

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

RSA No.5055 of 2013
Date of decision : 10.08.2016

Mani Ram and others

...Appellants

Versus

General Public and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Sanjiv Gupta, Advocate for the appellants.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby suit claiming two reliefs:- declaration qua death of Choka Ram and consequential relief of ownership as Chokha Ram died issueless or unmarried, has been dismissed.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of appellant submits that Prema had two sons Biru Ram and Chokha Ram. The appellants-plaintiffs and the defendant Nos.2 to 3 are the sons and daughters of Biru Ram. Biru Ram had also died and the property of Biru Ram was also mutated in their name. Since Chokha Ram had no issue or wife being collateral his estate devolved upon the appellants and defendants,

aforementioned. In support of the evidence vis-a-vis missing of Chokha Ram for the last 60 years, one Balwant Ram, Lambardar and Sant Lal, residents of Village Nezia Khera (Sirsa) appeared as PW2 and PW3, respectively and copy of the jamabandi for the years 2006-2007 Ex.P1 has been brought on record, much less, death certificate of Biru Ram Ex.P2 and of his wife Chand Kaur Ex.P3, yet the Courts below declined the relief even the lower Appellate Court non-suited the appellants on the ground that two reliefs cannot be sought in one suit and urges this Court for setting aside of the judgment and decree. Since the respondent-defendant had admitted/conceded in written statement the claim of appellant-plaintiff, therefore, there would be no need for further granting opportunity to appellant to furnishing the correct address. The factum of death of Biru Ram and his wife Chand Kaur has been proved on record through the statement of Lambardar. It has been proved that the Chokha Ram had been missing since 60 years, therefore, presumption under Section 108 of the Indian Evidence Act was liable to be drawn. In this aspect of the matter, declaration was sought but the Courts below did not grant relief on the ground that no person between the age of 60 and 65 has been examined.

I have heard learned counsel for the appellant and appraised the paper book.

Both the Courts below particularly lower Appellate Court has also committed illegality and perversity in declining the relief of declaration qua the death of Chokha Ram and as well as ownership on the ground that it cannot be granted in one suit, in essence, the aforementioned observation is accepted, once appellants-plaintiffs succeed in getting the declaration qua

death of Chokha Ram therefore, have to undergo to rigmarole of another round of litigation which is not the scope and aim of the settled canons of law/jurisprudence.

Mr. Gupta, has made statement at bar that plaintiff and contesting defendants are the sons and daughter of Biru Ram and Chokha Ram was missing and he was neither married nor had an issue, therefore, the property had to be devolved upon the plaintiff.

For the foregoing reasons, judgment and decree rendered by the Courts below suffers from fallacy, much less, erroneous, accordingly are set aside.

Suit, resultantly ordered to be decreed. Decree sheet be prepared.

Appeal stands allowed.

10.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No