

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 163 of 2016 (O&M)
Date of Decision : 24.02.2016

Ranjit Singh

....Appellant

Versus

Harbans Kaur (deceased) through LR's and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. C.L. Sharma, Advocate
for the appellant.

Surinder Gupta, J. (Oral)

The dispute, in this case, pertains to inheritance of property of Manjit Singh son of Jagat Singh. Plaintiffs are Harbans Kaur mother (since deceased) now represented by her legal heirs, Tarsem Singh and Jaswinder Singh @ Balwinder Singh brothers of Manjit Singh while defendant no. 1 is brother of Manjit Singh and defendants no. 3 and 4 are his sisters.

2. Jagat Singh father of Manjit Singh died in the year 1964 and was survived by four sons (including Manjit Singh) and two daughters. He left behind agricultural land measuring 20 *kanals* 9 *marlas* and one residential house in village Loharan, *tehsil* and District Jalandhar. On his death, the aforesaid property came to the share of his four sons, two daughters and wife in equal shares by natural succession.

3. Case of plaintiffs, in brief, is that in 1971 Manjit Singh went to Madhya Pradesh to stay with Tarsem Singh-plaintiff no. 2 for his employment but did not reach him and has not been heard of after 1971 by those who would naturally have heard of him, if he had been alive. In the instant suit, plaintiffs sought declaration to

the effect that share of defendant no. 2 (Manjit Singh) in the property left by his father has been inherited by plaintiffs no. 1 to 3 and defendants no. 1, 3 and 4 in equal share and that Manjit Singh who has not been heard of for more than seven years by those who would naturally have heard of him if had been alive, is presumed to be dead as per presumption under Section 108 of Evidence Act (later referred to as 'the Act').

4. Defendants no. 1 and 3 i.e. appellant-Ranjit Singh and Charan Kaur (respondent no. 4) his sister, contested the claim of plaintiffs with regard to inheritance of property of Manjit Singh. They averred that on one hand plaintiffs are seeking share in the property of Manjit Singh by drawing presumption of his death under Section 108 of 'the Act' while on the other hand they have impleaded him as defendant no. 2 in this case. Regarding the house in dispute, it was alleged that the same is exclusively owned and possessed by defendant no. 1.

5. Gurdeep Kaur-defendant no. 4 also endorsed the plea of plaintiffs that Manjit Singh had gone to Madhya Pradesh to live with plaintiff no. 2-Tarsem Singh and for his employment but never reached there. After 1971, he has not been heard of and is presumed to be dead.

6. Defendant no. 5-Randhir Singh in his separate written statement took the plea that he has purchased share of plaintiff no. 2-Tarsem Singh, plaintiff no. 3-Jaswinder Singh and defendant no. 4-Gurdeep Kaur in the agricultural land inherited by them from their father Jagat Singh and is owner of 6 *kanals* 12 *marlas* out of suit land. He also took the plea that Manjit Singh son of Jagat

Singh has not been heard of since 1971.

7. Learned Civil Judge (Junior Division), Jalandhar discarded the plea of plaintiffs claiming succession to the property of Manjit Singh on the ground that he has not been heard of for the last more than seven years with observation that no cogent and convincing evidence to prove this plea has been produced on record. Plaintiffs have neither produced death certificate of Manjit Singh nor have sought any declaration from the Court declaring Manjit Singh dead in the eyes of law, rather, they impleaded Manjit Singh as defendant no. 2 which reflects that he still survives.

8. On appeal, learned Additional District Judge, Jalandhar reversed the findings of learned Civil Judge (Junior Division), Jalandhar and decreed the suit of plaintiffs.

9. It is a case where mother of Manjit Singh, his two brothers and one sister are alleging that Manjit Singh has not been heard of since 1971 when he left for Madhya Pradesh to live with plaintiff no. 2-Tarsem Singh, who was in service of Southern-Eastern Railways there. Defendant no. 1 i.e. appellant is not alleging that he has ever met Manjit Singh after 1971 or had ever heard of him thereafter. During course of arguments, an affidavit was sought from appellant as to whether they consider Manjit Singh alive. In the affidavit filed by Ranjit Singh (appellant) he tried to make out a story that in 1971, Manjit Singh left to live in solitude and concentrate his mind to find solution to some basic human problems with the promise to return and gave charge of his land to him. Since then he is waiting for his return. The affidavit filed by Ranjit Singh today affirms the plea taken by plaintiffs that

Manjit Singh has not been heard of by his friends, relatives or anyone after 1971 and Ist Appellate Court has rightly drawn the presumption of his death under Section 108 of 'the Act'. Sections 107 and 108 of 'the Act' reads as follows:-

“107. Burden of proving death of person known to have been alive within thirty years - *When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.*

108. Burden of proving that person is alive who has not been heard of for seven years - *Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.”*

10. The suit was filed in the year 2006 i.e. after a lapse of more than 35 years when Manjit Singh had left for Madhya Pradesh but had not been heard of by any of his family member. In the absence of any evidence on record that he was alive during last 30 years, the onus was not on plaintiffs to prove death of Manjit Singh. Under Section 108 of the Act, when Manjit Singh has not been heard of for the last seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on the person who affirms it. The appellant is not alleging

that Manjit Singh has been heard of by him during the period of seven years prior to filing of suit, as such, the plea taken by plaintiffs is un rebutted. There was no reason to disbelieve a mother who is seeking declaration that her son has not been heard for the last more than seven years, as such, he is presumed to be dead by drawing the presumption under Section 108 of the Act. It appears that the appellant is sole contestant as his other brothers and sister are not with him at this stage while contesting the claim of plaintiffs. Defendant no. 3, who was co-defendant with him, has also not preferred any appeal to challenge the judgment of Ist Appellate Court on this score.

11. Learned counsel for the appellant has assailed the judgment of Ist Appellate Court only on the ground that Manjit Singh was impleaded in the suit as defendant no. 2. Despite objection taken by defendant no. 1 his name was not deleted from the array of defendants, rather, the Court proceeded to serve him through publication in newspaper and he was proceeded *ex parte*. An application was moved by plaintiffs before Ist Appellate Court to delete the name of Manjit Singh from the array of defendants, which was dismissed but while passing the judgment, Ist Appellate Court removed the name of defendant no. 2-Manjit Singh from the array of defendants using its inherent power, exercise of which was against earlier order passed by the same Court. He has argued that when a person is impleaded as party in the suit, no presumption under Section 108 of the Act could be drawn against him.

12. Arguments advanced by learned counsel for the

appellant are without merits and have no force so far as plea of plaintiffs that Manjit Singh has not been heard since 1971 by those who would naturally have heard of him, if he had been alive. Mere fact that counsel for the plaintiffs impleaded Manjit Singh defendant no. 2 as party is no reason to discard the plea of plaintiff. The case is to be decided on the basis of pleadings which are clear and unambiguous. Realizing mistake and keeping in view the objection raised by defendant no. 1-appellant in the written statement, an application was moved to remove the name of Manjit Singh from the array of defendants, which was declined by Ist Appellate Court. That order of Ist Appellate Court on the face of it was illegal as there was no reason to continue the suit against a person whom plaintiffs are alleging that he is presumed to be dead under Section 108 of the Act and when the defendant no. 1-appellant is also raising objection against impleading Manjit Singh as party to the suit. There is no illegality in exercise of inherent power by Ist Appellate Court, at later stage, while removing the name of Manjit Singh from the array of defendants. Even otherwise litigant are not expert in legal matters. They depend on their counsel who draft the pleadings and implead parties to suit. The lapse, on the face of it, was due to deficient legal advice, that a person sought to be declared as dead, was impleaded as party in the suit. Plaintiffs cannot be made to suffer for the lapse on the part of their counsel.

13. The relationship of parties is admitted. The appellant, though, raised a plea that house in dispute is exclusively owned by him but failed to substantiate it by leading any evidence. Ist

Appellate Court has committed no error of law or fact while discarding the plea of contesting defendants that house in dispute was exclusive property of defendant no. 1. The inheritance of suit land after death of Jagat Singh and thereafter, by legal heirs of Manjit Singh is also not in dispute.

14. Learned Civil Judge (Junior Division) has committed grave error of law and fact while discarding the plea of plaintiffs that Manjit Singh is presumed to be dead on technical ground that he has been impleaded as defendant no. 2. Ist Appellate Court has rightly set aside the judgment and decree passed by learned Civil Judge (Junior Division).

15. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

February 24, 2015
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? *Yes/No*