

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

RSA No.497 of 2011 (O&M)

Date of Decision.22.08.2016

Jagdish

.....Appellant

Vs.

Usha Devi and others

.....Respondents

Present: Mr. Aayush Gupta, Advocate
for the appellant.

Mr. N.D. Achint, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J.

The appellant-plaintiff No.4 is aggrieved of the judgments and decrees passed by both the Courts below whereby the suit for declaration to the effect that Mutation No.465 dated 17.05.1954 and subsequent entries regarding ownership and possession of the land in the hands of defendants is illegal, void ab initio and non est qua plaintiffs' share and declaration of plaintiffs to be owners to the extent of their shares, has been dismissed.

Mr. Aayush Gupta, learned counsel for the appellant-plaintiff No.4 submits that Jai Ram was married to Tulsa and out of their wedlock, two daughters namely Piari and Parnami @ Kreshni were born and plaintiffs are the legal representatives of the above-mentioned daughters. After the demise of Tulsa, Jai Ram married again with Kartari and out of her loins, one daughter Teji @ Reshma born and defendants are legal representatives

of Teji @ Reshma. Jai Ram died on 07.01.954. The mutation No.465 dated 17.05.1954 qua estate of Jai Ram was effected in favour of defendants only i.e. legal representatives of children born out of the marriage of Jai Ram with Kartari whereas the interest of the plaintiffs i.e. successor-in-interest of Piari and Parnami @ Kreshni, daughters of Jai Ram and Tulsa, had not been taken into consideration, much less, kept in tact.

In order to prove the factum of marriage between Jai Ram and Tulsa, the plaintiffs have examined PW2-Amar Singh son of Mukh Ram, resident of the same village and PW-4 Jogi Ram. There is compliance of Section 50 of the Indian Evidence Act. Copy of birth certificate of Parnami @ Kreshni was produced on record as Ex.PC, who is stated to have born on 24.10.1932. The Courts below have non-suited the same on the ground of mode of proof and admissibility. Both the Courts below have abdicated in not referring the cross-examination of PW-2, Amar Singh, as the tenor and mode of cross-examination leads to an irresistible conclusion that Jai Ram and Tulsa were married and out of their loins, two daughters namely Piari and Parnami @ Kreshni were born and the aforementioned witnesses i.e. PW-2 and PW-4 treated Jai Ram as their uncle (*Taya*) and Tulsa as aunt (*Tayi*). The aforementioned witnesses had also stated that after the demise of Tulsa, Jai Ram married Kartari and they attended marriage of Jai Ram and Kartari. Thus, the factum of second marriage of Jai Ram with Kartari and birth of Piari and Parnami @ Kreshni out of wedlock between Jai Ram and Tusla, 1st wife, has been proved and therefore, Mutation No.465 dated 17.05.1954 was liable to be set aside.

He further submits that there is no limitation to claim inheritance in view of law laid down by the judgment rendered by Full

Bench of this Court in *Mohinder Singh vs. Kashmira Singh 1985 PLJ 82* and therefore, the Courts below could not have dismissed the suit by invoking provisions of Article 59 of the Limitation Act. There is categorical averment in the plaint that the plaintiffs acquired knowledge of mutation only in May, 2003 and accordingly, the suit was filed on 28.10.2003 with promptitude.

He further relies upon the provisions of Section 2 of the Hindu Law of Inheritance (Amendment) Act, 1929 whereby order of succession of certain heirs has been prescribed. Once the factum of marriage of Jai Ram with Tulsa and birth of Piari and Parnami @ Kreshni out of the wedlock, has been proved, then the legal heirs of abovesaid daughters would have right in the estate of Jai Ram and therefore, provisions of Hindu Women's Right to Property Act, 1937 would have no applicability in these circumstances. He submits that the judgments and decrees passed by both the Courts below suffers from illegality and perversity and thus, urges this Court for setting aside the same by formulating the substantial questions of law drawn in the memorandum of appeal.

On the contrary, Mr. N.D. Achint, learned counsel for the respondents-defendants submits that the suit was hit by law of limitation. The birth certificate, Ex.PC, has not been proved in accordance with law, as no witnesses from the concerned village or authority, purported to have issued the birth certificate, has been examined and rightly so, the Courts below have discarded the same. None of the witnesses have deposed in terms of provisions of Section 50 of the Indian Evidence Act. The provisions of Hindu Women's Right to Property Act, 1937 would apply and the Courts below have rightly interpreted the provisions of 1937 Act.

He further submits that the plaintiffs have miserably failed to prove the factum of marriage of Jai Ram with Tulsa and their birth out of the alleged wedlock and thus, there is no illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for consideration and urges this Court for confirming the abovesaid judgments and decrees, by dismissing the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that following substantial questions of law arises for consideration in the second appeal:-

- (i) Whether the plaintiffs have been able to prove the ingredients of Section 50 of the Indian Evidence Act, much less, discharged the onus as enshrined under Section 101 of the Code of Civil Procedure?
- (ii) Whether the suit of the plaintiffs would have been dismissed on the ground of limitation, in essence, whether the law of limitation for claiming inheritance would apply or not?
- (iii) Whether the judgments and decrees passed by both the Courts below misconstrued and misread the documentary and oral evidence, which tantamounts to illegality and perversity?

In my view, the reasoning assigned by both the Courts below with regard to the suit being barred by limitation is totally erroneous, fallacious and perverse. As per the ratio decidendi culled out in the judgment of Full Bench of this Court in **Mohinder Singh vs. Kashmira Singh** (supra), it is settled law that there is no limitation qua the inheritance. There is categoric pleading in the plaint with regard to acquisition of the knowledge of mutation in favour of the defendants i.e. successors-in-interest

of Kartari alleged to have born out of the 2nd marriage of Jai Ram with Kartari on the demise of Tulsa, only in May, 2003 and the suit was filed on 28.10.2003. Accordingly, the aforementioned findings of the Courts below on the issue of limitation is set aside.

Now coming to the question of whether the appellant-plaintiffs have been able to prove the relationship i.e marriage between Jai Ram and Tulsa and birth of plaintiffs out of the said wedlock, I deem it apt to reproduce Section 50 of the Indian Evidence Act:-

"50. Opinion on relationship, when relevant – When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or by person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 or in prosecution under Sections 494, 495, 497 or 498 of the Indian Penal code.

A perusal of aforementioned Section leaves no doubt that to form an opinion as to the existence of relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or by person who, as a member of the family or otherwise, has special means of knowledge on the subject, would be sufficient to prove the aforementioned fact. No doubt Ex.PC, birth certificate of Parnami @ Kreshni though tendered into evidence, has not been proved on account of mode of proof. I am in agreement with the finding of the Court below regarding the same but on going through the cross-examination of PW-2, Amar Singh, the entire tenor, pith and substance of the cross-examination is on the terms as if Jai Ram and Tulsa were married and children-plaintiffs were born out of their wedlock. Both the Courts below have only referred

Indian Evidence Act, as to interpret the evidence, entire evidence including the cross-examination has to be read as a whole. There are certain specific questions put to the aforementioned witness with regard to marriage and the children born out of the same. PW-2, Amar Singh, to a specific question asked in the cross-examination stated that he did not attend the marriage of Jai Ram and Tulsa as he was 12-13 years old but he said that he had seen them living as husband and wife and treated them as uncle (*Taya*) and aunt (*Tayi*) and even from their loins, both Piari and Parnami @ Kreshni were born. He also attended marriages of aforementioned daughters, much less, their deaths also. He stated that he attended the marriage of Jai Ram with Kartari and out of their loins, defendants were born and the reason of performing second marriage by Jai Ram was owing to the demise of Tulsa.

The aforementioned findings are not based upon mere reading of the grounds of appeal but after examination of the records of the Courts below, much less, entire cross-examination of PW2, Amar Singh. Both the Courts below, in my view, were required to examine the entire cross-examination and not to pick up line lines from here and there and thus, I am of the view that both the Courts below have abdicated from discharging their obligation/duty while deciding the suit, particularly, the lower Appellate Court as being the last court of fact and law.

For the foregoing reasons, I am of the view that mutation of inheritance of the entire estate of the deceased Jai Ram ought not to have been entered in favour of the legal representatives of defendants i.e. the successors-in-interest of Kartari but it could have been divided amongst the successors-in-interest of Tulsa and Kartari in equal shares. The judgments and decrees passed by the Courts below are set aside as the findings

rendered by the Courts below are illegal and perverse and the substantial questions of law framed above are decided in favour of the appellant-plaintiff and against the defendants. Accordingly, the suit of the plaintiffs is decreed and the Mutation No.457 dated 17.05.1954 is set aside as illegal, null and void and *non est* in the eyes of law. The second appeal is allowed. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

August 22, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes