

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2587 of 2016 (O&M)

Date of Decision: 12.12.2016

Jeeto Devi

...Appellant

Vs.

Parkash Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Rohiteshwar Singh, Advocate
for the appellant.

Amol Rattan Singh, J.

CM No. 6867-C-2016

For the reasons stated in the application, the delay of 08 days in re-filing the appeal is condoned.

Application stands disposed of accordingly.

RSA No. 2587 of 2016 (O&M)

This is an appeal filed by the plaintiff after her suit for declaration to the effect that she is in owner in possession of a 1/3rd share of land measuring 70 kanals and 70 marlas, situated in village Haler Dalpat @ Mushalibpur, Had Bast No. 417, Tehsil Mukerian, District Hoshiarpur, was initially decreed in her favour by the learned Additional Civil Judge (Senior Division), Mukerian, but in the appeal filed by the defendants (present respondents no. 1 to 6), before the learned first appellate Court, the said judgment and decree was set aside and the suit of the plaintiff dismissed with costs through out.

2. The facts, as taken from the judgments of the learned courts

below, are that the appellant-plaintiff (hereinafter referred to as plaintiff), contended that Kartar Chand and Sarwan Dass were brothers residing together but Kartar Chand was ill due to paralysis and was unable to walk or do any work. The appellant though married to Kartar Chand and being fully dependent upon him, in the circumstances being in great difficulty, she performed a '*Karewa*' marriage with Sarwan Dass, after performing a '*Chaddar Anadazi*' ceremony in the presence of family members and respectables.

It was further contended that the said marriage was never disputed by any relation of Sarwan Dass or anybody else. In some enquiry conducted by the SDM, Mukerian, also it was stated that the appellant, Jeeto, is the wife of the late Sarwan Dass, who was working as a Peon in the Government Senior Secondary School, Mehtabpur, Tehsil Mukerian. Hence, it was contended in the suit that being a legal heir of Sarwan Dass, the plaintiff was entitled to get his share in the property and all other benefits given by his department, after his death.

It was further contended that defendant no. 1, Parkasho Devi, was the widow of Parkash Singh, another brother of Kartar Chand and Sarwan Dass, defendants no.2 to 4 were the daughters of Parkash Singh and defendant no.5 was the son of Kartar Chand. The status of Karnail Singh, son of Lachhman Dass (defendant no. 6) is not specifically given in the judgment of the learned courts below, but he is later referred to as the brother-in-law of the appellant-plaintiff.

3. Sarwan Dass is stated to have died on 18.04.1990 and was the owner of 1/3rd of the land described in detail in the head note of the plaint, i.e. the suit land, and it was contended that the defendants had no right to such

share of Sarwan Dass, but in connivance with revenue staff had got sanctioned a mutation in their favour.

It was further contended that this fact came to the knowledge of the plaintiff in the month of February (i.e. in the year that the suit was filed- 2008), when she obtained a copy of mutation from the revenue department. Thereafter, it was stated that she requested the defendants many a time to admit her lawful claim but to no effect. Consequently, the suit was instituted on 30.07.2008.

4. Upon notice issued, defendants no.1 to 4 appeared and file a written statement taking preliminary objections with regard to maintainability, *locus*, concealment of facts etc.

On merits it was denied that the appellant was the legally wedded wife of Sarwan Dass, as she was actually the legally wedded wife of Kartar Chand and in fact from that marriage, defendant no. 5, Jagdish Singh, had been born, as had been his sisters, Rajni and Suneeta “etc.”.

It was further stated in the reply that Kartar Chand died on 01.07.1995, i.e. after Sarwan Dass and therefore, no second marriage could have been performed by the appellant during the life time of her husband, without a decree of divorce.

5. Yet further, it was contended that the enquiry conducted by the Sub-Divisional Magistrate was erroneous, on the basis of a false affidavit filed by the plaintiff herself.

However, the status of defendant no. 1 as the widow of Parkash Singh and that of defendants no. 2 to 4 as his daughters was admitted, further admitting that Sarwan Dass was the owner of a 1/3rd share of the suit land, but he having died issueless, the mutation was rightly sanctioned in favour of

Kartar Chand.

Consequently, dismissal of the suit was prayed for.

6. On the aforesaid pleadings, the following issues were framed by the learned Additional Civil Judge:-

“1. *Whether the plaintiff is entitled to declaration as prayed for? OPP*

2. *Whether revenue entries are liable to be corrected in the name of plaintiff? OPP*

3. *Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP*

4. *Whether suit of the plaintiff is maintainable? OPP*

5. *Whether the plaintiff has locus standi to file present suit? OPP*

6. *Whether the plaintiff had concealed material facts from the court? OPD*

7. *Relief.”*

7. To prove her case, the appellant-plaintiff examined one Mulkhraj, Karnail Singh and herself as PWs 1 to 3 and tendered five documents, which are not shown to be exhibited documents but Marks A to E. These documents are described in the judgment of the learned Civil Judge to be a photocopy of the death certificate of Sarwan Dass, a photocopy of a ration card, a photocopy of a voters list, a photocopy of a letter written by the Sarpanch of the Gram Panchayat and a photocopy of a letter written by the Deputy Commissioner to the District Treasury Officer, respectively.

The defendants on the other hand examined defendant no. 1 only.

8. Upon considering the arguments, the pleadings and the aforesaid documents, the learned Additional Civil Judge found that PW-1 Mulkhraj had deposed that he knew the parties and that the appellant had earlier been

married to Kartar Chand who was paralyzed and unable to walk or do any work, after which the appellant had left her matrimonial home and gone to her parents' house because Kartar Chand could not maintain her.

This witness further testified that Kartar Chand and the appellant were divorced “in *Biradri*”, after which she was married as per the '*Chadar Andazi*' ceremony with Sarwan Dass, who was working as a Peon in a Government school and had died in the year 1990.

PW-2, Karnail Singh, described the appellant-plaintiff as his sister-in-law, repeating that she had been married to Kartar Chand and further that she had three children. The rest of his testimony was also seen to be the same as that of PW-1.

Similarly, the appellant-plaintiff also deposed in terms of her suit.

9. The first defendant (respondent no. 1 herein) also deposed in terms of the written statement filed by the defendants.

10. The learned Additional Civil Judge first quoted Section 50 of the Indian Evidence Act, 1872, which reads as follows:-

“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 any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact.”

11. Thereafter, citing a judgment of the Karnataka High Court in **M.B. Gangadharappa** vs. **Bommagondappa** 1999 (2) CCC, 345, wherein it was held that the essential requirement under Section 50 is that firstly the Court must form an opinion as to the relationship of one person with another, secondly, in such a case, the opinion expressed by conduct as to the existence of such a relationship is a relevant fact and thirdly, that the person in respect of

whom the opinion is expressed must be a person who, as a member of the family or otherwise, has special means of knowledge on the particular subject of the relationship. Thus, the opinion of the Court must not be based on hearsay but on belief and conviction, as is manifested by the conduct or behaviour of the person.

12. Thereafter, it was recorded by that Court that the witnesses, especially the brother-in-law of the plaintiff, PW-2 Karnail Singh, also having admitted to the '*Chaddar Andazi*' ceremony after a divorce was "conducted" before the Panchayat between the appellant and Kartar Chand, Karnail Singh would be a person with special means of knowledge qua the relationship between the appellant and his other brother, Sarwan Dass.

13. Further, referring to the ration card and the voters list photocopies which were produced in Court (referred to earlier), as also referring to the letter of the Sarpanch, addressed to the Principal of the School where Sarwan Dass was working, it was held by that Court that the appellant is the widow of Sarwan Dass and therefore, entitled to inherit a 1/3rd share in the suit property.

14. On the aforesaid findings, the suit of the appellant-plaintiff was decreed in her favour.

15. In the appeal filed by the defendants (respondents herein), before the learned first appellate Court, that Court noticed the pleadings before and the issues framed by, the lower court, as also the evidence led before it.

Thereafter, holding that even though all documents relied upon by the learned lower appellate court pointed to a '*Karewa*' marriage having been performed by the appellant with Sarwan Dass, however, in the absence of a decree of divorce, dissolving the marriage of the appellant with Kartar Chand, she could not have married Sarwan Dass even by a '*Chadar Andazi*'

ceremony.

17. An argument by learned counsel for the appellant before that Court (respondents herein) was also noticed, in which it was brought to the notice of the learned Court that the present appellant had filed CWP No. 4325 of 2004 before this Court, seeking compassionate appointment (from the Government) being the widow of Sarwan Dass. It was noticed that this Court had held, vide its judgment dated 14.12.2006, that the certificate issued by the Deputy Commissioner, Hoshiarpur, on the basis of a verification made through the SDO (Civil) Mukerian, was incorrect and was aimed at enabling the present appellant (petitioner in the writ petition) to obtain the retirement benefits of Sarwan Dass. In fact, it was also pointed to the lower appellate court that this Court had directed the appellant to deposit the amounts already received by her.

18. Upon considering the aforesaid, another argument on behalf of the defendants (appellants before the first appellate court), it was held as noticed above, to the effect that without a valid decree of divorce, no second marriage could be recognized, whether performed by way of '*Karewa*' or otherwise.

In fact, as regards what constitutes a '*Karewa*' marriage, it was held that as per customary law, a '*Karewa*' marriage can be performed with the brother or some other male relative of a deceased husband, and that such a marriage requires no such religious ceremony, but confers all the rights of valid marriage. However, holding that no valid marriage could have been performed by the appellant during the life time of Kartar Chand and further, that this Court in CWP No. 4325 of 2004 had specifically held that the appellant cannot claim herself to be the widow of Sarwan Dass, the judgment

and decree of the learned trial Court was reversed and the suit of the appellant was dismissed throughout.

19. In this second appeal, learned counsel for the appellant on an earlier date, when this Court was not inclined to interfere with the judgment and decree of the learned first appellate court, had sought time to produce law on the issue that a '*Karewa*' marriage can be performed with the younger brother of the first husband of a woman, even during the life time of the first husband, if he was paralyzed etc., as was contended to be the case in the present *lis*. However, today he submits that despite his best efforts, he has not been able to find any law settled, holding as contended by him.

No commentary also on customary law, allowing a '*Karewa*' marriage even in such a situation, has been brought to the notice of this Court.

In any case, with no valid decree of divorce, even a '*Karewa*' marriage in the opinion of this Court would be void *ab initio*, in terms of Section 5 (i) of the Hindu Marriage Act, 1955, which stipulates that an essential condition for a Hindu marriage is that neither party has a spouse living at the time of the marriage.

In view of the aforesaid, it is not possible to hold that the judgment of the first appellate Court below is erroneous in any manner, as the appellant claimed title to the property of the person she claimed to have performed a '*karewa*' marriage with, i.e. the younger brother of her husband, Kartar Chand, with the said brother, i.e. Sarwan Dass, not being her legally wedded husband. Therefore, she would not have any right to his property, in the absence of any will set up by him in her favour, which is not the case.

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

However, it is made clear that nothing that has been observed by this Court with regard to the right of the appellant in any property of her legally wedded husband, i.e. Kartar Chand. Thus, any legal proceedings taken by her with regard to any such property, would be dealt with on its own merits, on all aspects of any such case, if instituted by any person.

December 12, 2016
vcgarg/nitin

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No