

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

**R.S.A No.3486 of 2012(O&M)
Date of decision :03.11.2016**

Norati Devi

..... Appellant

Versus

Ravi Bhushan

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Hari Om Sharma, Advocate
for the applicant-appellant.

DARSHAN SINGH,J

CM No. 14155-C of 2016

This application has been filed under Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') for placing on record documents i.e. Annexures A-1 to A-5.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the documents from Annexures A-1 to A-5 are take on record subject to just objections of the opposite party.

R.S.A No. 3486 of 2012 (O&M)

The present appeal has been preferred against the judgment and decree dated 30.04.2012 passed by the learned Additional District Judge, Ambala, whereby the appeal filed by appellant-plaintiff against the judgment and decree dated 05.12.2009 passed by the learned Civil Judge (Sr. Division), Ambala, has been dismissed.

2. Appellant-plaintiff-Norati Devi filed the suit for declaration

to the effect that she is owner of the land measuring 8 Kanals comprised of Khasra no. 138//17, khewat no. 493, khatauni no. 739 and plot comprised of khasra no. 277, situated in village Barara, Tehsil Barara, District Ambala. In the consequential relief, she sought a decree for mandatory injunction directing defendant to pay Rs. 800/- per month from July, 1997 till the delivery of possession of the above said land/plot. She also sought a decree of permanent injunction restraining the defendant from alienating the aforesaid property in any manner.

3. As per averments in the plaint, the plaintiff entered into the marital wedlock with defendant-respondent Ravi Bhushan on 16.05.1986 at Chandigarh. The marriage was registered with Registrar of Marriages at Chandigarh. Defendant was not performing his matrimonial obligations towards the plaintiff. Accordingly, she filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which was dismissed on 10.01.1997. She preferred the appeal, which was dismissed as withdrawn by this Court as a result of the compromise between the parties. It is further pleaded that by way of compromise, defendant-respondent has agreed to give the aforesaid land and plot to the plaintiff failing which he was to pay Rs. 800/- per month to the plaintiff-appellant till the delivery of possession. Defendant-respondent has also agreed to construct a house for the plaintiff within a period of one year or he will pay the actual cost of construction, if the house is constructed by the plaintiff herself. He did not adhere to the compromise. Hence the suit.

4. Defendant-respondent contested the suit. In the written statement, he denied the factum of marriage and living of plaintiff with

defendant as his wife. He also denied of having been entered into any compromise whatsoever with the plaintiff. He pleaded that no marriage had ever taken place between them and there was no question of entering into compromise by him with the plaintiff as alleged. He further pleaded that the defendant already had surviving wife and his children are of marriageable age. The suit has been filed just to blackmail him. With these pleas, he pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 18.07.2002:-

1. Whether there was any compromise effected between the plaintiff and defendant?OPP
2. If issue no.1 is proved, then whether plaintiff is entitled to declaration to the effect that the plaintiff is owner of land measuring 8K, comprising of K. No. 138//17, K. No. 493, Khatauni No. 739, situated in the revenue estate of village Barara, H.B. No. 203, Tehsil Barara, District Ambala, and plot comprising of Khasra no. 288, village Barara, Tehsil Barara, District Ambala?OPP
3. Whether plaintiff is legally wedded wife of the defendant as per the compromise?OPP
4. Whether plaintiff is entitled to relief of mandatory injunction directing the defendant to pay Rs. 800/- p.m from July, 1997 till the delivery of possession of the above land and plot?OPP
5. Whether plaintiff is entitled to the relief of permanent injunction restraining the defendant from selling, mortgaging or alienating the above land and plot on the grounds taken in the plaint?OPP
6. Whether the suit of the plaintiff is not maintainable in the present form?OPD
7. Whether plaintiff has no locus standi to file the present suit against the defendant?OPD
8. Whether suit property has not been properly valued for the purpose of Court fee and jurisdiction?OPD
9. Relief.

6. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the learned trial Court dismissed the suit of the appellant-plaintiff vide impugned judgment and decree dated 05.12.2009.

7. Aggrieved with the aforesaid judgment and decree,

appellant-defendant preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Ambala vide impugned judgment and decree dated 30.04.2012. Hence this Regular Second Appeal.

8. I have heard Mr. Hari Om Sharma, Advocate, learned counsel for appellant and have carefully gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that the plaintiff-appellant had entered into the marital alliance with the defendant. The said marriage was duly registered with the Registrar of Marriages at Chandigarh. He contended that the dispute has arisen between the parties as a result of which plaintiff-appellant filed a petition for restitution of the conjugal rights. The said litigation went up to this Court. The compromise Ex.P-2 has taken place between the parties and the appeal was dismissed as withdrawn. Thus, he contended that a valid compromise has come into effect between the parties and on the basis of said compromise, plaintiff-appellant has become the owner of the disputed property.

10. I have duly considered the aforesaid contentions.

11. The entire case of the plaintiff-appellant is based on the compromise dated 20.07.1997. Ex.P-3 is the copy of the order passed by this Court in CM No. 7147-C-II of 1997 in FAO No. 54-M of 1997 vide which the appeal filed by the plaintiff-appellant was dismissed as withdrawn.

12. This fact is not disputed that as a result of petition filed by

the appellant-plaintiff for restitution of conjugal rights, learned District Judge, Ambala has passed the judgment Ex.D-1 dated 10.01.1997 wherein the appellant-plaintiff was not held entitled for restitution of conjugal rights as defendant was already having a legally wedded wife namely Smt. Ram Murti.

13. Appellant-plaintiff has also filed the petition under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') for grant of maintenance. The same was also dismissed vide order dated 29.07.2002 i.e. after the institution of this suit. It is also not disputed that the petition filed by appellant-plaintiff under Section 482 Cr.P.C was also dismissed by this Court vide order dated 21.08.2006 in CRM-M-27142 of 2003. In that litigation, it was observed that the petitioner is not the legally wedded wife of respondent. Appellant has admitted the factum of dismissal of his petition under Section 125 Cr.P.C in her cross-examination.

14. Defendant-respondent has categorically denied the compromise dated 20.07.1997 (copy Ex.P-1/P-2). Learned counsel for the appellant has pleaded that the said compromise is admissible in evidence under Order 23 Rule 3 CPC, but it is an admitted fact as well as evident from the documents now placed on record by the plaintiff that the compromise dated 20.07.1997 was never produced before this Court when FAO no. 54-M of 1997 filed by the appellant-plaintiff was dismissed as withdrawn vide order dated 05.11.1997. The order dated 02.08.1999 passed in CM No. 3140-CII of 1998 in FAO No. 54-M of 1997 shows that the application moved for placing on file the copy of the

compromise was dismissed by this Court as the main appeal was already disposed of. So, the said compromise was never brought on record nor any order was passed by the Court in pursuance to the said compromise. So, the alleged compromise dated 20.07.1997 cannot convey any title qua the properties in dispute to the appellant-plaintiff.

15. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

16. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

17. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 03, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No