

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No. 14883-C of 2012 in/and
RSA No. 5306 of 2012 (O/M)
Date of decision : 10.12.2015

Ved Parkash

..... Appellant

Versus

Jai Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sanjay Mittal, Advocate,
for the applicant-appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

CM No. 14883-C of 2012

This is an application for condonation of delay of 130 days in refiling the present appeal.

For the reasons mentioned in the application, which is supported by the affidavit of the Clerk of the learned counsel for the applicant-appellant, namely, Kushal Kumar, the delay of 130 days in refiling the present regular second appeal is condoned.

Application is accordingly disposed of.

RSA No. 5306 of 2012 (O/M)

Main case

The father of appellant, namely, Harphul (plaintiff) had filed a suit for declaration before the lower Court to the effect that his brother Nand Ram was owner to the extent of 1/6th share in the disputed property. It was also claimed that Nand Ram was unmarried and issueless. He died on 9.1.2001. The plaintiff being the real brother and sole surviving legal heir of Nand Ram is entitled to succeed him. However, the mutation was wrongly entered in favour of defendant Bhuri Devi. It is stated that Bhuri Devi was married to Raja Ram, another brother of Nand Ram, who pre-deceased him. Jai Lal is the son born out of the wedlock of Raja Ram and Bhuri Devi. Therefore, mutation was wrongly sanctioned.

On the other hand, the defendant took the plea that Nand Ram was married with Bhuri Devi. He was employed in Indian National Army. He was confined in Singapore jail and did not return to his native village for 7/8 years. Assuming that Nand Ram is dead, his wife Bhuri Devi as per local custom was married to his younger brother Raja Ram as wife through Karewa marriage. Thereafter, she started living with him as his wife. However, when Nand Ram returned to his native village after 7/8 years, Bhuri Devi again started living with Nand Ram as his wife. Bhuri Devi was granted pensionary benefits as legal heir and wife of Nand ram.

The suit was decreed by the learned Civil Judge (Junior

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Division), Mohindergarh, holding that the plaintiff has admitted in cross-examination that Nand Ram was married and was working in Indian National Army. He did not return to his native village for 7/8 years. However, he denied the knowledge that Bhuri Devi was made to live with Raja Ram. He further stated that if Bhuri Devi was getting pension of Nand Ram, the same is by mis-representation. In this way, the marriage of Bhuri Devi with Nand Ram was admitted and it was also not specifically denied that when Nand Ram was assumed dead after being confined in Singapore jail being a member of Indian National Army, Bhuri Devi was made to live with Raja Ram as his wife. According to the plaintiff, Bhuri Devi died before the filing of the suit. The lower Court held that even if Bhuri Devi is proved to be wife of Nand Ram, the property will go to the sole surviving collateral of Nand Ram.

Aggrieved by the said judgment and decree, defendant went in appeal. The learned Additional District Judge, Narnaul, vide judgment and decree dated 6.1.2012, reversed the findings and dismissed the suit.

I have heard the learned counsel for the appellant and have also carefully gone through the file.

It comes out that the case of the plaintiff before the lower Court was that Nand Ram died unmarried and issueless. However, in cross examination, he could not face the reality and admitted that

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Bhuri Devi was married with his brother Nand Ram. He also did not deny the fact that Nand Ram was a member of Indian National Army and was confined in Singapore jail for 7/8 years. As a result thereof, Bhuri Devi was married to Raja Ram, another brother of Nand Ram, through customary ceremonies and Jai Lal is stated to have been born from the said wedlock. When Nand Ram returned back to his native village, Bhuri Devi again started living with him. It is also proved that till her death, Bhuri Devi was getting pension of her husband Nand Ram.

Under Section 14 of the Hindu Succession Act, 1925, the property of Nand Ram will go to his wife Bhuri Devi and she is full owner thereof. After her death, the property will go to her legal heirs. Even if it is assumed that Jai Lal was born out of the wedlock of Bhuri Devi with Raja Ram, the fact would remain that Jai Lal (defendant) is the son of Bhuri Devi and is the Class-I heir of Bhuri Devi. It being so, after the death of Bhuri Devi, the property will go to her Class-I heir, who is none else than Jai Lal (defendant). The position would have been different if Bhuri Devi had died intestate. It is held that the plaintiff has failed to establish his claim and that the property of Nand Ram, which was succeeded by Bhuri Devi, will not go to Jai Lal (defendant).

The learned counsel contends that it is the case of Jai Lal that he was not an adopted son of Nand Ram. However, it is the

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case of the plaintiff himself that Jai Lal was born out of the wedlock of Bhuri Devi and Raja Ram when Nand Ram had gone missing. It being so, it has to be concluded that Jai Lal (defendant) is the son of Bhuri Devi and is her Class-I heir.

The present appeal is accordingly dismissed, with above-noted findings.

(KULDIP SINGH)
JUDGE

10.12.2015
sjks