

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

**Regular Second Appeal No.1059 of 2013 (O&M)
Date of Decision: October 19, 2015.**

Smt. Sunheri

.....APPELLANT(s).

VERSUS

Smt. Sunita and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.S. Tewatia, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

2. This is appeal against the concurrent judgments of the Courts below dismissing the suit filed by the appellant-plaintiff claiming herself to be owner of the property left by her deceased brother Sunder Lal, being his sole legal heir. About defendant Smt. Kiran Pal, the plea was taken that she is not wife of the deceased. It was alleged that defendant was accommodated in the suit property and lived there from 1999 to December, 2012 as per the permission given by the plaintiff and her deceased brother. After the death of Sunder Lal, she was requested to vacate the disputed house and hand over the vacant possession of the house to the plaintiff but she refused. Hence, the suit.

3. The defendant contested the claim of the plaintiff inter-alia pleading that after the death of her husband, she re-married Sunder Lal about

16 years back and from this married, a son named Bablu was born.

4. The Civil Judge (Junior Division) Palwal on appraisal of evidence recorded the findings that defendant Kiran Pal is legal heir of her deceased husband Sunder Lal, as such, the plaintiff has no claim over the suit property. While recording this finding, the Court has relied upon the testimony of Angoori Devi, sister of plaintiff and deceased Sunder Lal, who stated that the defendant had entered into a *Kareva* marriage with deceased Sunder Lal and from this marriage, one son named Bablu was born. The Court also relied on the ration card wherein defendant was recorded as wife of Sunder and the school record of Bablu, where his father's name was recorded as Sunder Lal.

5. Not satisfied, the plaintiff filed appeal, which was also dismissed by the first Appellate Court.

6. Learned counsel for the appellant has argued that the Courts below have relied on the entry in the ration card which had cutting/over-writing. The school record of Bablu was also taken into account despite the fact that his date of birth is recorded as 15.12.1990, while the first husband of defendant had died in the year 1995-1996.

7. The first Appellate Court while reaching the conclusion that defendant was the wife of deceased Sunder, has relied on the statement of Angoori Devi, real sister of plaintiff and has also observed that plaintiff has concealed this fact, who presented herself to be the only legal heir of Sunder. Angoori Devi has supported the case of the defendant that she was wife of Sunder. Her testimony finds corroboration from ration card which also carry

the name of defendant as wife of deceased Sunder Lal. The plaintiff while

appearing as PW5 has admitted that defendant was recorded in the ration card as wife of Sunder.

8. DW1 Angoori Devi being the real sister of plaintiff and deceased Sunder had the best means of knowledge about the relationship of her brother with defendant and her statement cannot be discarded. The above fact finds support from the entry in the ration card and school record of Bablu. The statement of DW4 Ram Kishan that there was over-writing in the name shown in ration card, has rightly been ignored by the Courts below in view of admission of plaintiff that defendant Kiran Pal has ration card as widow of Sunder Lal. There is no evidence on record and it is not pleaded in the grounds of appeal that first husband of defendant had died in the year 1995-1996. Even otherwise, the plaintiff while claiming the property left by her brother Sunder, concealed this fact that Angoori Devi is also her sister and one of the legal heir of Sunder in the event of finding being recorded that he died unmarried and issueless.

9. On perusal of the paper book and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

10. No substantial question of law requiring determination arises in this appeal, which has no merits.

11. Dismissed.

October 19, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE