

Before J. V. Gupta, J.

BALWANT SINGH,—Appellant

versus

STATE OF PUNJAB and others,—Respondents.

Regular Second Appeal No. 754 of 1974.

December 15, 1982.

Hindu Succession Act (XXX of 1956)—Sections 14(1) and 15—Female succeeding to a widow's estate before the enforcement of the Act—Such female becoming absolute owner under section 14(1) and dying intestate after the Act had come into force—Rule of Succession on her death—Whether to be governed by section 15(1)—Grand son of a brother of the deceased female—Whether could succeed under section 15(2) as well.

Held, that from a reading of section 15 of the Hindu Succession Act, 1956 as a whole it appears that sub-section (2) is attracted only in cases where the female Hindu inherits the property as absolute owner before or after the coming into force of the Act. If she has inherited the property before the commencement of the Act and has become an absolute owner thereof by virtue of the provisions of section 14(1) of the Act, then after her death, it is sub-section (1) of section 15, which will govern the succession. Where on the death of the husband, the widow got the land as a widow's estate, became the absolute owner thereof by operation of law after the coming into force of section 14(1) of the Act and on her dying intestate the land was inherited by the daughter, Clause (b) of sub-section (1) of section 15 of the Act would not come into play and the daughter would get the inheritance under clause (a) of sub-section (1) of section 15 of the Act. That clause does not refer to the heirs of the husband at all but states that the property of a Hindu female dying intestate would devolve upon her sons and daughters and her husband jointly. In this view of the matter, a female having died after the coming into force of the Act and she having become the absolute owner of the suit property in view of the provisions of section 14(1) of the Act, the suit property will devolve upon the heirs as provided under sub-section (1) of section 15 of the Act. (Para 6).

Held, that even if sub-section (2) of section 15 of the Act is invoked then also the grand-son of a brother of the deceased female is entitled to succeed to the estate of the deceased being an heir of her father as provided under clause (d) of sub-section (1) of section 15 of the Act. Clause (a) or clause (b) of sub-section (2) of section 15 nowhere provides that if the property is inherited by a female Hindu either from her father or from her husband, then, it will only devolve upon her heirs and in the absence of any heirs as such, the property will be escheated to the State.

As a matter of fact, if the property is inherited by a female Hindu either from her father-in-law or from her husband, only the order specified in sub-section (1) of section 15 of the Act is changed. Where the husband of the deceased female has no heirs, the property will devolve upon the heirs of her father which admittedly the grand-son of a brother of the deceased is. (Para 7)

Regular Second Appeal from the decree of the Court of Sh. H. S. Ahluwalia Addl. Distt. Judge, Sangrur, dated the 27th day of December, 1973, affirming with costs that of Sh. O. P. Singla, Senior Sub Judge, Sangrur, dated the 30th April, 1970, dismissing the suit of the plaintiff, and leaving the parties to bear their own costs.

A. N. Mittal Advocate, for the Appellant.

S. L. Ahluwalia Advocate, for A. G. (Pb).

R. L. Sharma, Advocate, for respondent Nos. 2 & 3.

Y. P. Gandhi, Advocate, for respondent Nos. 4 & 6.

JUDGMENT

J. V. Gupta, J.

1. This is plaintiff's second appeal whose suit for possession of the agricultural land measuring 110 *kanals* 12 *marlas* has been dismissed by both the Courts below.

2. The plaintiff filed the suit on the allegations that the land, in dispute, belonged to one Mahan Kaur, widow of Jaimal Singh. The plaintiff claimed himself to be the grandson of Sucha Singh a brother of Mahan Kaur, deceased. Since the Assistant Collector, 1st Grade,—*vide* his order, dated April 10, 1963, sanctioned the mutation of the suit land in favour of the respondent State by way of escheat on the assumption that there was no heir of Mahan Kaur, deceased, the present suit was filed by the plaintiff. The suit was contested on behalf of the defendant State and the other defendants and it was pleaded *inter alia* that the plaintiff was not an heir of Mahan Kaur, deceased, as claimed by him. A plea was also taken that the defendants had become the owner of some of the suit land by adverse possession. The trial Court found that Mahan Kaur had died after the coming into force of the Hindu Succession Act (hereinafter called the Act), and that the plaintiff was the grandson of Sucha Singh, the brother of Mahan Kaur, deceased. It was also held that the property, in dispute, came to her from her husband.

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However, the plaintiff was non-suited in view of the provisions of clause (b) of sub-section (2) to section 15 of the Act, and it was held that he was not entitled to inherit the estate left by Mahan Kaur, deceased. In appeal, the learned Additional District Judge affirmed this finding of the trial Court and, thus, maintained its decree dismissing the plaintiff's suit. Dissatisfied with the same, he has come up in second appeal to this Court.

3. There is no dispute between the parties at this stage that the plaintiff is the grandson of Sucha Singh, brother of Mahan Kaur, who died after the coming into force of the Act. There is also no dispute that Mahan Kaur, deceased, had succeeded to her husband who had died before the enforcement of the Act and that she had only succeeded to a widow's estate. On these premises, the learned counsel for the appellant, contended that the plaintiff was an heir as provided under section 15 of the Act, and the view of the Courts below that in view of the provisions of clause (d) of sub-section (2) to section 15, the plaintiff was not entitled to succeed to Mahan Kaur, deceased, was wrong and illegal. According to the learned counsel, the suit property will be deemed to be the self-acquired property of Mahan Kaur, as she had become an absolute owner thereof in view of the provisions of section 14(1) of the Act. Therefore, it could not be held by the Courts below that the plaintiff could not succeed Mahan Kaur after her death because she had inherited the suit land from her husband as contemplated under clause (b) of sub-section (2) to section 15 of the Act. In support of his contention, the learned counsel relied upon *Jai Singh v. Mughla* (1), *Balwant Singh v. Mahabir Singh* (2) and *Bachan Singh v. Jas Kaur* (3). In any case, argued the learned counsel, even if it be assumed that Mahan Kaur, deceased, had inherited the property from her husband, even then, the plaintiff being an heir of the father under clause (d) of sub-section (1) of section 15 of the Act, was entitled to succeed to her estate because the plaintiff was an heir of the father of Mahan Kaur, deceased, being an agnate as provided under clause (c) of section 8 of the Act. The findings of the Courts below, according to the learned counsel, that on account of the provisions of clause (b) of sub-section (2) to section 15 of the Act, the heirs of the father could not inherit the property of a female which had been inherited by

(1) 1967 P.L.R. 475.

(2) 1970 P.L.J. 148.

(3) 1969 P.L.R. 675.

her from her husband or father-in-law, are not warranted by the provisions of the statute. As a matter of fact, according to the learned counsel, under clause (d) of sub-section (1) of section 15 of the Act, if the property is inherited by a female Hindu from her husband, it shall devolve, in the absence of a son or a daughter of the deceased, not upon the other heirs as referred to in sub-section (1) *in the order specified therein*, but upon the heirs of the husband which means that in that situation, the order specified in sub-section (1) will be altered accordingly. In other words, if the property is inherited by a female from her father, then clause (c) of sub-section (1) of section 15 will come first and clause (b) thereof would be superseded. Similarly, if the property was inherited, by a Hindu female from her husband, the same would devolve in the manner as provided in clause (b) of sub-section (1) of section 15.

4. On the other hand, the learned counsel for the respondent State contended that clause (b) of sub-section (2) of section 15 of the Act, clearly provides that in case there was no heir of the husband as provided under sub-section (1) of section 15 of the Act, then the property will escheat to the State and the heirs of the father, as contemplated under clause (d) of sub-section (1) of section 15, cannot succeed to the estate of a female Hindu who had inherited the property from her husband.

5. After hearing the learned counsel for the parties, I find force in the contentions raised on behalf of the appellant.

6. For proper appreciation of the contentions raised on behalf of the parties, reproduction of section 15 of the Act is necessary and the same reads,—

“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 as 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.

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- (2) Notwithstanding anything contained in sub-section (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 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 sub-section (1) in the order specified therein, but upon the heirs of the husband."

Reading the section as a whole, it appears that sub-section (2) of section 15 is attracted only in the cases where the female Hindu inherits the property as absolute owner before or after the coming into force of the Act. If she has inherited the property before the commencement of the Act and has become an absolute owner thereof in view of the provisions of section 14(1) of the Act, then after her death, it is sub-section (1) of section 15, which will govern the succession. It has been held in *Balwant Singh's case* (supra), that where on the death of the husband the widow got the land as a widow's estate, became the absolute owner thereof by operation of law after the coming into force of section 14(1) of the Act and on her dying intestate the land was inherited by the daughter, in her (the daughter's) case clause (b) of sub-section (1) of section 15 of the Act never came into play and the daughter got the inheritance under clause (a) of sub-section (1) of section 15 of the Act. That clause does not refer to the heirs of the husband at all but states that the property of a Hindu female dying intestate would devolve upon her sons and daughters and her husband jointly. In this view of the matter, Mahan Kaur having died after the coming into force of the Act, and she having become the absolute owner of the suit property in view of the provisions of section 14(1) of the Act, the suit property will devolve upon the heirs as provided under sub-section (1) of section 15 of the Act.

7. Apart from the above, even if sub-section (2) of section 15 of the Act, is invoked, then also the plaintiff is entitled to succeed

to the estate of Mahan Kaur, deceased, being an heir of her father as provided under clause (d) of sub-section (1) of section 15 of the Act. Clause (a) or clause (b) of sub-section (2) of section 15 nowhere provides that if the property is inherited by a female Hindu either from her father or from her husband, then, it will only devolve upon her heirs and in the absence of any heirs as such, the property will be escheated to the State. As a matter of fact, if the property is inherited by a female Hindu either from her father-in-law or from her husband, only the order specified in sub-section (1) of section 15 of the Act is changed. In the present case, there being no heirs of the husband of Mahan Kaur, deceased, the property will devolve upon the heirs of her father which admittedly the plaintiff is. Thus, under both the contingencies, the plaintiff is entitled to succeed to the estate of Mahan Kaur, deceased.

8. As a result of the above discussion, this appeal succeeds and is allowed. The judgments and decrees of the Courts below are set aside and the plaintiff's suit is decreed with costs.

N. K. S.

Before S. S. Sandhawalia, C. J. & I. S. Tiwana, J.

GURCHARAN SINGH and others,—Appellants.

versus

THE UNION OF INDIA and another,—Respondents.

LETTERS PATENT APPEAL NO. 721 of 1981.

December 21, 1982.

The Requisitioning and Acquisition of Immovable Property Act (XXX of 1952)—Section 8(1)(e)—Constitution of India 1950—Article 31-B and Ninth Schedule—Acquisition of Immovable property—Determination of 'just compensation' under section 8(1)(e)—Act not providing for payment of solatium—Solatium—Whether could be granted as part of 'just compensation'—Placing of the Act in the Ninth Schedule—Whether bars the grant of solatium while quantifying the compensation.

Held, that solatium essentially has to be treated as integral part of the compensation payable to a land owner on account of the acquisition of his land and if that is so, then clause (e) of