

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

R.S.A No. 651 of 1987

DATE OF DECISION : 07.05.2015

Nasib Kaur alias Raj Kaur and another

.... APPELLANTS

Versus

Surjit Kaur

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Jashandeep Singh Sandhu, Advocate,
for the appellants.

Mr. Surinder Garg, Advocate,
for the respondent.

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SATISH KUMAR MITTAL, J. (Oral)

Smt. Nasib Kaur alias Raj Kaur and her son Gurmel Singh have filed the instant Regular Second Appeal against the judgment and decree dated 19.12.1986 passed by the first appellate court, whereby after setting aside the judgment and decree dated 13.11.1984 passed by the trial court, the suit filed by plaintiff-Surjit Kaur was decreed and she was held entitled to the entire share of the service benefits of deceased Harbhajan Singh.

The brief facts of the case are that Harbhajan Singh (deceased) was working as Constable in Punjab Police. He died in a road accident on 05.11.1982. It is the case of plaintiff – Surjit Kaur that she was married to Tara Singh, brother of aforesaid Harbhajan Singh, and after his death, she

performed 'Karewa' marriage with Harbhajan Singh. One child, namely Balaur Singh, was born from the Karewa marriage of Surjit Kaur and Harbhajan Singh. It is also undisputed fact that later on, Harbhajan Singh performed marriage with Nasib Kaur and one child, namely Gurmel Singh, was born from the subsequent marriage of Harbhajan Singh with Nasib Kaur.

After the death of Harbhajan Singh, dispute arose between the parties with regard to the service benefits of Harbhajan Singh.

Surjit Kaur filed the present suit for declaration to the effect that after the death of her previous husband Tara Singh (brother of Harbhajan Singh), she had performed 'Karewa' marriage with Harbhajan Singh according to the customs prevalent in Punjab and the said marriage is a valid marriage under the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). It was further the case of the plaintiff that the subsequent marriage of Harbhajan Singh with Nasib Kaur during the subsistence of his karewa marriage with her (plaintiff-Surjit Kaur) was a void marriage under Section 11 of the Act and the child born from the said wedlock is illegitimate. As such, Nasib Kaur and her child Gurmel Singh have no legal right to the estate of deceased Harbhajan Singh, and the plaintiff is entitled to receive the service benefits of Harbhajan Singh, after his death.

The said suit was contested by Nasib Kaur and Gurmel Singh on various grounds, including that Surjit Kaur did not perform any 'Karewa'

marriage with Harbhajan Singh. Rather, she performed 'Karewa' marriage with Sardara Singh, another brother of her deceased husband Tara Singh.

The trial court, after appreciating the evidence led by both the parties, had recorded a finding of fact that Surjit Kaur validly contacted 'Karewa' marriage with Harbhajan Singh and gave birth to Balaur Singh. It was also found that Harbhjan Singh also performed marriage with Nasib Kaur and she also gave birth to a son, namely Gurmel Singh. It was further observed by the trial court that since Balaur Singh had died, half of the share of Harbhajan Singh would naturally be inherited by Gurmel Singh. Accordingly, Nasib Kaur and Gurmel Singh were held entitled to 3/4th share out of the dues belonging to Harbhajan Singh, whereas plaintiff Surjit Kaur was held entitled to 1/4th share.

Feeling aggrieved against the said judgment and decree, both the parties preferred separate appeals before the first appellate court. It was observed by the first appellate court that Section 5 (1) of the Act clearly lays down that neither party should have a spouse living at the time of marriage. Admittedly, Surjit Kaur, who had contacted 'Karewa' marriage with Harbhajan Singh, was alive when Nasib Kaur married Harbhajan Singh. In these circumstances, the marriage of Nasib Kaur with Harbhajan Singh was held to be void and Gurmel Singh was held to be illegitimate child of Harbhajan Singh. After recording these findings of fact, the learned first appellate court, while relying upon the decision in **Gurnam Kaur and**

another Vs. Puran Singh and others, 1976 PLR 164, and the Division Bench decision of the Madras High Court in Thulasi Ammal Vs. Gowri Ammal, AIR 1964 Madras 168, held that the children born of a void marriage would be legitimate children of the parents if a decree of nullity has been granted in respect of that marriage under Section 11 of the Act, and only in that situation, such children of the void marriage can get share in the property of their deceased father while getting the benefit of Section 16 of the Act, because obtaining of a decree of nullity of a void marriage under Section 11 of the Act is a condition precedent to the grant of legitimacy under Section 16 of the Act, to children of such a marriage begotten or conceived before the decree. While coming to the conclusion that in the present case, no decree of nullity of marriage between Nasib Kaur and Harbhajan Singh was obtained, therefore, Gurmel Singh (appellant No.2) cannot succeed to the estate of Harbhajan Singh. It was further held that Nasib Kaur is also not entitled to succeed to the estate of Harbhajan Singh, because her marriage with Harbhajan Singh was void. After coming to the said conclusion, it was held by the first appellate court that Nasib Kaur and Gurmel Singh are not entitled for any share in the service benefits of Harbhajan Singh, and Surjit Kaur alone is entitled to the entire share of the service benefits of deceased Harbhajan Singh, because their son Balaur Singh has died. Consequently, the appeal filed by Surjit Kaur was allowed and the appeal filed by Nasib Kaur and Gurmel Singh was dismissed.

Against the said judgment and decree, the instant appeal has been filed by Nasib Kaur and Gurmel Singh.

During the course of arguments, learned counsel for the appellants does not dispute the legal position that as far as Nasib Kaur is concerned, she is not entitled for any share in the service benefits of Harbhajan Singh, because her marriage with Harbhajan Singh was a void marriage, being solemnised during the subsistence of karewa marriage of Harbhajan Singh with Surjit Kaur. However, learned counsel argued that as far as appellant No.2 Gurmel Singh is concerned, he being the illegitimate child of void marriage is definitely entitled to a share in the estate of Harbhajan Singh. Learned counsel further argued that the first appellate court has committed grave illegality while recording a finding that Gurmel Singh is not entitled to any share in the estate of Harbhajan Singh, because a decree of nullity of the void marriage was not obtained under Section 11 of the Act, which is a condition precedent to the grant of legitimacy under Section 16 of the Act, to children of such a marriage begotten or conceived before the decree. It has been argued that the first appellate court has completely ignored the amendments made in Sections 11 and 16 of the Act (by Act 68 of 1976), which has completely changed the dimension of the issue involved in this appeal. The judgments relied upon by the first appellate court were rendered prior to the aforesaid amendments. According to the learned counsel, the following substantial question of law is involved

in this appeal :-

“Irrespective of the fact whether or not, a decree of nullity of the void marriage is granted in respect of the marriage between Nasib Kaur and Harbhajan Singh, whether Gurmel Singh being illegitimate child of Harbhajan Singh is entitled to the share in the estate of his father Harbhajan Singh ?

After hearing learned counsel for the parties, I am of the opinion that the judgment and decree passed by the first appellate court is totally contrary to the provision of Section 16 of the Act and the same is not sustainable. After the amendments in Sections 11 and 16 of the Act, there is no condition precedent that to get the said benefit, a decree of nullity of a void marriage is to be obtained. Appellant Gurmel Singh being illegitimate child of the marriage of Nasib Kaur with Harbhajan Singh, is definitely entitled to a share in the property of his father Harbhajan Singh under Section 16 of the Act, irrespective of the fact whether the said marriage was declared void by a decree of nullity or not. In my opinion, the first appellate court has completely ignored the amendments made in Sections 11 and 16 of the Act. These provisions were interpreted by the High Courts of Punjab and Madras to the effect that the benefit of Section 16 of the Act was conferred to the illegitimate children only in those cases where a decree of nullity was granted under Section 11 or 12, and it did not extend the benefit to other cases. To overcome that interpretation, in the year 1976, Section 11

was amended by inserting the words “against the other party”, along with the amendment in Section 16 of the Act. The following words in Section 16 (1),

“... and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.”

enlarged the applicability of the beneficial provisions to the illegitimate children, irrespective of the fact whether or not a decree of nullity is granted in respect of the marriage or not. All the illegitimate children of the marriage, whether it is declared void or not, were placed in circumstances similar to those of Gurmel Singh in the instant case. After the said amendments, to get the benefit of Section 16 of the Act by an illegitimate child, it is not necessary to get the marriage declared as void or voidable under Section 11 and 12 of the Act. The protection of legitimacy provided under Section 16 of the Act to the illegitimate children was widened. This fact has been recognised by the Hon'ble Supreme Court in **Maharani Kusum Kumari and another Vs. Smt. Kusum Kumari Jadeja and another,** (1991) 1 Supreme Court Cases 582. In **Revanasiddappa and another Vs. Mallikarjun and others,** (2011) 11 Supreme Court Cases 1, it was held by the Hon'ble Supreme Court that children of void and voidable marriage are entitled to inherit the property of their parents.

In view of the aforesaid legal position, Gurmel Singh has a

right in the service benefits of deceased Harbhajan Singh, being his illegitimate child. Since only two legal heirs of Harbhajan Singh are alive, namely Surjit Kaur and Gurmel Singh, therefore, in my opinion, both of them are legally entitled to his service benefits to the extent of half share each.

Consequently, the instant appeal is partly allowed and the decree of the first appellate court is modified to the extent that plaintiff Surjit Kaur (respondent herein) and defendant No.2 Gurmel Singh (appellant No.2 herein) shall be equally entitled to the service benefits of deceased Harbhajan Singh.

May 11, 2015
ndj

(SATISH KUMAR MITTAL)
JUDGE