

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

RSA No.4005 of 2011 (O&M)

Date of decision : 03.08.2016

Asha Deep Kaur

...Appellant

Versus

Sansar Kaur and others
(deceased through LRs)

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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. J.R. Syal, Advocate for the appellant.

Mr. Raman Sharma, Advocate for respondent Nos.2 to 4.

AMIT RAWAL, J. (Oral)

The appellant-defendant No.1 is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit of the respondent-plaintiff seeking declaration and permanent injunction in respect of suit property i.e. House No.3675, Sector 46-C, Chandigarh allotted by Chandigarh Housing Board, has been decreed.

Mr. J.R. Syal, learned counsel appearing on behalf of appellant submits that aforementioned house was allotted to Swaran Singh but in the year 1985 i.e. 17.07.1985 was transferred in the name of Des Raj Singh Bains. Des Raj Singh Bains had married to appellant-defendant No.1 and, therefore, respondent-plaintiff could not have inherited the entire property of Des Raj Singh Bains. It has been proved on record that she was legally divorced wife from the first husband and, therefore, marriage with the Des

Raj Singh Bains was valid and cannot be said to be void. The Will dated 05.11.2004 propounded by Des Raj Singh Bains has been proved through the testimony of DW2 Harnam Singh. There is compliance of Section 68 of the Indian Evidence Act, therefore, the respondent-plaintiff is not entitled to any share in the property and the house is required to be transferred in favour of the appellant.

He further submits that Des Raj Singh Bains had adopted the child born out of the first marriage vide registered adoption deed dated 07.08.2001. However, lower Appellate court discarded the same by applying the ingredients of Hindu Adoption and Maintenance Act. Additional evidence i.e. copy of the divorce petition from the first husband, being record of the Court, is being sought to be placed.

He further submits that marriage between the appellant and Des Raj Singh Bains was performed on 10.09.1999, though no child was born out of the wedlock. The aforementioned facts were not noticed by the lower Appellate Court, thus, suit is liable to be dismissed and thus urges this Court for framing of the following substantial questions of law:-

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity?
2. Whether the wife and the adopted child would be entitled to the share qua estate of Des Raj Singh Bains or not?

Mr. Raman Sharma, learned counsel appearing on behalf of respondent Nos.2 to 4, submits that in cross-examination, appellant admitted that there was no decree of divorce. Lower Appellate Court disbelieved her to be wife of Des Raj Singh Bains and rightly so, decreed the suit by granting

the declaration that Harnam Singh is none else but the interested witness. He did not depose in terms of provision of Section 63(c) of the Indian Succession Act and thus urges this Court for affirmation of the findings under challenge.

He further submits that Section 9 of the Hindu Adoption and Maintenance Act, has not been complied with owing to the fact that there was no consent of natural father.

I have heard learned counsel for the parties and appraised the paper book.

The registered adoption deed dated 07.08.2001 leaves no manner of doubt that the appellant was married with Des Raj Singh Bains. No sane person who is married would adopt the child, born from the previous marriage. Harnam Singh had also deposed regarding date of marriage with the appellant, performed on 10.09.1999.

It is conceded position on record that aforementioned share has been transferred in favour of Des Raj Singh Bains and the question revolves in the present case is whether the adopted daughter and the appellant would have right, over and above, the right of the living mother who is stated to have died during the pendency of the present litigation.

It is a matter of record that judgment and decree dated 27.07.1998 rendered by the lower Appellate Court passed under Section 13-B of the Hindu Marriage Act has been placed on record as Annexure A-1. Reply of the application has been filed but no corroborative evidence to rebut has been filed to dispel the aforementioned judgment and decree.

Accordingly, additional evidence is allowed. Judgment and decree dated 27.07.1998 is taken on record by way of additional evidence. In

the judgment and decree, it has been mentioned that one Kirti Rani was born out of the wedlock. It is the said Kirti Rani who has been adopted vide registered adoption deed dated 07.08.2001. Since custody of the child has been given to the appellant, it is the mother who has given the adoption and custody of the child. I am of the view that requirement of Section 9 was not required to be proved owing to dissolution of marriage. Kirti Rani is the adopted child. Now answer to the question posed above is that the mother and wife i.e. the appellant and daughter would have 1/3rd share to the estate of Des Raj Singh Bains or not. Since respondent-plaintiff Sansar Kaur has died then her share would devolve on all the LRs including the appellant in equal share.

Accordingly, judgment and decree of the lower Appellate Court is hereby set aside. Decree is passed with the direction to Chandigarh Housing Board by holding that appellant and the adopted child would have 1/3rd share in the aforementioned property i.e. House No.3675, Sector 46-C, Chandigarh and the remaining share will be divided among the LRs of Sansar Kaur.

Decree sheet is ordered to be prepared.

Mesne profits application is dismissed. Liberty is granted to seek execution after determination of the share.

RSA stands allowed.

03.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes

Whether reportable:- Yes/No