

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.760 of 1987

Date of Decision.19.10.2016

Mst. Kaki d/o Peer Baksh

.....Appellant

Vs

Rehmat Ullah and others

.....Respondents

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

None for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The instant appeal is against the judgments and decrees rendered by the Courts below whereby claim in the suit regarding inheritance of estate of deceased-Peer Baksh was in dispute. The suit of the appellant-plaintiff has been dismissed by both the Courts below. The aforementioned appeal stood admitted for awaiting the outcome of the decision whether the Muslims who are Kamboj by caste, would be governed by customary law or personal law. The aforementioned fact has already been decided in numerous cases including regular second appeal bearing No.2337 of 1980 decided on 11.11.1988 titled "Abhul Rahim and others Vs. Yusaf (deceased) through LRs and others" where it has been held that the Muslims belonging to Kamboj Caste of Jamalpura, which is a mohalla of Malerkotla town are governed by personal law and not by agricultural custom.

In the present case, the appellant is none-else but the daughter of Peer Baksh who had asserted a right in the estate of her father. Both the

Courts below have dismissed the suit on the ground that as per the custom,

the daughter, married or unmarried, is not entitled to inherit the property. Since the controversy is not longer res integra in view of the judgment passed by this Court in Abdul Rahim's (supra) that the Muslims belonging to Kamboj Caste of Jamalpura will not be governed by the custom but by personal law, therefore, the judgments and decrees passed by the Courts below are not sustainable in the eyes of law and are liable to be set aside.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High

Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled." [at paras 27 - 29] ”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Accordingly, the judgments and decrees passed by the Courts below are set aside and it is held that the Muslims belonging to Kamboj

caste of Jamalpura shall be governed by the personal law. The second appeal is allowed. The decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

October 19, 2016
Pankaj*

Whether reasoned/speaking Yes/No

Whether reportable Yes/No