property still remains to be the joint family property until it is divided between the heirs of Harsukhjrit Singh. The appellant being the heirs of the father of the respondent Parshotam Singh, they are entitled to the half share in the property succeeded by Harsukhjrit Singh from his grand-father and the rest of the half share would go to the respondents.

The appeal is, therefore, allowed. The orders of the High Court and the District Court stand set aside. The matter is remitted to the trial Court to pass final decree in accordance with law. The decree of the trial Court stands restored. But, in the circumstances, without costs.