

RSA-3270-2015(O&M)

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In the High Court of Punjab and Haryana at Chandigarh

RSA-3270-2015(O&M)
Date of Decision:11.02.2016

Kulwant Kaur

....Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Kehar Singh Hissowal, Advocate
for the appellant.

SABINA, J.

Appellant had filed suit for mandatory injunction directing the defendants to grant family pension to her.

Case of the appellant, in brief, was that Sarwan Singh was working as a Head Teacher with the defendants and had retired from service on 31.03.2004. Sarwan Singh was initially married to Paramjit Kaur who had died on 07.10.2007 and thereafter on 02.03.2008, he performed marriage with the appellant. Sarwan Singh died on 23.01.2009. Hence, the appellant was entitled for grant of family pension.

Respondents-defendants, in their written statement, averred that as per the record, Paramjit Kaur was the only

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legally wedded wife of Sarwan Singh. The story put-forth by the appellant that Sarwan Singh had performed marriage with her was false and concocted.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. *Whether plaintiff is entitled for mandatory injunction, as prayed for? OPP*
2. *Whether plaintiff has no cause of action to file the present suit? OPD.*
3. *Whether suit of the plaintiff is bad for non-joinder of necessary parties? OPD*
4. *Whether plaintiff is estopped from filing the present suit by her own act and conduct?OPD*
5. *Whether plaintiff has concealed material facts from the Court?OPD*
- 6 *Relief.”*

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 17.10.2014 dismissed the suit of the plaintiff. The said judgment and decree were upheld in appeal filed by the appellant by the First Appellate Court vide judgment/decreed dated 18.03.2015. Hence, the present appeal by the appellant-plaintiff.

I have heard learned counsel for the appellant and have gone through the record available on the file carefully.

In order to prove her case, the appellant examined

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PW-1 Balwinder Singh Granthi, PW-2 Rupinder Kaur, Ex-Sarpanch, PW-3 Keshav Kapoor and PW-4 Darshan Singh.

Appellant-plaintiff herself did not appear in the witness box. So far as PW-1 is concerned, although he proved the writing Exhibit P-1 qua marriage of the appellant with Sarwan Singh on 02.03.2008 but the said witness in his cross examination, stated that the factum of marriage of Sarwan Singh with Kulwant Kaur was not entered in the register maintained by the Gurudwara Sahib where the marriage had allegedly taken place. In these circumstances, Courts below have rightly held that no reliance could be placed on the testimony of PW-1.

So far as PW-2 is concerned, the said witness was examined to prove Exhibit P-2-certificate, but in her cross-examination the said witness deposed that she had not seen the original of Exhibit P-2. She further stated that she did not know Sarwan Singh and had not attended the marriage of Sarwan Singh with the appellant. She also stated that she had not made any entry in the resolution register of Panchayat before the issuance of Exhibit P-2 nor had got the factum of marriage with the Sarwan Singh verified from the Gurudwara Sahib. Hence, the Courts below have rightly held that no reliance could be placed on the testimony of PW-2.

So far as PW-3 is concerned, the said witness

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deposed that he had issued certificate with regard to performance of second marriage of Sarwan Singh with the appellant. However, the said witness could not establish the source qua issuance of the certificate Exhibit P-3. The said witness in his cross examination admitted that he had not attended marriage of appellant with Sarwan Singh nor had brought any record relating to their marriage. Hence, the Courts below have rightly held that no reliance could be placed on the testimony of PW-3.

So far as PW-4 is concerned, the said witness in his cross examination admitted that Paramjit Kaur had been nominated by Sarwan Singh in the pension papers. He denied knowledge qua the factum of issuance of marriage certificate in favour of the appellant.

The Courts below, thus, rightly dismissed the suit of the appellant as she had failed to examine any witness who had attended her marriage with Sarwan Singh. During his life time, Sarwan Singh had not made any effort to inform the Department qua his marriage with the appellant. Admittedly, in the official record, Paramjit Kaur was nominated by Sarwan Singh. Paramjit Kaur had died on 07.10.2007. In case Sarwan Singh had got married to the appellant, he would have nominated the appellant to receive family pension in case she survived him.

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Keeping in view the facts and circumstances of the present case, Courts below have rightly dismissed the suit filed by the appellant.

No substantial question of law arises in this appeal, warranting interference by this Court.

Dismissed.

February 11, 2016
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(SABINA)
JUDGE