

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1611 of 1996 (O&M)

Decided on: 19.10.2016

Sher Singh
(deceased through LRs)

.... Petitioner

Versus

Darya Singh and others
(deceased through LRs)

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.D. Bansal, Advocate,
for the appellant.

Mr. Abhinav Sood, Advocate,
for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the concurrent finding of the fact ,whereby, the suit of the respondent-plaintiff seeking declaration that she being the daughter of Diwana be declared owner in possession to the extent of 1/8th share, out of the agricultural land measuring 180 kanals 12 marlas situated in the revenue estate of Village Khera Khemawati, Teshil Safidon, District Jind, as per Jamabandi for the year 1984-85 and mutation of inheritance No.1199, has been decreed by the Courts below.

Mr. S.D. Bansal, appearing on behalf of the appellant submits that the respondent-plaintiff had filed the suit claiming the aforementioned share has been erroneously decreed.

All the witnesses i.e. Pw-2 Atma Ram, PW-3 Hira Ram, PW-4 Kapoora, who are resident of Khera Khenawati, have not stated the name of the mother of Shanti Devi. It has borne out from the evidence that she was born in the maternal uncle's house, but they did not disclose the name of the mother of Shanti Devi.

That as per categorical stand of the appellant-defendant taken in written statement, that Sher Singh was the only son of the Diwana and inherited the 1/4th share.

Both the Courts below have relied upon the self serving documentary information given to the authorities i.e. birth certificate. Pleadings qua date and birth place are conspicuously absent much less relation with Diwana. He submits that certain witnesses including PW-4 examined and after lot of deliberation/thinking gave the name of the father of Shanti Devi as Diwana. Even PW-2 Atma Ram deposed that he could not answer the year and date of birth of Shanti Devi. No witness has come forward to state that marriage ceremony of Shanti Devi was performed by Diwana nor any witness of the marriage of Shanti Devi, has been produced.

Mr. Abhinav Sood, appearing on behalf of the respondents submitted that the aforementioned witnesses have been coherent and consistent.

Sher Singh sold the land vide sale deed dated 29.05.1979 to various other persons i.e. defendants No.2 to 4 and as such they were made parties. The birth certificate Ex.PW-5/A shows that Shanti Devi is daughter of Diwana. The birth and death register from which the entry was maintained by the department the entries could not be given in the absence of any evidence. The certified copy is permissible in evidence as per provisions of Section 76 of the Indian Evidence Act.

The perusal of the record shows that the sale deed has not been challenged for the last 3 years which was filed in 1979 but no explanation came forward.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is merit in the submission of learned counsel for the appellant.

All the witnesses have not been able to give the name of father of Shanti Devi for a considerable period of time. As noticed in the statement of PW-4 Kapoora, no explanation came forward in the suit, as the suit was filed in the year 1987.

In my view, the information given is self serving and not authenticated. No witness has deposed that the information provided is correct but stated that it was on the basis of the information provided by the informant.

In my view, this aspect has not been noticed by the Courts below. Even otherwise, there is no compliance to the provision of Section 50 of Evidence Act.

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 V/s. 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 V/s. Gurdial Singh Mann (dead) by LRs and**

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.

For the foregoing reasons, the judgments and decrees passed by the Courts below are set aside as they have committed illegality and perversity in appreciating the documentary as well as oral documents. The second appeal is allowed. The decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

19.10.2016

Dinesh

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No