

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

**Regular Second Appeal No.1957 of 2015 (O&M)
Date of decision: 08.05.2015**

Harpal Kaur and another

.....Appellants

Versus

Rajinder Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anil Shukla, Advocate,
for the appellants.

Ritu Bahri, J.

Plaintiffs-appellants have come up in regular second appeal against the judgment dated 18.02.2015 passed by the Additional District Judge, SAS Nagar, Mohali, whereby appeal filed by defendant-Rajinder Kaur and her minor daughter-Gurpreet Kaur against the judgment and decree dated 30.08.2013 passed by the Civil Judge (Senior Division), SAS Nagar, Mohali, has been partly accepted.

Harpal Kaur and Bir Devinder Singh-plaintiffs (appellants herein) filed a suit for declaration to the effect that they were legal heirs of deceased-Kuldeep Singh, who was working as Head Constable in Chandigarh Police and they were entitled to claim all his retiral benefits. It was stated that Harpal Kaur-plaintiff No.1 had solemnized marriage with deceased-Kuldip Singh and out of this wedlock, Bir Devinder Singh-defendant No.2 was born. Kuldip Singh had died on 05.03.2006. Being widow and son, the plaintiffs have claimed all his retiral benefits.

Upon notice, Rajinder Kaur and her minor daughter-Gurpreet Kaur appeared and filed written statement by taking preliminary objections with regard to maintainability of the suit and it being hit under Order 2 Rule 2 CPC. On merits, it was stated that defendant-Rajinder Kaur had solemnized marriage with deceased-Kuldip Singh and after his death, she had obtained a succession certificate by filing an application under Section 372 of Indian Succession Act. It was further stated that the plaintiffs were not entitled to any retiral benefits of deceased-Kuldip Singh.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to declaration as prayed for?
OPP
2. Whether suit of plaintiff is maintainable in the present form?
OPP
3. Whether suit is bad under Order 2 Rule 2 CPC? OPD
4. Relief.

The trial Court, after going through the evidence led by both the parties, decreed the suit declaring that the plaintiffs were the only legal heirs of deceased-Kuldip Singh and were entitled to claim entire benefits arising out of his death.

On appeal, the lower Appellate Court observed that initially the suit was filed by the plaintiffs-appellants without impleading Rajinder Kaur and her daughter Gurpreet Kaur as party defendants. However, when notice of the suit was issued to the General Public by way of publication in the newspaper, Rajinder Kaur and her daughter Gurpreet Kaur appeared and filed their written statement. As per deposition of Harnek Singh (PW-5),

who is real brother of deceased-Kuldip Singh, Rajinder Kaur was residing with Kuldip Singh in a rented accommodation and thereafter, on allotment of Government accommodation, he shifted in Sector 46, Chandigarh along with Rajinder Kaur. The admission of real brother of deceased-Kuldip Singh that Rajinder Kaur had been residing with him (Kuldip Singh) and a daughter was born out of this alliance, supported the case of defendant-RAjinder Kaur. This fact was further established by photographs, Ex.D1 to Ex.D3, wherein deceased-Kuldip Singh was seen standing along with Rajinder Kaur and was their minor daughter Gurpreet Kaur. In the birth certificate, Ex.D4, of Gurpreet Kaur, name of her father had been mentioned as Kuldip Singh. Further, in her election identity card, Ex.D5, Rajinder Kaur had been mentioned as wife of Kuldip Singh. As per copy of LIC Policy (Ex.D6), Kuldip Singh has nominated Rajinder Kaur as his nominee by referring his relationship with her as that of a wife. Although the marriage of Rajinder Kaur with Kuldip Singh was not proved, yet minor Gurpreet Kaur was proved to be daughter of Kuldip Singh on the basis of evidence adduced in the form of photographs, Ex.D1 to Ex.D3 and birth certificate, Ex.D4. Therefore, she could not be denied the benefits of inheritance being a child of Kuldip Singh. On the basis of above evidence, the lower appellate Court accepted the appeal filed by the Rajinder Kaur etc. and modified the judgment and decree passed by the trial Court by declaring that along with plaintiffs-Harpal Kaur & Bir Devinder Singh, defendant-Gurpreet Kaur was equally entitled to inherit the estate of deceased-Kuldip Singh.

Argument of learned counsel for the appellants-plaintiffs that in

the absence of proof of marriage of Kuldip Singh and Rajinder Kaur as per

Hindu Marriage Act, 1955, no decree could be passed in favour of minor Gurpreet Kaur, is liable to be rejected. The Hon'ble Supreme Court in **Revanasiddappa and another Vs. Mallikarjun and others**, 2012 (3) RCR (Civil) 969 had examined the case of inheritance of illegitimate child under the Hindu Marriage Act, 1955 and observed as under:-

“36. We are constrained to differ from the interpretation of Section 16 (3) rendered by this Court in Jinia Keotin (supra) and, thereafter, in Neelamma (supra) and Bharatha Matha (supra) in view of the constitutional values enshrined in the preamble of our Constitution which focuses on the concept of equality of status and opportunity and also on individual dignity. The Court has to remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid marriage. This is the crux of the amendment in Section 16 (3). However, some limitation on the property rights of such children is still there in the sense their right is confined to the property of their parents. Such rights cannot be further restricted in view of the preexisting common law view discussed above. It is well known that this Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children. In doing so, the Court must have regard to the equity of the Statute and the principles voiced under Part IV of the Constitution, namely, the Directive Principles of State Policy. In our view this flows from the mandate of Article 37 which provides that it is the duty of the State to apply the principles enshrined in Chapter IV in making laws. It is no longer in dispute that today State would include the higher judiciary in this country.....”

It was further observed by the Hon'ble Supreme Court that Section 16 (3) as amended, does not impose any restriction on the property right of such children except limiting it to the property of their parents.

In the present case it has been duly proved that Gurpreet Kaur is born out of the alliance of deceased-Kuldip Singh and Rajinder Kaur,

therefore, she cannot be denied the right of inheritance in the property of the deceased. In view of the law laid down by the Hon'ble Supreme Court in **Revanasiddappa's** case (supra), this Court is of the view that the impugned judgment has been passed by the lower appellate Court after appreciating the evidence in right perspective. No illegality, much less perversity, has been found in the impugned judgment warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

08.05.2015
ajp

(RITU BAHRI)
JUDGE