

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 852 of 2015
Date of Decision: November 17, 2015

Shyam Sunder

..... Appellant

Versus

Sukhpal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vinod S Bhardwaj, Advocate
for the appellant.

Amit Rawal, J (Oral)

The appellant is in Regular Second Appeal against the concurrent finding of fact whereby the suit for declaration/injunction claiming 1/16th share to the estate of Kela Devi has been declined.

Mr. Vinod S Bhardwaj, learned counsel appearing on behalf of the appellant submits that the appellant-plaintiff being legal representatives of Kela Devi claimed estate of Shiv Lal on the premise that Kela Devi was his daughter.

In order to substantiate the aforementioned claim two documents have been placed on record Ex.P-2 copy of General Power of Attorney executed by Kela Devi reflecting her status as daughter of Shiv Lal. The said General Power of attorney had been executed in favour of Sukh Pal-brother of Kela Devi and legal notice Ex.P-3 sent by the lawyer revoking the General Power of Attorney and both the courts below have committed illegality and perversity in

not appreciating the aforementioned documents, therefore the impugned judgments and decrees are not sustainable.

I have heard learned counsel for the appellant and appraised the paper book.

In order to claim the share of estate of Kela Devi being daughter of Shiv Lal, essentially it was required to lead evidence as per Section 50 of the Indian Evidence Act, 1872. Section 50 of the Indian Evidence Act, 1872 reads thus:-

Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860)."

No such evidence has been lead. The General Power of Attorney cannot assume character and the status of daughter of Shiv Lal, as it is self serving statement inasmuch as that it is Kela Devi, the principal who has given the attorney to an agent Sukh Pal. Even the legal notice reflecting Kela Devi as daughter of Shiv Lal would not clothe her status of daughter.

In the absence of evidence lead in pursuance to Section 50 of Indian Evidence Act, 1872 the claim of the appellant-plaintiff viz-a-viz declaration and injunction qua 1/16th share in the estate of Kela Devi was not maintainable.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

November 17, 2015
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