

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1100 of 2016 (O&M)
Date of decision : November 17, 2016

Smt. Sushila

..... Appellant

Versus

Jai Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

**Present:- Mr. Mahesh Sangwan, Advocate
for the appellant.**

AMOL RATTAN SINGH, J

This is the second appeal of the contesting defendant, after the suit filed by respondents no.1 and 2 herein, seeking a declaration to the effect that they and proforma defendants no.2 to 10 (proforma respondents no.3 to 11 herein) were owners in joint possession of a 1/4th share of land measuring 52 bighas 12 biswas, fully described in the judgment of the learned Civil Judge (Jr. Divn.), Charkhi Dadri, District Bhiwani.

The land is situated in the revenue estate of village Paintawas Khurd, Tehsil Dadri, District Bhiwani. A further declaration was sought the mutation no.482 in respect of the estate of their father, Risal and mutation no.483 in respect of the estate of their mother Bhateri, in favour of the present appellant, i.e. the widow of their brother Suresh, were illegal, null and void. Consequently, a decree of injunction against the present appellant, against alienating the suit land, was also sought by the respondents-plaintiffs.

2. As per the plaintiffs, they were agriculturists of the

aforementioned, village with their father, Risal, being the owner in possession of the suit property, which was ancestral in his hands.

It was further contended that the plaintiffs' brother, Suresh Kumar, was married to the present appellant but had died on 17.04.1986, leaving only her as his widow. 15 days after the death of Suresh, the appellant is stated to have performed a *karewa* marriage with another brother of the plaintiff, Lilu Ram, proforma defendant no.2 (respondent no.3 herein), and out of that wedlock several children were born.

It was also contended that after her marriage with Lilu Ram, the appellant ceased to have any right, title or interest in the estate of Suresh Kumar.

Further, the plaintiffs had stated that at the time of death of Suresh Kumar, their father, Risal, was alive who thereafter died in the year 1996 and as such, succession to the property of Risal opened in that year. Hence, in terms of Section 24 of the Hindu Succession Act, 1956, even though it was subsequently repealed vide the Hindu Succession (Amendment) Act 2005, the appellant would have no right, title or interest in the property of Risal Singh.

3. Risal Singh, it was further averred, had left seven living sons and two living daughters at the time of his death, as also the legal heirs of his pre-deceased daughter, Bimla and consequently, mutation no.393 was entered on 12.11.1999 in favour of the plaintiffs and the proforma respondents-defendants. However, allegedly due to a clerical error, the land comprised in Khewat 15/15, Khatoni 41 and 42, measuring 47 bighas, to the extent of a 1/4th share thereof, was not mentioned in the mutation, which was an error later rectified vide *fard badar* No.36 dated 11.06.2007.

Therefore, as per the plaintiffs, they, the proforma defendants and their mother (grand-mother of proforma respondents no.10 and 11 herein), i.e. Smt. Bhateri Devi, all became owners in joint possession to the extent of the share of Risal Singh.

Subsequently, after the death of Bhateri, her share in the land was also inherited by the plaintiffs and the proforma respondents-defendants and a mutation to that effect, bearing no.477, was initially entered but was subsequently cancelled due to the requisite fee not being deposited.

4. Thereafter, as per the plaintiffs, the present appellant colluded with the revenue authorities and procured “mutation no.482” in respect of the estate of Risal, and mutation no.483 in respect of the estate of Bhateri, were entered on 23.05.2008, showing a right of inheritance in her favour as the widow of Suresh, pre-deceased son of Risal, to the extent of the share of Suresh.

Thus, it was contended in the suit, that the said mutations were illegal, null and void and no right, title or interest could be created in favour of the present appellant, who had already contracted a *kareva* marriage with the first proforma defendant, i.e. brother of the plaintiffs and Suresh Kumar.

Hence, the suit came to be filed.

5. Upon notice issued to the present appellant, as also the proforma defendants, she (the appellant), her husband, i.e. defendant no.2, as also defendants no.4 and 8, i.e. one son and one daughter of Risal Singh, appeared and filed a written statement taking preliminary objections on the suit being barred by the conduct of the plaintiffs and it otherwise also not being maintainable.

On merits, it was admitted that the present appellant, Sushila,

was the widow of Suresh and as such, had every right to inherit the property of Risal and Bhateri. In fact, these defendants even denied the factum of any marriage having been performed by the present appellant with Lilu Ram and anybody else.

It was further contended that as a matter of fact, mutation no.393 had been entered on 12.11.1999, which had been corrected vide mutation no.482 on 23.05.2008 and as such, mutations no.482 and 483 were very much legal.

Defendant no.6, i.e. another brother of the plaintiff, appeared and filed his written statement, admitting the claim of the plaintiffs. The rest of the defendants, i.e. defendants no.5, 7, 9 and 10, did not appear in response to the notice issued and were consequently proceeded against ex parte.

6. A replication having been filed by the plaintiffs to the written statement filed by the appellant along with defendants no.2, 4 and 8, the following issues were framed by the learned Civil Judge (Jr. Divn.):-

- “1. Whether the plaintiffs are entitled for the relief of declaration as prayed for?OPP
2. Whether the plaintiffs are further entitled to the relief of injunction as prayed for ?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form ?OPD
4. Whether the plaintiffs have no locus standi or cause of action to file the present suit?OPD
5. Whether the plaintiffs have not come to the Court with clean hands and has suppressed the true and material facts from

the Court ?OPD

6. Whether the suit is false and frivolous?OPD

7. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct ?OPD

8. Relief.”

7. The plaintiffs examined the first plaintiff, one Amar Singh, Sunder Lal SI and one Satender Kumar, all of whom supported the case of the plaintiffs. Further, by way of documentary evidence, the birth certificate of Neeraj son of the appellant and respondent no.3 herein, i.e. Lilu Ram (defendant no.2 in the suit), a voters list, the ration card of Lilu Ram and the appellant and various 'jamabandis' and mutations were also tendered, as were the death certificates of Risal Singh and Suresh Kumar.

The defendants as had opposed the claim of the plaintiffs, i.e. the present appellant and defendants no.2, 4 and 8, examined the present appellant as DW1, as also defendant no.4, Chand Ram. By way of documentary evidence, they tendered mutation nos.482 and 483.

8. Upon considering the pleadings and arguments raised and on appraisal of the evidence led, the learned Civil Judge found that though the appellant and the other defendants who supported her, had denied her marriage with Lilu Ram, however, an independent witness, Amar Singh, PW-3, had deposed that a *kareva* marriage had been performed between the appellant and Lilu Ram, after which she was living with him. Other than finding that the testimonies of this witness and that of the first plaintiff himself were not shaken even in thorough cross-examination, it was also found by the learned Civil Judge that the birth certificate of Neeraj showed

him to be son of Lilu Ram and the appellant, with the ration card of Lilu Ram also showing the appellant to be his wife.

Hence, on the aforesaid evidence, further seen with the fact that the appellant and Lilu Ram had been living together for a sufficiently long time and children too had been born to them, it was held that the appellant was actually the wife of Lilu Ram.

In this regard, a judgment of the Supreme Court in **Badri Parshad Vs. Deputy Director of Consolidation**, AIR 1978 Supreme Court 1557, was cited by the learned Civil Judge, wherein it was held that where a man and woman had been living as husband and wife for a long time, there would be a strong presumption with regard to a marriage having taken place and the burden would lie heavy upon a person who contended otherwise, to refute such presumption.

9. It was further found that the appellant had admitted in her cross-examination that she had no children from her previous husband, i.e. Suresh and in fact she had also admitted that Lilu Ram had put a *Chadar* upon her, which the Court accepted to be proof of the ceremony of a *karewa* marriage, or *chadar andazi*.

The appellant also further admitted that in their area, such a ceremony with the brother of a deceased husband is performed.

10. Therefore, with the 'karewa' marriage having stood proved, the learned Civil Judge next examined the effect of the death of Suresh and Risal Singh, as regards the devolution of Risal Singhs' property and it was held that in terms of Section 24 of the Hindu Succession Act, the present appellant could not have succeeded to the property of Risal Singh.

However, it was held that as regards Smt. Bhateri, widow of

Risal Singh, since she died on 11.09.2007, i.e. after the Hindu Succession (Amendment) Act, 2005 came into force w.e.f. 09.09.2005, the appellant could inherit the property of Bhateri.

The primary issues were, therefore, decided as aforesaid, with the other issues not having been pressed, as recorded in the order of the learned Civil Judge.

Accordingly, the suit of the plaintiffs was partly decreed, to the effect that mutation no.482 dated 23.05.2008, pertaining to the estate of Risal Singh, was held to be illegal, null and void, with the appellant having no right to inherit his estate, but mutation no.483 of the same date, was held to be legal and binding, with the appellant fully entitled to inherit the estate of Bhateri.

11. The present appellant challenged the aforesaid judgment and decree before the learned first appellate Court, with the respondents-plaintiffs having accepted the decree.

The learned first appellate Court, after noticing the facts, the issues framed and appraising the evidence led before the learned Civil Judge, also came to the same conclusion, that since Risal Singh had died prior to the repeal of Section 24 of the Hindu Succession Act, 2005, but Bhateri had died thereafter in 2007, the learned Civil Judge had correctly decreed the suit of the plaintiffs only partly to the aforesaid extent.

The finding with regard to the marriage of the appellant having been validly performed with Lilu Ram, was also upheld, with the main arguments addressed before the learned first appellate Court, seen to have been essentially on the issue that there was no karewa marriage performed.

However, again citing the judgment in **Badris'** case (supra), as

also a judgment of this Court in M/s Ram Rattan Aggarwal & Co. Vs. State of Haryana, 1996(3) PLR 769, it was held that a karewa marriage being a prevalent custom among the Jats of Haryana, no specific religious ceremony like the *Saptpadi*, need be performed for such a marriage.

Consequently, the first appeal filed by the present appellant was dismissed by the learned District Judge, Bhiwani, leading to the filing of this appeal.

12. When this case had come up for hearing before this Court on 08.07.2016, learned counsel for the appellant had been asked to address argument, by citing any law to the effect that despite the fact that the Hindu Succession (Amendment) Act, 2005, specifically repealed Section 24 of the Act of 1956 only w.e.f. 9.9.2005, how would a succession that opened prior to such repeal operate in favour of the appellant.

Despite having sought various adjournments, to substantiate his contention that the appellant would be entitled to the benefit of the repeal, learned counsel could not cite any law to that effect.

13. Admittedly in the present case, Risal Singh, father-in-law of the appellant-defendant No.1, had died in the year 1996 and the husband of the appellant died in the year 1986, after which she married respondent no.3 herein by way of a *karewa* marriage, prior to 2005, i.e. prior to the date of repeal of Section 24 of the Act.

Learned counsel for the appellant has submitted that since a mutation of inheritance on the death of Risal Singh was entered only on 3.5.2008, i.e. after the repeal of Section 24 of the Act, and the provision had ceased to operate on that date, therefore the appellant is entitled to inherit the estate of her father-in-law, as fell to the share of her 1st husband,

Suresh.

14. Having considered the aforesaid argument, in view of the fact that there is no retrospective effect of the repeal of Section 24 (by which the widow of a pre-deceased son was de-barred from inheriting the share of that son if she had re-married by the time succession opened upon the death of the father of the pre-deceased son), I see no reason to interfere with the judgments and decrees of the Courts below, especially in view of the judgment rendered by the hon'ble Supreme Court in **Prakash and others Vs. Phulavati and others 2015 (4) RCR (Civil), 953**, in which though the issue was the right of a daughter of a family in co-parcenary property, the question essentially was with regard to whether the Amendment Act of 2005 would have retrospective effect or not. It was held that the said right would only inhere in daughters with effect from the date of amendment of the Hindu Succession Act, 1956, entitling the daughters to be co-parceners if succession opened after the amendment, and not from any date prior to that.

In the opinion of this Court, the same principle would also apply to the repeal of Section 24 of the Act.

15. However, before finally disposing of this appeal, Section 24 of the Act of 1956, as it stood before its repeal w.e.f. 09.09.2005, needs to be referred to.

The provision reads as follows:-

“24. Certain widows re-marrying may not inherit as widows.
—Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.”

A perusal of the aforesaid provision (as it stood on the statute before its repeal), obviously makes it clear that a Hindu widow of a pre-

deceased son of a Hindu who died intestate, would not be entitled to succeed to the property of the intestate, if she had performed another marriage on the date that her father-in-law died.

It having been held by the Courts below that the appellant had, in fact, performed a *karewa* marriage with Risal, on the basis of oral as well as documentary evidence, the latter showing the appellant to be the wife of respondent no.3 herein, both in the voters-list and in the ration card led by way of evidence, that finding of fact would not be disturbed by this Court in the absence of any kind of perversity shown to this Court, which has not even been attempted.

16. Hence, the learned Courts below were wholly correct in decreeing the suit of the respondents/plaintiffs only partly, to the extent that the appellant was held entitled to the estate of her mother-in-law Bhateri, she having died after the bar on the rights of succession of a re-married daughter-in-law, had been removed by the repeal of Section 24, whereas she was held not entitled to the estate of her father-in-law Risal Singh, he having died before such repeal and succession to his estate obviously having opened at that time, i.e. in 1996.

As regards the contention of Mr. Sangwan, that since a mutation of inheritance in favour of the appellant was entered only on 03.05.2008, i.e. after the repeal of Section 24 and therefore, she would be entitled to continue her ownership to the estate of Risal Singh as per the share of her first husband, that contention is also to be rejected, in view of the fact that firstly, mutation is only a reflection of a title and does not confer any title by itself. The right to the property, accrued to the legal heirs of Risal Singh upon his death in 1996, i.e. inheritance opened qua his property upon his

death in that year only. At that time, Section 24 very much being existent on the statute book, rights of a legal heir to his property stood crystalized upon his death. Any mutation entered at any time thereafter, could only reflect such rights and would create no right by itself.

Hence, the appellant already having performed a karewa marriage with Risal, i.e. respondent no.3 herein, the bar contained in the then existent Section 24 very much applied against her and in favour of all other successors to Risal Singhs' estate.

Consequently, finding no merit in the appeal, it is dismissed in limine, but with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

November 17 , 2016
archana/vcgarg

Whether speaking/reasoned	Yes
Whether Reportable	Yes