

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

Regular Second Appeal No.5108 of 2011 (O&M)

Date of decision: 7.4.2015

Pala Ram

... Appellant

Versus

Bhagwan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Arvind Bansal, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The plaintiff instituted a suit to declare Mutation No.5528 of suit property described in the plaint as illegal and not binding on his rights. He claimed corpus through Shanti Devi widow of Mohinder Singh who is claimed to be owner to the extent of 1/3rd share in the land mentioned in para. 1(i) and 1/6th share in the land mentioned in para. 1(ii) of the prayer clause. Shanti Devi died on 4th February, 2005 leaving behind the plaintiff Pala Ram as her sole legal heir as owner in possession of the suit land. The plaintiff claimed that her brother Amrit had died leaving behind defendants No.2 to 5 as his legal heirs. It is alleged that these defendants in collusion with the revenue authorities got a mutation attested with respect to the estate of Shanti Devi in 3 equal shares including the plaintiff which act was

illegal.

2. The defendant responded to the suit by filing a written statement in 2007 and contested the case. It was asserted that Mohinder Singh, husband of Shanti Devi and son of Gora Singh was once owner of the disputed land. He died 25 years before the filing of the suit and Shanti Devi inherited the land as his widow. Mohinder Singh had 3 brothers; plaintiff Pala Ram, Bhagwan Singh defendant No.1 and Amrit father of defendants No.2 and 3 and husband of defendant No.5. Mohinder Singh and Shanti Devi had no issue and thus, the property devolved upon the plaintiff, Bhagwan Singh and defendants No.2 to 5 being LR's of Shanti Devi. The question which arose was that when the plaintiff had taken Shanti Devi as his wife by way of *Kareva* system, then after her death, without leaving any issue from the marriage, he become the sole legal heir in terms of Section 15 of the Hindu Succession Act, 1956. He was, therefore, entitled to inherit the property of Shanti Devi. Mutation reflecting otherwise was null and void. The Courts *a quo* found that if plaintiff Pala Ram was married to Shanti Devi by way of *Kareva* marriage after the death of her previous husband Mohinder Singh, his brother who died 25 years before the suit, then he cannot be taken lawfully to have married Shanti Devi because of an admission made by the plaintiff that his earlier wife Khazani was still alive. This means that *Kareva* marriage between the plaintiff and Shanti Devi was prohibited by law which recognizes only monogamous marriages. If his wife Khazani was alive, then the question of *kareva* marriage to another woman did not arise, much less his brother's widow. If it did not arise, she was his sister-in-law and thus a class-II heir and he could not claim property

rights as Class-I heir of Shanti Devi. Therefore, Shanti Devi's estate would devolve by survivorship and natural succession which fact removes the base of the suit. After all, Shanti Devi had died issueless. The so-called marriage between the plaintiff and Shanti Devi was not lawful nor could be supported by *Kareva* custom in the presence of his first wife living and the fact that Mohinder Singh died over 3 decades ago makes the plaintiff's plea wholly fallacious. The plaintiff does not qualify as legally married to Shanti Devi nor could she be taken to be his legally wedded wife.

3. Nothing more needs to be seen or examined in this second appeal which is ordered to be dismissed, the prayers being contrary to laws of marriage, custom, succession and inheritance.

(RAJIV NARAIN RAINA)
JUDGE

April 7, 2015
Paritosh Kumar