

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

RSA No.414 of 2005 (O&M)

Date of Decision.10.11.2016

Smt. Sunita

.....Appellant

Vs

Smt. Parmeshwari and others

.....Respondents

Present: Mr. Amit Jain, Advocate and
Mr. Arnav K. Sood, Advocate
for the appellant.

None for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of the dismissal of the appeal and allowing of the cross-objections on issue Nos.1 and 9 on the premise that the suit for declaration and joint possession of the suit property was sought on the ground that respondent No.3-Soran son of Harnama had two daughters namely respondent Nos.1 and 2 i.e. Parmeshwari and Giano and one son Bhag Singh. The plaintiff is none else but the daughter of Bhag Singh. The ancestral property was inherited by Soran vide mutation sanctioned on 22.04.1943 on account of death of his father, Harnama. On death of Harnama, Bhag Singh being only son of Soran became owner in possession of ½ share. Bhag Singh died on 6.12.1981 and on his demise, his property was inherited by appellant-plaintiff, Sunita, by virtue of implication of law and she obtained the right as co-sharer to the extent of half share. It was further averred that father of deceased Bhag Singh namely Soran Singh and grand-father of the appellant-plaintiff suffered a collusive decree in favour of two daughters by excluding the appellant from

her share. The aforementioned act was at her back and therefore, null and void and not binding upon her rights. Soran Singh was having an unascertained share in the joint family along with his brother Parsa and could not transfer any land by way of consent decree dated 14.02.1983.

Mr. Amit Jain, learned counsel appearing for the appellant submits that the trial Court without taking into consideration the pleadings and evidence, dismissed the suit and the appeal filed by the plaintiff was also dismissed on most erroneous and frivolous ground. The trial Court has taken a contrary view by making observation that Sunita was not born from the wedlock of Bhag Singh because she was shown to have been born in 1970 whereas in the evidence it has come that Bhag Singh had expired within a period of one year of his marriage i.e. in the year 1981 and the appellant was born in the year 1970. In fact, the appellant was 11 years old at the time of death of her father, which is a conclusive proof of legitimacy. The appellant was born during the subsistence of the valid marriage. The deposition of maternal grand father of the appellant has proved the aforementioned fact but yet the Courts below held the appellant not to be the daughter of Bhag Singh son of Soran Singh.

The Courts below have ignored by not taking into consideration the statement of appellant-Sunita, who deposed that her father was Bhag Singh and the name of her mother was Kamla Devi. Even the statement of Kamla, PW2, has also been ignored. There is a complete misreading of oral and documentary evidence.

The birth certificate showed her date of birth as 23.09.1970 and she was named as Nita Rani, as generally Sunita is called Nita. It was rather admitted case before the Courts below that Kamla was legally

wedded wife of Bhag Singh and marriage of Kamla PW-2 was not in dispute. The chowkidar of the village also stepped into the witness box and fully proved the case of the appellant, in essence, PW1 and PW2 have deposed in terms of the provisions of Section 50 of the Indian Evidence Act. The judgment and decree aforementioned at the back of the appellant-plaintiff was not valid in the eyes of law, thus, urges this Court for setting aside the finding under challenge by formulating the substantial question of law as drawn in the memorandum of appeal.

There is no representation for the respondents.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Amit Jain. It is admitted fact that Sunita was born at village Kaul. She further admitted that she was called by name Nanda but when she went to school she was named as Sunita. She deposed that for the first time she was named Sunita by her 'Nana' (maternal grand father) in the school record.

PW-5, Ram Kumar, deposed that the plaintiff was brought up at her maternal grand father's house and in the childhood she was named as Nanda. This witness belonged to village Mirzapur which is village of Bhag Singh and Soran. The plaintiff's date of birth, according to Ex.P2, copy of birth certificate, was 6.8.1970 whereas in copy of register, Ex.P1, maintained by Chowkidar of village Kaul, her date of birth had been reflected as 23.09.1970. The information given to the Registrar of Births and Deaths is a self-serving statement. In this certificate, her name was mentioned as Nanda Rani whereas in the register of Chowkidar, her name was mentioned as Sunita but her case was that she was named Sunita for the

first time in school record when she was admitted in the school.

PW-3, Kuru Ram, maternal grand father of the appellant deposed that Bhag Singh died within one year from his marriage. In cross-examination, he further deposed that he died after 8-9 months of the marriage. From the cumulative reading of his statement, it is revealed that daughter of Bhag Singh might have born somewhere in October/November, 1981 but strangely her date of birth has been mentioned as August/September, 1970.

For the reasons aforementioned, I am of the view that the appellant-plaintiff has miserably failed to prove ingredients of Section 50 of the Indian Evidence Act, in essence, could not prove herself to be daughter of Bhag Singh, thus, had no right in the property. The findings rendered by both the Courts below are perfectly legal and justified as the same are based upon correct appreciation of fact and law, much less, no ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 10, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No