

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3528 of 1998 (O&M)

Date of Decision: September 26th, 2016

Smt.Om Pati & others

...Appellants

Versus

Devi Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.V.K.Jindal, Senior Advocate with
Ms.Janya Sirohi, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM No.12674-C & 12675-C of 2016

The aforementioned Regular Second Appeal was dismissed in default way back in the year 2008. CM No.12674-C of 2016 has been moved seeking condonation of 3024 days in filing the application for restoration of the appeal. The reason assigned in the said application is that the appellants are illiterate persons and not aware of the niceties of the law. Even on the date of dismissal of the appeal for non-prosecution, the counsel for the respondents had not put in appearance. They have been contacting the previous counsel for ascertaining the aforementioned fact.

No doubt, the date, month and the year of ascertaining the fact has been given. In my view, the relationship between the client and the lawyer is fiduciary in nature. Once the appeal stands admitted, the client always remains safe and sound regarding the pendency of the appeal. It is not fair that the counsel did not plead any instruction, therefore, the Court did not have any occasion to issue notice. The explanation given in the applications is fair enough and, therefore, the delay in filing the application

for restoration is condoned. Resultantly, the application for restoration is allowed and the appeal is taken on board for hearing.

Applications stand disposed of.

RSA No.3528 of 1998

Appellant-plaintiffs are aggrieved of the judgments and decrees of the Courts below, whereby the suit seeking declaration that the plaintiffs are the wife and the children of Randhir Singh, has been dismissed by both the Courts below.

Mr.V.K.Jindal, learned Senior Counsel assisted by Ms.Janya Sirohi, learned counsel for the appellant-plaintiffs submits that the suit was filed challenging the judgment and decree dated 3.2.1983 passed in Civil Suit No.46 titled as “Devi Singh Versus Randhir Singh obtained on the basis of the fraud and misrepresentation having been played upon the appellants, whereby land to the extent of 2/9 share was transferred by deceased Randhir Singh in favour of defendants in equal shares. In order to support the relationship and the marriage, appellant-plaintiffs had examined PW-3 Satbir Singh Lamberdar and PW-4 Bhana, who is real brother of Randhir Singh, thus, there is compliance of Section 50 of the Indian Evidence Act.

Along with the application an application bearing No.6188-C of 1998 has been moved to place on record documents Ex.A-1 to Ex.A-10, i.e., statement of Randhir Singh, Ration Card, Voter Lists for the years 1971, 1976, 1980, 1983, 1989, and 1996 (Ex.A-1 to A-8) and birth certificates (Ex.A-9 and Ex.A-10) to contend that Om Pati has been shown to be the wife of Randhir Singh as both the Courts below have non-suited the appellants of not having led the aforementioned evidence. He submits

that the Courts below have also found fault with the statements of PW-3 and PW-4 regarding the date, month and year of the marriage, much less the village where barat had gone, in essence Court had formed an opinion that provisions of Section 50 of the Indian Evidence Act had not been complied with. He also submits that if the additional evidence and the statements of the aforementioned witnesses read together, irresistible conclusion is that Om Pati was married to Randhir Singh. Even Randhir Singh had also suffered a statement in proceedings initiated under Section 125 Cr.P.C., where he admitted that he was married to Om Pati, but he left her and again remarried to Shakuntla. All these factors have proved the fact that the decree suffered by Randhir Singh in favour of the defendants was suffering from fraud and misrepresentation. In support of his contention, he has also relied upon the judgment rendered by the Hon'ble Supreme Court in **Shantinath Ramu Danole & Anr. Versus Jambu Ramu Danole & Ors., 1997(1) R.C.R. (Criminal) 238** to contend that the factum of marriage had been proved through the aforementioned evidence, much less the birth of the children and also the jointness in mess with brother Bhana PW-4, who is none else but real brother of deceased Randhir Singh, thus, both the Courts below have erroneously dismissed the suit.

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

As per the averments culled out in the plaint, the suit is not based upon the nature and character of the property being ancestral. No doubt, all these factors in the first glance, *prima-facie*, made to believe that Om Pati is the wife of Randhir Singh and the children born out of the same are also of Randhir Singh, but have failed to plead the fact that Randhir

Singh had inherited the property from three generation in lineage, in essence the property was ancestral or not. Since no such evidence has been led, the presumption was/is liable to be drawn that it is a self acquired property. Once it was a self acquired property, Randhir Singh could have parted with the same in the manner and mode as indicated in the judgment and decree under challenge.

Mr.Jindal, during the course of the hearing, has also submitted that the question whether the sons born would be entitled to stake claim in the estate of Randhir Singh or not is referred to the larger bench. I am of the view that said question would not arise in the present appeal, for, the date of death of Randhir Singh has not seen the light of the day. Even the presumption drawn is, that during all his life time, after having suffered the decree, he did not challenge the same. The Hon'ble Supreme Court in **Daljit Kaur & another Versus Muktar Steels Pvt.Ltd. & another, 2014 (1) RCR (Civil) 625** had an occasion to ponder upon the consent/compromise decree and equated the same by holding it to be standing in the same platform by taking the aid of provisions of Order 23 Rule 3-A CPC. It has become a common practice amongst the family and the children also, to challenge the decree suffered by the actual owner of the property after his demise. The best person, who had suffered the decree, if does not come forward during his life time to prove the ingredients of fraud and misrepresentation, I am of the view the appellants have not been able to prove the ingredients of Order 6 Rule 4 CPC. There is no evidence with regard to the fraud or misrepresentation, even assuming for the sake of arguments that the appellants are the wife and the children of Randhir Singh. In the absence of the nature and character of the property, Randhir

Singh had to deal with the property in the manner and mode, as indicated above, therefore, they have no right to challenge the same. The decree is of 1983 and the suit had been filed on 15.10.1990. Even the explanation of not approaching the Court in time is also conspicuously wanting. The limitation to challenge the judgment and decree is three years. The plaintiffs can bring the suit within limitation from the date of the knowledge. I would not be delving upon the point of limitation, for, already held the appellants have failed to prove the ingredients of fraud and misrepresentation, much less character and nature of the property.

Though, *prima-facie*, the appellants have been able to convince this Court with regard to the relationship, but in the absence of the property being ancestral, the appellants cannot stake the claim and rightly so, the decree has been suffered.

For the foregoing reasons, the judgments and decrees of the Courts below are upheld. No ground for interference is made out, much less no substantial question of law arises for determination.

Appeal stands dismissed.

September 26th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No