

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4862 of 2015 (O&M)
Date of Decision : 18.12.2015

Gurdial Singh and othersAppellants

Versus

Harjit Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.S Sullar, Advocate
for the appellants.

Surinder Gupta, J.

Plaintiff-Harjit Singh (respondent no. 1 in this appeal) filed suit for declaration to the effect that he and proforma defendant no. 17 are owners to the extent of half share each in the land measuring 22 *kanals* 16 *marlas*, earlier owned by Hari Singh, situated in village Khera, P.O. Basolan, via Pinjore, *Tehsil* Kalka, District Panchkula and mutation No. 841 dated 27.12.1986 sanctioned in favour of defendants no. 1 to 16 thereby transferring ownership of suit land in their favour, as illegal, null and void. He also sought relief of permanent injunction to restrain defendants no. 1 to 16 from alienating the suit land.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. Claim of plaintiff was allowed by Civil Judge (Junior Division), Panchkula and the appeal filed by some of defendants was dismissed by Ist Appellate Court, Panchkula. While reaching the conclusion that plaintiff is son of Hari Singh born to defendant no. 17 Karnail Kaur, the Court below relied upon

following documentary evidence:-

- (i) Hari Singh was employed with HMT, Pinjore and in his nomination papers, filled in by him, Karnail Kaur was shown as his wife.
 - (ii) In CPF declaration (Ex. PW-4/1) and nomination form dated 01.08.1978, Karnail Kaur, as wife of Hari Singh, was made 100% nominee for the accumulative fund of Hari Singh.
 - (iii) In retirement gratuity nomination form (Ex. PW-4/2) Karnail Kaur was mentioned in column of nominee with relationship described as wife.
 - (iv) In VDRF nomination/authorization form Karnail Kaur was mentioned as wife in the column of relationship.
- All the above forms were duly signed by Hari Singh.
- (v) In result-cum-detailed mark-sheet certificate (Ex. P-5), Harjit Singh-plaintiff was shown as son of Hari Singh and Karnail Kaur.
 - (vi) In Senior Secondary certificate (Ex. P-6) Hari Singh is mentioned as father of Harjit Singh.
 - (vii) In Voter-ID card (Ex. P-7) Hari Singh was mentioned as father of Harjit Singh.

4. I have heard learned counsel for the appellants and perused the paper-book and judgments of Courts below with his assistance.

5. PW-4 Lokesh Kumar an official of HMT, Pinjore has stated that all the service benefits of Hari Singh were paid to plaintiff and his mother Karnail Kaur on the basis of succession certificate (Ex. P-4) vide receipts Ex. PW-4/1 and PW-4/3. Ist Appellate Court observed that in the proceedings for grant of succession certificate predecessor-in-interest of defendants have pleaded that Karnail Kaur was living with Hari Singh without any legal marriage and she left him before his death.

6. Plaintiff is claiming himself to be son of Hari Singh. Defendants denied the relationship of plaintiff with Hari Singh and alleged that Hari Singh had died unmarried and issueless. It was also pleaded that in proceedings relating to grant of succession certificate to claim amount of Hari Singh lying with his employer, Karnail Kaur failed to prove herself to be legally wedded wife of Hari Singh. Mother of Hari Singh, namely, Chamel Kaur inherited the entire estate of Hari Singh and after her death the same devolved on her three sons and six daughters.

7. The main reliance of learned counsel for appellants is on the judgment dated 29.05.1991 passed on a petition under Section 372 of the Indian Succession Act. This petition was filed by Chamel Kaur who died during pendency of the petition and it was observed that her legal heirs were entitled to the amount lying deposited with General Manager, HMT, Pinjore. The Court also recorded the finding that Karnail Kaur had failed to prove that she is legally wedded wife of Hari Singh or that from her wedlock with Hari Singh two children were born.

8. Ist Appellate Court considered the above argument advanced on behalf of counsel for the appellant and has rightly rejected the same. It is not disputed that no succession certificate was issued on the basis of judgment dated 29.05.1991 (Ex. D-1) and it was never acted upon. As stated by the official of HMT, Pinjore, all the service benefits of Hari Singh were paid to plaintiff and his mother Karnail Kaur. From the succession certificate produced on record as Ex. P-4, it is apparent that legal heirs of Chamel Kaur never laid any claim on the basis of judgment dated 29.05.1991 (Ex. D-1) and allowed service benefits of Hari Singh to be drawn by Karnail Kaur and her son Harjit Singh. The judgment (Ex. D-1) is otherwise not applicable to plaintiff as he was not a party to that petition which had a limited scope of grant of succession certificate with regard to liquid assets of Hari Singh. Ist Appellate Court on the basis of evidence on record has observed regarding the judgment (Ex. D-1) as follows:-

“18.Above all, even if there was any such judgment, there is nothing on record to prove that as per judgment, Ex. D-1, any succession certificate was actually obtained by the appellant-defendants or their predecessor-in-interest after furnishing the necessary stamp papers to claim the movable pecuniary benefits, as no copy of such Succession Certificate has been placed on record. Thus, it seems that no doubt, judgment, Ex. D-1, was obtained by the predecessor-in-

interest of the appellant-defendants but no Succession Certificate was either issued on the basis of that judgment nor any benefit was claimed by the appellant-defendants or their predecessor-in-interest on the basis of that judgment.”

9. Learned counsel for the appellants has argued that mere fact that Hari Singh had mentioned the name of Karnail Kaur as his wife in the nomination forms, is no proof of her relationship with Hari Singh as wife. He has relied on the observations of the Apex Court in cases of **K. Vimla vs. K. Veeraswamy, 1991 (2) SCC 375** and **Bharatha Matha and another vs. R. Vijaya Renganathan and others, 2010 (11) SCC 483**. As is apparent from the evidence discussed above, plaintiff has not only relied on the entries made in the nomination forms by Hari Singh but has also relied upon his school certificate and that the payment of entire service benefits of Hari Singh after his death were made to Karnail Kaur. In the case of **K. Vimla (supra)**, the dispute pertained to claim of maintenance by the second wife. Husband had failed to prove his first marriage and in that context it was observed that mere fact that name of wife was shown in the insurance policy or in the identity card is no proof of marriage. In the case of **Bharatha Matha (supra)**, the dispute pertained to inheritance of ancestral coparcenary property and it was observed that illegitimate child has no right in the coparcenary property. He is entitled to claim share in the self acquired property of his father.

In this case, it is nowhere the case of appellants that suit property was joint Hindu family coparcenary property of Hari Singh. The above citations referred by learned counsel for appellants are not applicable to the facts and circumstances of present case.

10. On perusal of paper-book and judgments of Courts below, I find no legal or factual infirmity therein calling for any interference. The Courts below have rightly reached the conclusion based on ample evidence on record that plaintiff is son of Hari Singh born to Karnail Kaur from her marriage with Hari Singh. The fact that Hari Singh had mentioned Karnail Kaur as his wife in all the nomination forms relating to his service benefits shows that he and Karnail Kaur were living together as husband and wife and there was no discord of Hari Singh with anybody giving him reasons to make a false declaration. Defendants have no reason or authority to challenge the above right exercised by Hari Singh mentioning Karnail Kaur as his wife.

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

Dismissed.

December 18, 2015
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(SURINDER GUPTA)
JUDGE