

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Reserve:01.08.2023

Date of Decision: 03.08.2023

FAO No.1805 of 2018 (O&M)

Jaibir Singh Poonia

.....Appellant

Vs

Shanti Devi

.....Respondent

**CORAM:HON'BLE MR. JUSTICE RAJ MOHAN SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present:Mr. S.K. Verma, Advocate
for the petitioner.

Mr. Ajit Sihag, Advocate
for the respondent.

RAJ MOHAN SINGH, J

[1]. The appellant has preferred this appeal against the judgement and decree dated 19.01.2016 passed by the District Judge, Family Court, Hisar in Civil Suit No.31-C of 2011 titled '*Smt. Shanti Devi vs. Jaibir Singh Poonia*'.

[2]. Vide the aforesaid judgment and decree, the suit for declaration filed by the plaintiff/present respondent was decreed and the plaintiff/present respondent was declared to be legally wedded wife of the defendant/present appellant. A decree for declaration was passed in favour of the plaintiff/present

respondent that the land mentioned in the head note of the plaint shall be the charge on the right of maintenance of the plaintiff under Section 18 of the Hindu Adoption and Maintenance Act. It is relevant to mention here that in the suit, the plaintiff/present respondent sought declaration to the effect that the right of plaintiff for maintenance is a charge over 1/4th share of land measuring 103 *kanals* 5 *marlas* i.e. 26 *kanals* 16 *marlas*, 263/2371 share of land measuring 237 *kanals* 2 *marlas* i.e. 26 *kanals* 3 *marlas* comprising in *Khewat* No.22 and 24, *Khatuni* No.71 and 73 to 82 as per *jamabandi* for the year 2005-06 situated in Mauja Gyanpura, District Hisar and 21/148 share of land measuring 7 *kanals* 8 *marlas* i.e. 2 *kanals* 1 *marla* situated within Municipal Committee, Hisar, District Hisar as per provisions of Section 18 of the Hindu Adoption and Maintenance Act and Section 39 of the Transfer of Property Act.

[3]. The plaintiff claimed that her marriage was solemnized with the defendant/present appellant on 28.06.1964 according to Hindu rites and ceremonies. After marriage, they were blessed with a male child namely Raghbir born on 13.12.1970 and a female child namely Geeta born on 13.09.1977. Unfortunately both the children died after their birth. The plaintiff further asserted that the defendant had performed his second marriage with one Kamla and started living under her

impression/influence and neglected the plaintiff/present respondent and refused to maintain her. The plaintiff also filed a petition under Section 125 Cr.P.C. against the defendant/present appellant. The right of her maintenance was claimed to be a charge over 1/4th share as mentioned in the preceding para of this judgment.

[4]. The claim of the plaintiff/present respondent was resisted by the defendant/present appellant by filing written statement. The stand of the defendant was that the plaintiff/present respondent never co-operated with the defendant/present appellant. Date of birth of defendant/present appellant is 20.08.1956 and at the time of alleged marriage between the parties on 28.06.1964, he was only 8 years of age and the marriage was quite unbelievable. The defendant/present appellant has also denied the relation with the plaintiff/present respondent or with his children. He claimed that the children were born out of the loins of Jaipal, who is his brother. He claimed Kamla to be his legally wedded wife and out of the marriage with Kamla, the defendant/present appellant is having three children namely Mandeep, Reena and Annu.

[5]. On the basis of pleadings of the parties, the following issues were framed by the Family Court:-

- “1. *Whether the plaintiff is legally wedded wife of defendant and entitled to pay maintenance by way of creating a charge on the property of the defendant as mentioned in the head note of the plaint as claimed for? OPP*
2. *Whether the plaintiff has no cause of action to file the present suit? OPR*
3. *Whether the plaintiff is estopped for filing the present suit? OPR*
4. *Whether the suit is not maintainable in the present form? OPR*
5. *Whether this court has got no jurisdiction to try and entertain the present suit? OPR*
6. *Relief.”*

[6]. The plaintiff examined herself as PW-4 and also examined Sube Singh, Patwari, Halka as PW-1, Rajinder Kumar, S.A. from the office of Civil Surgeon, Hisar as PW-2 and Rajpal Election Kanungo, Hisar as PW-3. On the other hand, the defendant examined himself as DW-1 and Satbir Singh as DW-2.

[7]. The Family Court after due appreciation of the evidence on record decided the issue No.1 in favour of the plaintiff/present respondent. While deciding the aforesaid issue, the Family Court appreciated that the birth entries of the children namely Raghbir and Geeta were proved with reference to their birth certificates which were duly produced from proper source. PW-2 Rajinder Kumar, SA from the office of Civil

Surgeon, Hisar has appeared in the witness box and proved the entries in the register of birth *qua* both the children. The PW-3 Rajpal Election Kanungo, Hisar has also proved the electoral roll of village Gyanpura of 38 Assembly. In the election record also, the plaintiff was shown as wife of defendant/present appellant. The plaintiff/present respondent herself appeared as PW-4 and deposed her status as that of wife of the defendant/present appellant. The factum of birth of two children on 13.12.1970 and 13.09.1977 was stated. The plaintiff/present respondent has also deposed that the defendant/present appellant got engaged and married with one Kamla and started living under her impression by ignoring the plaintiff and flatly refused to maintain her. In the birth certificates of the children, the name of mother was mentioned as Shanti Devi/present respondent and name of father was mentioned as Jaibir/present appellant. In the election record also, the status of the plaintiff/present respondent was shown to be that of wife of defendant/present appellant. In the petition under Section 125 Cr.P.C., the maintenance was awarded in favour of the plaintiff/present respondent from the defendant/present appellant. In a petition under Section 12 of the Domestic Violence Act, the plaintiff/present respondent was granted an amount of Rs.4,000/- per month from the defendant/appellant.

The appeal filed against the said order was dismissed by the Court of Addl. District Judge, Hisar.

[8]. In order to rebut the evidence of the plaintiff/present respondent, the defendant/present appellant filed his affidavit thereby denying the status of the plaintiff being that of wife. He claimed that the plaintiff was living with his elder brother Jaipal, who is also a real brother-in-law of the plaintiff/present respondent. The defendant/present appellant had strained relations with Jaipal. At the time of alleged marriage, the defendant/present appellant was hardly 8 years of age and the marriage was quite unbelievable. The defendant/present appellant tendered documents Ex.D-1 and Ex.D-2 to prove his contention. Ex.D-1 is the matriculation certificate of the defendant/present appellant wherein his date of birth is 20.08.1956. Ex.D-2 is the copy of ration card showing Kamla as his wife and names of Mandeep, Reena and Annu as the children. The defendant also examined Satbir as DW-2 and also produced his identity card as Ex.D-3.

[9]. With reference to the aforesaid, learned counsel for the appellant vehemently submitted that in order to prove the valid marriage, the factum of marriage has to be pleaded and proved by means of necessary ceremonies of *homadatta* and *Saptpadi*.

In the absence of such essential ceremonies, the marriage cannot be said to be a valid marriage under the Hindu Marriage Act. In the written statement filed by the defendant/present appellant, a stand has been taken that the defendant/present appellant took birth on 20.08.1956 and was 8 years of age at the time of his marriage, therefore, marriage was unbelievable.

[10]. We have considered the submissions made by learned counsel for the parties and with their assistance have perused the pleadings and material on record.

[11]. The Family Court has decided issue No.1 in favour of the plaintiff/present respondent. The issues No.2 to 4 have also been decided in favour of the plaintiff/present respondent and against the defendant/present appellant. The issue No.5 was decided in favour of the plaintiff/present respondent and as a result of findings recorded under different issues, the suit was decreed thereby holding that the plaintiff/present respondent is the legally wedded wife of the defendant/present respondent and a decree for declaration was granted in favour of the plaintiff/present respondent in respect of land mentioned in the headnote of the plaint.

[12]. Onus to prove issue No.1 was on the plaintiff/present respondent. The plaintiff/present respondent by examining

PW-2 Rajinder Kumar, SA from the office of Civil Surgeon, Hisar has proved the birth entries of her children i.e. date of birth of Raghbir as 13.12.1970 and date of birth of Geeta as 13.09.1977. The birth certificates of both the children have been exhibited as Ex.P-3 and Ex.P-4 on record. The birth certificates have come from proper source and the entries made in the register of birth as presumption of its correctness. Moreover, these entries have been proved by the summoned witness i.e. PW-2 Rajinder Kumar, SA office of Civil Surgeon, Hisar. No incriminating information could be extracted from the cross-examination of the witness. Similarly, PW-3 Rajpal Election Kanungo, Hisar has proved the status of plaintiff/present respondent in terms of election record. With the aid of aforesaid documentary evidence, the plaintiff/present respondent has discharged the initial onus to prove that she is legally wedded wife of the defendant/present appellant.

[13]. Thereafter in terms of the stand taken by the defendant/present appellant, the onus heavily shifted upon him to rebut the presumption arising out of the birth entries. The defendant also sought to rebut the presumption only with the aid of Ex.D-1 which is a copy of matriculation certificate of the defendant/present appellant showing his date of birth as 20.08.1956. Secondly, Ex.D-2 ration card of the

defendant/present appellant would show his family composition showing Kamla as his wife and Mandeep, Reena and Annu as his children. In order to prove the execution of the aforesaid documents i.e. Ex.D-1 and Ex.D-2, the defendant/present appellant has not examined any witness. It is a settled law that mere exhibition of document does not dispense with its proof of execution. The documents are not *per se* admissible. The defendant has not produced any witness from the Education Board by whom the matriculation certificate was issued to him. Similarly, the defendant/present appellant has not examined any witness from the relevant Department, who has prepared the ration card. In this way, the onus shifted upon the defendant/present appellant to rebut the presumption of correctness attached to the birth entries and the same has not been discharged by the defendant/present appellant.

[14]. Learned counsel for the defendant/present appellant only sought to demolish the case of the plaintiff/present respondent on the ground that the essential ceremonies of the marriage between the plaintiff and respondent have not been pleaded and proved by way of evidence. The categorical case of the plaintiff/present respondent is that she is legally wedded wife of the defendant/present appellant and by virtue of two children, the status of the plaintiff/present respondent was

shown to be the wife of the defendant/present appellant in the record of right which was duly exhibited as Ex.P-3 and Ex.P-4 and proved by the summoned witness PW-2 Rajinder Kumar, SA from the office of Civil Surgeon, Hisar.

[15]. The controversy being totally based on preponderance of probability stood elaborately proved by the plaintiff/present respondent. In the absence of any evidence to prove due execution of Ex.D-1 and Ex.D-2, the defendant/present appellant could not rebut the presumption arising out of Ex.P-3 and Ex.P-4. The case law i.e. **Vinit Kumar Behl vs. Smt. Ruchi, 2003(2) R.C.R. (Civil) 272** cited by learned counsel for the defendant/present appellant does not advance the case of the appellant in any manner. The presumption of correctness attached with the entries of Ex.P-3 and Ex.P-4 would show that the plaintiff/present respondent is the legally wedded wife of the defendant/present appellant and the plaintiff/present respondent has successfully discharged the onus to which there is no rebuttal. The defendant/present appellant did not challenge the correctness of birth entries which have been proved from the proper source by means of examination of PW-2 Rajinder Kumar, SA from the office of Civil Surgeon, Hisar and the documents were duly exhibited as Ex.P-3 and Ex.P-4. Since there was no rebuttal to the same, therefore, merely exhibited

documents Ex.D-1 and Ex.D-2 cannot be presumed to be the legally exhibited documents in the absence of any proof in respect of its execution.

[16]. The findings recorded by the Family Court cannot be held to be arbitrary or having suffered with any illegality. In the headnote of the plaint, the claim of the plaintiff/present respondent viz.-a-viz. nomenclature of land has been elaborately mentioned, therefore, even if, in the relief clause such nomenclature has not been elaborately shown but the same would have the effect of a decree of declaration in respect of the land as pleaded by the plaintiff/present respondent in the headnote of the plaint. The Family Court has not misread any evidence.

[17]. For the reasons recorded hereinabove, this Court finds no ground to interfere in the present appeal. The appeal is found to be totally bereft of merits and is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

(HARPEET SINGH BRAR)
JUDGE

August 03, 2023

Atik

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No