

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4187 of 2010 (O&M)

Date of Decision: 28.01.2016

Smt. Jagjit Kaur

... Appellant(s)

Versus

Smt. Sunehri Devi and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Harkesh Manuja, Advocate
for the appellants.

Mr. Inderjit Sharma, Advocate
for the respondents.

Shekher Dhawan, J.

Present appeal is against concurrent findings of both the Courts below whereby Court of first instance decreed the suit of the plaintiffs for possession and First Appellate Court also dismissed the appeal.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance. Relevant facts for the purpose of decision of the present appeal that plaintiffs had filed civil suit seeking possession of house No. 21, New Durga Colony, Jalbera Road, Ambala, forming part of khasra No. 25//10/2/1. As per plaintiffs, Jasbir Singh, who is deceased husband of plaintiff No.1 and father of

plaintiffs No.2 to 4, purchased 7 marlas plot comprising khasra No. 25//10/2/1 on the basis of sale deed dated 21.7.1995 and thereafter constructed residential house in the year 1996-97. Jasbir Singh died on 9.4.2000 and thereafter, plaintiffs became owner of the said property. Mutation has already been sanctioned vide mutation No. 5270 dated 15.10.2000.

The defendant also purchased a plot in front of the property of the plaintiffs and wanted to construct her residential house on her plot and for that purpose, approached father of plaintiffs No.2 to 4 for giving his house to her on rent. Father of plaintiffs No.2 to 4 refused to give his house on rent but he allowed her to retain the house in question for some months as a licensee till the construction of her house is complete. In July 1999, defendant, with ulterior motive, filed suit for injunction taking false and frivolous pleas of being wife of Jasbir Singh and claimed ownership of the house in question. Defendant also challenged the mutation of inheritance sanctioned in the name of plaintiffs. However, appeal filed by the defendant was dismissed by the Collector, Ambala vide order dated 27.1.2002. Plaintiffs are absolute owner of the suit property. Defendant had not paid any charges to the plaintiffs for the use of the property and plaintiffs are also entitled to charges for unauthorized use and occupation of the said property. Defendant had refused to accede to the said request and as such necessity of the suit.

Defendant contested the suit taking plea that plaintiffs estopped from filing the suit because of their own act and conduct. On

merits, defendant denied that Jasbir Singh was maintaining any relation with the plaintiffs. To the contrary, defendant got married with Jasbir Singh on 10.4.1995 in the presence of respectables, namely Karnail Singh, Sham Lal and Rattan Singh and as such defendant is absolute owner of the suit property and raised construction over the same. She had been paying electricity as well as telephone bills from the very beginning. The marriage of defendant with Jasbir Singh was "kareva" marriage and it was admitted by Jasbir Singh, who died on 9.4.2000 and even his last rites were performed by the defendant. Jasbir Singh admitted the defendant to be his own wife in the sale deed dated 23.10.1996. Defendant also admitted that legal notice dated 2.7.1999 was received by her on 4.7.2009 from Jasbir Singh and same was replied. Defendant prayed that she is well within her right to claim ownership of the suit property and the plaintiffs never challenged the "kareva" marriage of the defendant with Jasbir Singh. Defendant was not licensee of the property. Rather she is owner of the property in dispute. She has spent more than ₹ 2,00,000/- for raising construction over the suit property and prayed that suit be dismissed.

On these facts, issues were framed by the Court of first instance and after recording of the evidence by both the parties and appreciating the same, suit of the plaintiffs was decreed. Plaintiffs were also held entitled to recover mesne profits from the defendant at the rate of ₹ 1,000/- per month from the date of sale deed till delivery of possession. First appeal filed by the defendant was dismissed and as

such present appeal before this Court.

Learned counsel for the appellant mainly submitted that Court of first instance primarily decreed the suit of plaintiff on the basis that no "kareva" marriage was performed by Jasbir Singh with present appellant-Jagjit Kaur. The said findings regarding "kareva" marriage were reversed by First Appellate Court and no cross objections have been filed by the respondents. Ex.P1 was duly objected to at the time of evidence. But no permission for leading secondary evidence i.e. to prove the said document by way of certified copy was ever sought. In this way, statements of PW.1 Surja Ram and PW.2 Devinder Singh are relevant because PW.1 Surja Ram simply took the plea that he did not know about the registry but his grandson might be knowing about the same. PW.2 Devinder Singh, when put to cross examination, admitted that registration was available at home but the same was not produced. Undisputedly, Ex.P1 is certified copy of mutation and not the original document and the said document, having not been proved on the file in accordance with law, could not be relied upon by the Court below and the findings arrived at on the basis of such a document are liable to be reversed. As such the findings recorded by both the Courts below as regard to suit for possession are liable to be returned in favour of the appellant and against the respondents and the present appeal be accepted.

Learned counsel for the appellant submitted that mere failure to prove the document does not amount to an admission nor does it reverse or discharge the burden of proof of the plaintiffs. On this

point, reliance has been placed upon judgment rendered by Hon'ble the Supreme Court in ***L.I.C. of India v. Ram Pal Singh Bisen 2010(2) Law Herald (SC) 1234.***

While arguing on these points, learned counsel for the respondents submitted that document Ex.P1 was duly acted upon and mutation was sanctioned on the basis of sale deed. Even appeal and revision against the same were dismissed and as such, plea taken by learned counsel for the appellant is legally not tenable.

As regard the performance of "kareva" marriage of appellant with Jasbir Singh, both the Courts below have already recorded finding that Jasbir Singh could not perform marriage with defendant during life time of his first wife. More so, there is nothing on the file that parties are being governed by customs so as to give overriding effect to the provisions of Hindu Marriage Act, 1955 that a person cannot perform second marriage during the life time of his first wife. Learned counsel for the respondents submitted that concurrent findings recorded by both the Courts below do not call for any interference by this Court and appeal be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that on the basis of judgment rendered by the Hon'ble Supreme Court in case ***L.I.C. of India v. Ram Pal Singh Bisen (supra)***, both the Courts below have returned the findings of fact that plaintiffs have been able to prove that they are owner of the suit property and defendant/appellant is in an unauthorized possession of the suit property and it is not a

question of failure to prove the documents. Rather plaintiffs proved their case by leading their evidence in affirmative. Both the Courts below have also recorded findings of facts that Jasbir Singh could not perform marriage with the defendant by way of "kareva" marriage during the life time of his first wife after coming into force the provisions of the Hindu Marriage Act. Version of the present appellant is purely based on the plea that she had performed "kareva" marriage with Jasbir Singh during his life time. First of all, on the facts, "kareva" marriage of the present appellant with Jasbir Singh is not proved on file and secondly, appellant could not perform marriage with Jasbir Singh during the life time of his first wife. To that effect, findings of both the Courts below are correct. Apart from that, appellant is not having any documentary evidence showing any right, title or ownership of the suit property. Both the Courts below have already recorded findings of facts that status of the present appellant was just of a licensee and the license has already been revoked and she is just an unauthorized occupant and liable to revert back possession to the plaintiffs. The said concurrent finding of fact of both the Courts below do not call for any interference.

There is absolutely no substantial question of law involved in this case calling for interference by this Court and as such present appeal stands dismissed.

(Shekher Dhawan)
Judge

January 28, 2016

"DK"