

In the High Court of Punjab and Haryana at Chandigarh

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(1) CM No.14142-C of 2014 and
R.S.A. No.5955 of 2014

.....

Date of decision:10.4.2015

Mohinder Singh

.....Appellant

v.

Preet Kanwar and others

.....Respondents

....

(2) CM No.14143-C of 2014 and
R.S.A. No.5956 of 2014

.....

Date of decision:10.4.2015

Mohinder Singh

.....Appellant

v.

Preet Kanwar and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. G.S. Bhatia, Advocate for the appellant.

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Inderjit Singh, J.

CM No.14142-C of 2014 in
RSA No.5955 of 2014:

For the reasons mentioned in the civil miscellaneous
application, the delay of 92 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

CM No.14143-C of 2014 in
RSA No.5956 of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 109 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

RSA Nos.5955 and 5956 of 2014:

Mohinder Singh appellant-defendant No.1 has filed RSA Nos.5955 and 5956 of 2014 against Preet Kanwar respondent No.1-plaintiff and Gurpreet Singh etc.-respondents-defendants No.2 to 4 challenging the judgment and decree dated 22.9.2010 passed by learned Additional Civil Judge (Senior Division), Kapurthala, vide which the suit filed by Preet Kanwar for declaration to the effect that the plaintiff and defendants No.2 and 3 are joint owners in possession in equal shares of house as described in the head note of the plaint, has been decreed and the counter-claim filed by defendant No.1 has been dismissed by a common order and the appeal against the judgment and decree filed by appellant-defendant No.1 has also been dismissed by the learned Additional District Judge, Kapurthala vide judgment and decree dated 10.2.2014. Therefore, both the appeals are taken up together for hearing and decision.

The brief facts of the case are that Preet Kanwar filed the suit against Mohinder Singh, Gurpreet Singh, Rupinder Kaur and Canara Bank-defendants for declaration to the effect that the plaintiff and defendants No.2 and 3 are joint owners in possession in equal shares of the house as fully described in the head note of the plaint and suit for declaration to the

effect that the plaintiff and defendants No.2 and 3 are entitled to operate Locker No.96 in Canara Bank, M.D.S.D. School Branch, Kapurthala being legal heirs of Smt. Harjinder Kaur deceased widow of late Shri Gurdial Singh and with consequential relief that defendant No.1 may be permanently restrained from interfering into or taking forcible possession from the plaintiff of the house detailed above in the head note and also from alienating the same.

It is stated in the plaint that defendant No.2 is real brother and defendant No.3 is step-sister of the plaintiff. Defendant No.3 is the minor daughter of defendant No.1. The mother of the plaintiff and defendant No.2, Smt. Harjinder Kaur was married with Gurdial Singh, who died on 20.11.1977 leaving the plaintiff and defendant No.2 as his legal heirs. He was an employee in the Post Office. After his death, Smt. Harjinder Kaur used to get widow pension from the Postal Department. After his death, Smt. Harjinder Kaur married with defendant No.1, who was already married with Balwant Kaur, who is still alive. Defendant No.1 had already two sons, namely, Rajdeep Singh and Karambir Singh and a daughter, namely, Poonam from the said wedlock. Their marriage is violative of provisions of Section 5 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') and is void under Section 11 of the said Act. Harjinder Kaur purchased a plot measuring 1 Kanal 3 Marlas vide registered sale deed dated 27.11.1981 and she made construction of a house over the same. Thereafter, she sold a part of it measuring 12 Marlas on 12.5.1989 to Jasbir Singh. In the remaining portion, she used to reside and had also opened a Coaching

Centre in the name and style of Minerwa Coaching Centre. Her children were also residing with her. She died on 6.12.1997 leaving behind the plaintiff and defendants No.2 and 3 as her legal heirs, who are entitled to inherit her property. It is also stated that defendant No.1 is also claiming a right in the suit property as husband of Harjinder Kaur. The said marriage on account of being void did not create any legal status of husband and wife in between them.

Upon notice, defendants No.1 and 3 initially and now defendant No.1 has contested the suit by taking preliminary objection that it is not maintainable. It is the case of defendant No.1 that Smt. Harjinder Kaur used to draw a meager pension of ₹150/- per month. She had performed marriage with defendant No.1 with the knowledge, consent and concurrence of his wife Smt. Balwant Kaur. The marriage was not void. The said plot of 1 Kanals 3 Marlas was purchased by Smt. Harjinder Kaur with the active and monetary assistance provided by defendant No.1 from time to time. She also raised construction with the assistance and monetary help of defendant No.1. She and defendant No.1 were residing in the same till her death on 6.12.1997. The plaintiff and defendant No.2 have nothing to do with the suit property. Smt. Harjinder Kaur in order to set the record right, duly executed a Will dated 8.11.1997 during her life time, in a sound disposing mind, of her own free will, in favour of defendants No.1 and 3 in equal shares. The plaintiff and defendant No.2 have got no concern with the same. It is also case of defendant No.1 that since the plot was purchased and thereafter construction was raised through the money provided by him,

he is otherwise its exclusive owner. Defendant No.1 has further taken a counter-claim of mandatory injunction directing the plaintiff to stop using the ground floor portion of the house and to hand over its vacant possession to him by taking the same pleas as have been taken in the written statement.

Both the parties led evidence. The learned Additional Civil Judge (Senior Division), Kapurthala vide judgment and decree dated 22.9.2010 decreed the suit of the plaintiff Preet Kanwar declaring him and defendants No.2 and 3 as owners in equal shares of the house in suit. And defendant No.1 was permanently restrained from interfering in the possession over the house in dispute.

As regards the Locker, the learned Additional Civil Judge (Senior Division), Kapurthala, held that the nominee mentioned by deceased Smt. Harjinder Kaur is entitled to operate the same and her legal heirs, namely, the plaintiff and defendants No.2 and 3 are entitled to its contents. The counter-claim filed by defendant No.1 stands dismissed.

Against this judgment and decree appeal has been filed by defendant No.1 and the learned Additional District Judge, Kapurthala vide judgment and decree dated 10.2.2014 also dismissed the appeal.

I have heard learned counsel for the appellant-defendant No.1 in both the appeals and have gone through the record.

Learned counsel for the appellant mainly argued on one point that no declaration in a civil suit can be given declaring the marriage as void of Smt. Harjinder Kaur with appellant Mohinder Singh. It can only be done under the Hindu Marriage Act by filing the petition under that Act.

Therefore, he argued that the marriage till it is declared void under the Act is a valid marriage and appellant Mohinder Singh is one of the legal heirs being husband of Smt. Harjinder Kaur. Learned counsel for the appellant also argued that there is cutting on the sale deed in which Smt. Harjinder Kaur is shown as widow of Gurdial Singh and on this basis also the plaintiff is not entitled to any relief.

From the perusal of the record as well as at the time of arguments, it is an admitted fact that appellant Mohinder Singh has one living wife Balwant Kaur, with whom he has been legally married at the time of his second marriage with Smt. Harjinder Kaur. The appellant is nowhere contesting that Balwant Kaur was not his legally wedded wife nor he is, in any way, arguing that first marriage of the appellant with Balwant Kaur was not a valid marriage. Therefore, as per the admission of appellant Mohinder Singh his marriage with Balwant Kaur is legal and valid marriage. In the life time of his first wife he again married with Smt. Harjinder Kaur. Section 5 of the Act states that a marriage may be solemnized between any two Hindus if the following conditions are fulfilled, namely, neither party has a spouse living at the time of the marriage. Section 11 of the Act states that any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5. Clause (i) of Section 5 says that neither party has a spouse living at the time of marriage. Therefore, in view

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of the provisions of the Act, as discussed above, the appellant married with Smt. Harjinder Kaur when he was having a living spouse, therefore, marriage with Harjinder Kaur is null and void. Smt. Harjinder Kaur has already died. There is no question that the marriage is to be declared null and void under the Hindu Marriage Act by either party to the marriage. As per the provisions of the Act, the marriage of the appellant with Smt. Harjinder Kaur was not a valid marriage. Therefore, the appellant cannot be held as a natural legal heir of Smt. Harjinder Kaur being husband. There is no provision under the Hindu Marriage Act that a person can marry second time during the life of spouse with consent. Therefore, there is no merit in the argument of the learned counsel for the appellant.

Secondly, I find that even if there is cutting in the sale deed by showing Harjinder Kaur as widow of Gurdial Singh etc., as argued, even then it is admitted case of both the parties that Smt. Harjinder Kaur was the owner of the property in dispute. No other point has been argued by the learned counsel for the appellant. The plaintiff and defendant No.2 being the sons of Smt. Harjinder Kaur and defendant No.3 being daughter of Smt. Harjinder Kaur are entitled to inheritance of Smt. Harjinder Kaur. Nothing has been argued regarding the validity of the Will executed by Smt. Harjinder Kaur.

Learned counsel for the appellant has placed reliance on the judgment of this Court in Smt. Sunehri Devi v. Krishan and others, 2012(4) R.C.R. (Civil) 178. I have gone through this judgment. In that case, there was no evidence on record to show that first wife of 'T' was legally wife of

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`T' and Ms. `S' was not his legally wedded wife. It was also not the case that Ms. `S' was leading adulterous life, which are not the facts in the present case as it is admitted case of appellant-defendant No.1 that his marriage with Balwant Kaur is legal and valid marriage. The law laid down in this judgment will not apply to the facts of the present case.

Therefore, the findings recorded by both the Courts below are concurrent. No question of law, much less any substantial question of law arises in the present regular second appeals and the findings recorded by the Courts below are correct and as per law, which do not require any interference from this Court and the same are upheld.

Finding no merit in the regular second appeals, the same are dismissed.

April 10, 2015.

(Inderjit Singh)
Judge

hsp

NOTE: Whether to be referred to the Reporter or not: Yes