

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

RSA No.1031 of 1988
Date of decision : 12.08.2015

Suraj Bhan

...Appellant

Versus

Gurdial & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Ashok Kumar Jindal, Advocate for
Mr. Sanjay Mittal, Advocate for the appellant.

Mr. O.P. Goel, Sr. Advocate with
Ms. Shamita Kaushik, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the judgment and decree dated 21.11.1987 passed by the Lower Appellate Court, whereby the judgment and decree of the trial Court dated 17.09.1986 decreeing the suit of the appellant/plaintiff for declaration and possession has been reversed.

Mr. Ashok Kumar Jindal, learned counsel appearing on behalf of appellant/plaintiff submits that the occasion to file the suit for declaration and possession arose on account of death of Bihari, as appellant/plaintiff, claimed to be son of Bihari. He submits that Pirana had two sons namely

Baldev and Hardeva. Hardeva had son namely Bihari and Baldev had son namely Richhpal who had married with Goran @ Goral, whereas Bihari had performed marriage with Chameli. On account of death of Richhpal, Bihari performed 'Kerawa' marriage with Goran @ Goral. Bihari and Chameli had already three children namely Gurdial Singh and two other daughters.

Declaration was sought on account of the fact that Gurdial Singh had set up a Will dated 07.09.1967 alleged to have been executed by Bihari in his favour. He submits that trial Court on the basis of evidence on record found that the property was ancestral at the hands of Bihari and that appellant/plaintiff was son of Bihari Lal through Ex.P4 and, therefore, decreed the suit.

Gurdial Singh and defendants aggrieved against the judgment and decree, challenged the same by filing appeal under Section 96 of the Act. Lower Appellate Court on appreciation of the oral and documentary evidence allowed the appeal and set aside the judgment and decree of the trial Court. He submits that Lower Appellate Court has committed illegality and perversity in setting aside the well reasoned judgment of the trial Court as there has been a stark misreading of both the oral and documentary evidence and, therefore, following substantial question of law arises for determination by the Court.

1. Whether appellant/Suraj Bhan is son of Bihari and Goran, after Bihari had performed 'Kerawa' marriage or not.

Mr. O.P. Goel, Id. Sr. Advocate assisted by Ms. Shamita Kaushik, Advocate for the respondents submits that there is no illegality and

perversity and the judgment is based on sound principles and preponderance of oral and documentary evidence, and is liable to be upheld.

I have heard learned counsel for the parties and appraised the paper book.

The essential questions to be determined in the present appeal is as to whether the appellant has been able to prove the son of Bihari out of the loins of Bihari and Goran and whether Bihari alleged to have been performed 'Kerawa' marriage with Goran after death of Richhpal. No such evidence has been proved or placed on record with regard to the factum of such marriage. The birth certificate Ex.P3 purported to be of Gurdial Singh, but there is no mention of name of the child. Ex.P4 pertains to the birth certificate of appellant/plaintiff, where his name has been mentioned.

Aforementioned document along with other documents were tendered into evidence on behalf of plaintiff by the counsel vide statement dated 24.01.1985 and their exhibition was objected. Once the authenticity and genuinity of the documents were objected to, it was incumbent upon the appellant/plaintiff to prove the documents in accordance with law i.e. by summoning witnesses of the concerned authorities from where documents Ex.P3 and Ex.P4 had been issued. In the absence of such evidence, documents which were objected to, could not be read into evidence.

It is settled proposition of law mere exhibition of the document does not dispense its proof, the reference is invited to *Sait Tarajee Khim Chand & Ors. Vs. Yelamarti Satyam & Ors. 1971 AIR (SC) 1865*. The Lower Appellate Court rightly found that the appellant/plaintiff failed to prove his parentage i.e. whether he was born from the loins of Bihari and

Goran. In the absence of any evidence, trial court could not have drawn the interference under Section 114 of the Indian Evidence Act.

The impugned judgment and decree of the Lower Appellate Court passed on the basis of oral and documentary evidence, much less, settled law.

There is no merit in the appeal, much less, no substantial question of law arise for determination of this Court.

Accordingly, appeal is dismissed.

12.08.2015

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**(AMIT RAWAL)
JUDGE**