

# PUNJAB AND HARYANA HIGH COURT

Amar Kaur

Vs

Raman Kumari

Second Appeal No. 612 of 1976

(G.C. Mital, J.)

17.01.1984

## JUDGMENT

### **G.C. Mital, J.**

1. Ram Chand was the original male-holder, who died on 6th Dec. 1946 leaving his widow Smt. Dhanti and two daughters Shankari and Amar Kaur. On his death his agricultural land was mutated in favor of his wife Smt. Dhanti. On 27th Nov. 1948 Smt. Dhanti gifted the entire estate in favor of her two daughters and the mutation of gift was duly sanctioned. Both the daughters survived the enforcement of Hindu Succession Act, 1956 (hereinafter referred to as 'the Act'). On 4th February, 1972, Smt. Shankari died without leaving husband or a descendant. Her estate was mutated in favor of her sister Amar Kaur. At the time of death of Shankari Kahan Chand her husband's son, from another wife was alive, who died on. 5th Oct. 1972 leaving behind his widow and children. His widow and children filed the present suit on 1st November, 1973 to claim succession of the estate left by Smt. Shankari on the basis of the gift from her mother and claimed that the inheritance to her was to be governed by Section 15(1) of the Act.

2. Smt. Amar Kaur contested the suit and pleaded that Shankari has succeeded to the estate of her mother/father and, therefore Section 15(2) of the Act was applicable and not Section 15(1) of the Act, inasmuch as the gift has to be considered as acceleration of succession.

3. Both the Courts below decreed the suit after recording a finding that on the basis of gift, she became the owner of the property and since gift did not amount to acceleration of succession, it could not be held that the property was inherited by her from her mother or father, and, therefore, Section 15(2) of the Act was not applicable. This is second appeal by Smt. Amar Kaur.

4. It cannot be disputed that in 1946 when Ram Chand died, if the parties were governed by customary law then the widow could succeed to widows' estate. Similarly, under the Hindu Law widow would succeed in preference to daughters but to limited estate. Similarly, on the death of the widow, the daughters could succeed as limited owners. Even if the gift made by Shrimati Dhanti in favor of the two daughters is considered as acceleration of succession, Smt. Shankari succeeded to life estate, which stood enlarged in her full ownership under Section 14(1) of the

Act. Since smaller estate merged into larger one, the lesser estate ceases to exist and a new estate of full ownership by fiction of law came to be held for the first time by Smt. Shankari. The estate, which she held under Section 14(1) of the Act, cannot be considered to be by virtue of inheritance from her mother or father. In law it would be deemed that she became full owner of this property by virtue of the Act. On these facts it is to be seen whether Section 15(1) of the Act will apply or Section 15(2) of the Act will apply. Section 15(2) of the Act will apply only when inheritance is to the estate left by father or mother, in the absence of which, Section 15(1) of the Act would apply. Under Section 15(1) of the Act, the heirs of the husband have to be traced and while doing so her husband's son Kahan Chand who was alive, on the date of her death inherited the estate and after death of Kahan Chand, the estate was inherited by the widow and his children, who are plaintiffs in this case.

5. Shri Malook Singh Advocate strenuously argued that in Section 15(2) of the Act, emphasis has to be laid on the words "property inherited by a female Hindu from her father or mother". While doing so, he urged that property held by Smt. Shankari was inherited by her from her father or mother and it matters little that that inherited property stood enlarged by Section 14(1) of the Act. As already observed Shankari had inherited a limited estate on the rule of acceleration of succession under the gift. Before inheritance could open Section 14(1) came into force, and because of the legal fiction she became full owner as the smaller estate had merged into larger estate as held in *Jai Singh v. Mughla*<sup>1</sup>, with the result that the larger estate has to be recognised in law, she will be deemed to be owner of this property for the first time, on the basis of Section 14(1) of the Act. Hence the words relied upon in Section 15(2) of the Act do not advance the case of the appellant. For the reasons recorded above, the appeal is devoid of merit and is dismissed but with no order as to costs.

Appeal dismissed.

Cases Referred.

1(1967) 69 Pun LR 475