

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

R.S.A. No.3331 of 2010 (O&M)

Date of decision: 26.02.2016

Battan @ Batuni

...Appellant

Versus

Mrs. Jamila and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjay Vashisht, Advocate
for the appellant.

Mr. Rajesh Arora, Advocate
for respondent Nos.1 and 2.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 22.10.2009, passed by the learned Additional District Judge, Faridabad, (for short, the 'first Appellate Court') whereby, the appeal filed by the appellant, against the judgment and decree dated 29.05.2008, passed by the learned Civil Judge, Jr. Divn., Faridabad, (for short, the 'trial Court'), has been dismissed.

The learned counsel for the appellant contends that the deceased Hafiz Khan had nominated the appellant as his nominee in the official records being his wife. The respondent No.1 had obtained divorce from said Hafiz Khan vide Talaqnama dated 15.9.1974, subsequent thereto she got married to another person namely, Jumma. As no exact date of marriage has been proved by respondent No.1. Therefore, the judgments and decrees passed by the learned Courts below are liable to be set aside.

On the other hand, the learned counsel for respondent Nos.1 and 2 states that the appellant was not married to the deceased, Hafiz Khan, as his first marriage with respondent No.1 had been subsisting. The appellant was in fact married to one Ramzan. The name of respondent No.2 as the daughter of the deceased, Hafiz Khan has been reflected in the CGHS Card. The learned counsel further asserted that no talaqnama was executed between the deceased, Hafiz Khan and respondent No.1 as alleged by the appellant.

I have heard the learned counsel for the parties and perused the entire record on file.

From the perusal of the record, it reveals that the appellant herself in her testimony has admitted that respondent

No.1 is the first wife of the deceased, Hafiz Khan, however, she had also deposed that vide Talaqnama dated 15.09.1974, said Hafiz Khan had divorced respondent No.1. Since then, he had been residing with the appellant. PW10, Ali Mohammad, close relative of respondent No.1-Jamila, has stated that the witnesses of the said Talaqnama namely, Yousuf Khan, Mauji, Nasruddin, have since died. The appellant did not examine any person to identify the signatures of these witnesses. There is a condition in the Talaqnama, that respondent No.1 also had to put her thumb impression to show her consent on the Talaqnama and that it is only upon affixing thumb impression by the respondent No.1 on this document that divorce was to become final. Therefore, the contents of this Talaqnama made it clear that it is conditional upon contesting of respondent No.1 to the same. The Talaqnama does not bear the signature of respondent No.1. This Talaqnama has been recovered from the possession of the appellant, which appears that it was never communicated to respondent No.1. Thus, this Talaqnama is not binding upon the rights of respondent No.1. Further, Ex.P4, voters list for the year 1975, shows respondent No.1 as wife of deceased Hafiz Khan. Ex.P6, is the voters identity card issued on 17.01.2005 in which

respondent No.1 has also been referred as wife of deceased Hafiz Khan. The appellant does not prove the execution of the Talaqnama and the fact that respondent No.1 was remarried. Even PW1-Badlu Ram Numberdar of Village Rajpura, PW2-Habib Khan resident of Rajpura and PW3- Abdul Karim resident of Rajpura, who have testified that respondent No.1 is the legally wedded wife of deceased Hafiz Khan and that she was not remarried and divorced. In this considered view, the learned Courts below have rightly passed the judgments and decrees.

On consideration, this Court finds that the contentions raised by the learned counsel for the appellant have no merit. No evidence has been shown to have been ignored from consideration. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

26.02.2016

ashok

(JITENDRA CHAUHAN)
JUDGE