

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

**Regular Second Appeal No.658 of 2015 (O&M)
Date of Decision: October 07, 2016.**

Harpreet Kaur and another

.....APPELLANT(s).

VERSUS

Surjit Kaur

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Ashok Singla, Advocate
for the appellant (s).

Mr. R.D. Anand, Advocate
for the caveator-respondent.

SURINDER GUPTA, J.

This is appeal by Harpreet Kaur and Sarabjeet Kaur against the concurrent judgments of the Courts below, decreeing the suit of the respondent-plaintiff Surjit Kaur, whereby the judgment and decree dated 04.10.2005 passed by Additional Civil Judge (Senior Division), Kaithal in civil suit No.731 of 2003/2004 titled *Harpreet Kaur and another Vs. General Public*, was declared illegal, null and void, not binding on the rights of the plaintiff in the suit property and as a consequential relief, the appellants-defendants were restrained from alienating the suit land and/or getting the same mutated in their favour and/or interfering into the possession of the plaintiff over the suit land.

2. The matter in dispute revolves around the estate of Jaspal Singh

son of plaintiff Surjit Kaur, husband of appellant Sarabjeet Kaur and father of appellant Harpreet Kaur. Though the plaintiff denied that Harpreet Kaur is daughter of Jaspal Singh and Sarabjeet Kaur is wife of Jaspal Singh but the status of defendants, as such, is no more in dispute.

3. Jaspal Singh owned land situated in the revenue estate of village Dussain, Tehsil and District Kaithal, as per entry in the jamabandi for the year 2000-2001 as follows:-

“(a) 1/6th share out of total land measuring 16 kanals 0 marla comprised in khewat No.76, khatoni No.117, rect. No.92, killa No.16/2, 17/2, 24/1, 24/2, 25 kittas 5;

(b) 1/6th share in the land measuring 13 kanals 13 marlas comprised in khewat No.77, Khatoni No.118, rect. No.92, killa No.15/2, 16/1, 17/1, kittas 3;

(c) 15/22 share out of total land measuring 122 kanals 0 marla comprised in khewat No.118, khatoni No.167, rect. No.28, killa No.7,8,9,11,12,13,14,18 rect. No.29 killa No.13,14,15,16/1 khasra No.376, khatoni No.168, rect. No.28 killa No.19,20/1,20/2, rect. No.29, killa No.16/2, 17, 18/1 kittas 19;

(d) 13½/640 share out of total land measuring 16 kanals 0 marla comprised in khewat No.164, khatoni No.234, rect. No.28, killa No.4,5, kittas 7;

(e) 40/960 share out of total land measuring 48 kanals 0 marla comprised in khewat No.165, khatoni No.235, rect. No.33, killa No.1, khatoni No.236, rect. No.17 killa No.21, 22, khatoni No.237, rect. No.22, killa No.17, 24, 25, total kittas 6;

(f) 53/1280 share out of total land measuring 64 kanals 0 marla comprised in khewat No.166, khatoni No.238, rect. No.28, killa No.6, 15 rect. No.33, killa No.9

khatoni No.239, rect. No.33, killa No.2,12,13,14 khatoni No.240, rect. No.33, killa No.10, total kittas 8;

(g) 26½ /640 share out of land measuring 32 kanals 0 marla comprised in khewat No.167, khatoni No.241, rect. No.22, killa No.13, 18, 23, rect. No.28, killa No.3 kittas 4.”

4. The appellants-defendants filed a civil suit on 12.08.2003 seeking declaration that Jaspal Singh had left the house in September, 1989 and thereafter, never returned or has been heard of by his relatives, appellants-defendants or anybody else and is presumed to be dead. Appellant Harpreet Kaur and Sarabjeet Kaur, claiming themselves to be only legal representatives of Jaspal Singh sought declaration to this effect. The suit was decreed by the Court of Additional Civil Judge (Senior Division), Kaithal vide judgment and decree dated 04.10.2005. The decree passed by Additional Civil Judge reads as follows:-

“It is ordered that the suit of the plaintiff is decreed and Jaspal Singh s/o Subeg Singh r/o vill. Dussain, tehsil & Distt. Kaithal, who is missing for the last more than seven year, is declared as civil dead and the plaintiff No.1, who is minor daughter of said Jaspal Singh and plaintiff No.2 who is the wife of said Jaspal Singh are declared class-I heirs of Jaspal Singh and revenue authorities are directed to get the mutation sanctioned in their favour of the estate left by Jaspal Singh.”

5. It was averred that above judgment is based on misrepresentation of facts. Jaspal is very much alive. Plaintiff being mother of Jaspal Singh was not a party to that suit. No summons or munadi was ever effected in village Dussain regarding this suit. Taking benefit of

judgment and decree dated 04.10.2005, Sarabjeet Kaur threatened to get the

mutation of the suit property effected in her name.

6. It was after the decree that Surjit Kaur, mother of Jaspal Singh filed instant suit seeking declaration as follows:-

“It is, therefore, prayed that a decree for declaration to the effect that impugned judgment and decree dated 4-10-2005 passed by Mrs. Gurvinder Kaur Shah, Addl. Civil Judge (Sr. Div.), Kaithal in case No.731 of 2004 , are null, void-ab initio, illegal, fraudulent and not binding over the rights of the plaintiff over the suit property and a decree for permanent injunction as a consequential relief restraining the defendants for ever in any manner, alienating getting mutation or interfering with the property in suit in any manner be passed with costs in favour of the plaintiff and against the defendants, in the interest of justice.”

7. Surjit Kaur, plaintiff alleged that the suit property was purchased in the name of her son Jaspal Singh with the income of joint Hindu family as she along with her husband Subeg Singh, son Jaspal Singh, other son of Subeg Singh, was having common mess and joint family. The suit property, as such, is joint Hindu family property.

8. Sarabjit Kaur, defendant No.2 has deliberately mentioned herself as widow of Jaspal Singh and Harpreet Kaur, defendant No.1 as his daughter. She left village Dussain in the year 1988 and started living in village Hodla Kalan, Tehsil Mansa and thereafter never returned. She is also not in possession of the suit property.

9. After 1988, Sarabjit Kaur instituted civil and criminal cases in the Court of Civil Judge at Mansa against plaintiff, her husband Subeg Singh, Jaspal Singh and other members of the family but never mentioned in those proceedings that Jaspal Singh had not been heard of for the last seven

years. She filed a civil suit titled Sarabjeet Kaur Vs. Subeg Singh and others in which Jaspal Singh was also a party. It was a suit for return of jewellery articles, which was decreed but the appeal against the said judgment and decree was accepted by the District Judge, Bathinda vide judgment dated 13.11.1999. She filed a regular second appeal No.1634 of 2000 against the judgment of District Judge, Bathinda which was also dismissed by this Court vide judgment dated 21.02.2002.

10. Sarabjeet Kaur married with one Kulwant Singh son of Waryam Singh resident of Kishore Colony, Patiala but this marriage was dissolved in divorce petition bearing H.M. Act petition No.35 of 30.08.1993 by the Court of District Judge, Patiala vide judgment dated 04.05.1994. Sarabjeet Kaur after marriage with Kulwant Singh ceased to be wife of Jaspal Singh.

11. In the written statement filed by defendants No.1 and 2, it was denied that the suit land was joint Hindu family property of Jaspal Singh and other family members. It was alleged to be separate property of Jaspal Singh whose family comprised of his wife defendant No.2 and daughter defendant No.1. At the time of civil and criminal litigation with plaintiff and others, defendants No.1 and 2 were in search of Jaspal Singh. The decree passed in civil suit No.731/2004 dated 04.10.2005 was defended as legal and valid. This averment of plaintiff has been denied that defendant No.1 has ceased to be the wife of Jaspal Singh. All other averments of the plaintiff were contested, controverted and denied.

12. Pleadings of parties led to the framing of issues as follows:-

- (1) Whether the judgment and decree dated 04.10.2005 passed in civil suit No.731 of 2004 are illegal, null

and void and are not binding on the rights of the plaintiff, as alleged? OPP

- (2) Whether the defendants are liable to be restrained from interfering in the possession of the plaintiff and/or alienating the suit land? OPP
- (3) Whether the plaintiff has no locus-standi and/or cause of action to file this suit? OPD
- (4) Whether the suit is not maintainable in the present form? OPD
- (5) Whether the suit is false and frivolous and is liable to be dismissed with special costs? OPD
- (6) Relief.

13. In support of her case, plaintiff examined Sajjan Kumar, process-server as PW1 to prove that he served the summons issued in this case on Jaspal Singh. She herself appeared as PW2. Sahab Singh son of Kapoor Singh was examined as PW3 while defendant Harpreet Kaur, daughter of Jaspal Singh appeared as DW1 and examined Chanchal Singh as DW2.

14. While recording finding on issue No.1, learned Civil Judge (Junior Division), observed that in suit filed by defendants No.1 and 2 (civil suit No.731 of 2004) Surjit Kaur plaintiff who is class-I heir of Jaspal Singh was not impleaded and this fact was concealed from the Court. Decree was obtained fraudulently from the Court by misrepresentation of facts. It was further observed that defendants No.1 and 2 are not the persons, who would have naturally heard of Jaspal Singh for the last seven years, had he been alive as defendant No.2 Sarabjeet Kaur wife of Jaspal Singh left the company of Jaspal Singh in the year 1988 and did not return to her matrimonial home. She later married with one Kulwant Singh in the year

1991 and that marriage was dissolved by way of decree of divorce dated 04.05.1994. In the civil and criminal litigation between the parties, Sarabjeet Kaur never stated before the Court that Jaspal Singh has not been heard of for seven years. Jaspal Singh was rather arrayed as party in those proceedings. In this case, Jaspal Singh was arrayed as defendant No.3 and was duly served at a Gurudwara, Fatehgarh Sahib. The process-server who served Jaspal Singh was knowing him personally. Sahab Singh PW3 has also corroborated the statement of process server. Learned Civil Judge also took note of the fact that defendant No.2 did not appear to depose and the statement of daughter of Jaspal Singh i.e. defendant No.1 was discarded with the observation that she has expressed ignorance about the several facts put to her in her cross-examination.

15. I have heard learned counsel for the parties and have perused record of the Courts below with their assistance.

16. Learned counsel for the appellants has argued that dispute in this case pertains to inheritance of estate of Jaspal Singh, who has not been heard of for the last 27 years. This fact is not even disputed by the respondent-plaintiff as she and her husband have been projecting this fact before the Court. Respondent-plaintiff has even claimed inheritance to the estate of Jaspal Singh on the basis of his Will. The relations of Sarabjeet Kaur with her in-laws were not cordial and this led to litigation. Because of their lust, greed, animus and intent to deprive wife and daughter of Jaspal Singh from suit property, family of Jaspal Singh put forth plaintiff Surjit Kaur who admittedly being class-I heir, is entitled to her share in the estate of Jaspal Singh but they fabricated evidence to project that Jaspal Singh is

alive and both the Courts got swayed by their plea and set aside the decree declaring Jaspal Singh as 'civilly dead'. It is quite surprising that the plaintiff obtained a fake report in connivance with a process server that Jaspal Singh was served at Gurudwara Fatehgarh Sahib, where he was living at the relevant time as Sewadar. The Court ignored the statement of Manager of Gurudwara who categorically stated that Jaspal Singh never stayed there. Process server has stated that he had served Jaspal Singh on the identification of Sahab Singh. His statement that he was knowing Jaspal Singh personally for the last six months, had no basis. The summons were brought by Subeg Singh father of Jaspal Singh who obtained the report Ex.P1 from the Process server. It is quite strange that Courts below have relied upon the testimony of Sajjan Kumar, who was a stranger for Jaspal Singh but connived with his father Subeg Singh to fabricate a false report and ignored the statement of Harpreet Kaur, daughter of Jaspal Singh, who has stated that she for the last 18-19 years, had not seen her father. She along with her mother and relatives searched her father for many years. They have even gone to Fatehgarh Sahib and inquired about her father but were told by Car-Sewa officials that no Jaspal Singh of village Dussain had ever come to Gurudwara Fatehgarh Sahib and stayed there. Statement of Harpreet Kaur when read with evidence on record proves that Jaspal Singh had gone missing in the year 1989 and has not been heard of till date. The Courts below have given undue importance to this fact that being class-I heir, plaintiff Surjit Kaur was not impleaded as party in civil suit No.731 of 2004 and it was a misrepresentation/concealment of material fact. The Court while passing the decree in that suit has not declared that appellants

are the only class-I legal heirs. The Court declared Jaspal Singh as civilly dead as he has not been heard of for the last more than seven years. All the legal heirs including the appellants are entitled to lay their claim on the property left by Jaspal Singh. Instead of claiming her share in estate left by Jaspal Singh, plaintiff in order to deprive appellants of their share, challenged the decree passed in civil suit No.731 of 2004 on false ground that Jaspal Singh is alive.

17. Learned counsel for the respondent has argued that Sarabjeet Kaur left her matrimonial home in a year after her marriage with Jaspal Singh. Thereafter, she did not return to village Dussain, as such, she has no means of knowledge about Jaspal Singh. She had indulged in litigation with family of Jaspal Singh and impleaded Jaspal Singh as party in case filed by her. In case, Jaspal Singh had not been heard of since 1989, she would not have made him party in the litigation initiated afterwards. Thereafter, she was married to one Kulwant Singh son of Waryam Singh in the year 1991 which marriage was dissolved by decree of divorce dated 04.05.1994. In these circumstances, she could have no reason to go after Jaspal Singh or to hear about him. It was during the pendency of the suit that Jaspal Singh was traced at Gurudwara Fatehgarh Sahib and his service was effected which shows that he is still alive. The courts below have rightly set aside the judgement and decree passed in civil suit No.731 of 2004.

18. Before proceeding further, it will be relevant to take a note of certain facts, enumerated as follows, which come to the fore on perusal of the judgment of the Courts below:-

(i) The suit land was owned by Jaspal Singh son of Surjit Kaur, plaintiff.

(ii) Sarabjeet Kaur, defendant No.2 is wife and Harpreet Kaur, defendant No.1 is the daughter of Jaspal Singh.

(iii) Learned Civil Judge while setting aside the decree dated 04.10.2005 passed in civil suit No.731 of 2004 also allowed consequential relief restraining the defendants from interfering in the possession of the plaintiff over the suit land and this decree was affirmed by the first Appellate Court. It is apparent from perusal of plaint and evidence on record that plaintiff has never claimed her exclusive possession over the suit land and the evidence on record, nowhere state that the suit land is in possession of plaintiff. No such relief was even sought by the plaintiff as is evident on perusal of the relief clause already reproduced in para 4 above.

(iv) Though plaintiff denied the relationship of Sarabjeet Kaur as wife of Jaspal Singh and Harpreet Kaur defendant No.1 as daughter of Jaspal Singh but this fact is not hotly disputed. Even in the appeal filed by plaintiff, her son and husband against Sarabjeet Kaur i.e. Civil Appeal No.67 of 30.07.1997 decided by District Judge Bathinda on 13.11.1999 (Ex.P3), Sarabjeet Kaur was described as wife of Jaspal Singh. In the written statement filed in that suit, the marriage of Sarabjeet Kaur with Jaspal Singh was admitted. It was also admitted that after the marriage of Sarabjeet Kaur with Jaspal Singh in the year 1987, she gave birth to a female child in March 1989 in Civil Hospital, Sunam.

(v) Respondent-plaintiff, her son Gurinder Singh and husband Subeg Singh had taken plea regarding Jaspal Singh going missing since

September, 1989 in the statement which was discussed by the first Appellate Court in judgment (Ex.P3) (which has been relied upon by respondent-plaintiff) as follows :-

“Jaspal Singh had gone several times to village Hodlan Kalan to bring back his wife and lastly in the month of September, 1989 when Jaspal Singh had gone to village Hodlan Kalan, the father and brother of Sarabjit Kaur took him away by misrepresentation on the ground that Sarabjit Kaur would be got medically checked from a doctor at Patiala, but Jaspal Singh did not return for 15 days and then a foul play was suspected. Subegh Singh appellant visited village Hodlan Kalan but he was told by Sarabjit Kaur and her father that Jaspal Singh had already gone to village Dussain, **but Jaspal Singh was not found anywhere and there is no information about the whereabouts of Jaspal Singh. It is also pleaded that Subegh Singh appellant filed a criminal complaint under Section 365 Indian Penal Code against Mann Singh which is pending trial at Kaithal (Haryana). The respondent has no locus standi to file the suit nor the same is maintainable. It is further pleaded that the appellants suspected the murder of Jaspal Singh respondent from the hands of father and brother of Sarabjit Kaur and in fact the whereabouts of Jaspal Singh are not known and if he is found dead then the suit filed against a dead person is not maintainable.**”

(vi) In the complaint filed in the year March, 1990 by Subeg Singh against father and brother of Sarabjeet Kaur, it was alleged that **Jaspal Singh was taken by father and brother of Sarabjeet Kaur and thereafter, he had not returned and his whereabouts were not known.**

Complainant Subeg Singh made all out efforts to search Jaspal Singh

but could not succeed. The complaint was, however, dismissed on 22.07.1997. It was observed by learned Magistrate while dismissing the complaint that Jaspal Singh was suffering from mental disorder and lost his memory and left his house of his own. Not satisfied, Subeg Singh filed Criminal Revision No.39 of 1998 against the order dated 22.07.1997 passed by Judicial Magistrate 1st Class, which was dismissed on 12.02.2003. All this shows that family of Jaspal Singh was convinced that since 1989, Jaspal Singh had not been heard of or had been seen by anybody.

(vii) Surjit Kaur, plaintiff, mother of Jaspal Singh was also convinced that Jaspal Singh is not in this world and she moved an application before the Assistant Collector 2nd Grade, Pundri, District Kaithal on 20.12.2005 i.e. after filing of this suit, claiming that she is not having a definite evidence regarding the death of Jaspal Singh but propounded a Will dated 08.10.1988 and claimed right over his property. She nowhere stated in the application that Jaspal Singh has been heard, seen or contacted at any point of time after he had been missing till the date of filing of the application. She only claimed that mutation regarding the estate of Jaspal Singh has become contested, as such, be put up before the Sub Divisional Officer for decision.

19. I have taken note of above facts on record because present case relate to validity of a decree passed by the competent Court declaring that Jaspal Singh as missing for more than seven years and declaring him dead. Appellants-defendants are the daughter and wife of Jaspal Singh while respondent-plaintiff Surjit Kaur is the mother of Jaspal Singh. The plaintiff has challenged the judgment and decree passed by Additional Civil Judge

(Senior Division), Kaithal in civil suit No.731 of 2004 raising two pleas that the appellants who were plaintiffs in that case, did not disclose that she (plaintiff) is also class-I heir of Jaspal Singh and secondly, Jaspal Singh is still alive. Both the Courts below accepted the plea of plaintiff which appear to be not in accordance with the evidence on record, as such, I am of considered view that the evidence in this case require re-appraisal.

20. The substantial questions of law which arise for consideration in this appeal are as follows:-

(i) ***Whether the judgment and decree dated 04.10.2005 passed in civil suit No.731 of 2004 is illegal, null and void on the ground that plaintiff was not made party in that suit?***

(ii) ***Whether the Courts below have ignored vital evidence on record to prove that Jaspal Singh was no heard of since September, 1989 and the findings recorded by the courts below that Jaspal Singh is alive, are against record, perverse, not based on proper appreciation of evidence on record?***

21. Firstly, I take the finding recorded by the courts below that Jaspal Singh is alive. This finding is based on the testimony of Sajjan Kumar, a Process-server posted in District Courts at Fatehgarh Sahib. He on the summons for service of Jaspal Singh son of Subeg Singh made a report that service of Jaspal Singh on the summons was effected on the identification by Sahab Singh and Dalip Singh. He stated in cross-examination that Sardar Subeg Singh (father of Jaspal Singh) was known to him. He had brought the summons to him. Signatures of identifier were obtained in Fatehgarh Sahib. He had not taken the signatures of any

further stated that summons were not bearing any number of *Nazarth* Branch of Kaithal. The persons Sahab Singh and Dalip Singh, who identified Jaspal Singh were not known to him, however, he stated that Jaspal Singh was known to him for the last six months and also gave his description.

22. Sahab Singh son of Kapoor Singh is resident of village Dussain, which is also village of plaintiff Surjit Kaur. He appeared as PW3 and has stated that on 21.03.2006, he was present in Gurudwara Fatehgarh Sahib/Dera Car Sewa, where Jaspal Singh son of Subeg Singh was also present. Service of Jaspal Singh was effected in his presence by the Process-server. He stated that Jaspal Singh met him a year ago at Kurukshetra in Gurudwara and he is alive. He has further stated that about 5/6 years ago, Jaspal Singh met him twice at Hazoor Sahib Gurudwara. He had never seen Dalip Singh with Subeg Singh, who was related to him in his brotherhood. From the statement of this witness, it transpires that he had gone to Hazoor Sahib about 5-6 years before 2008 and also a year before his statement. He is resident of village Dussain and had very cordial relations with Subeg Singh. Very surprisingly, despite meeting Jaspal Singh he never intimated his family about this fact. The facts and circumstances make it amply clear that both Process-server Sajjan Kumar and PW3 Sahab Singh were witnesses procured by Subeg Singh, husband of plaintiff. This fact is further clear from the statement of Chanchal Singh, Manager of Dera Car Sewa, Sant Babapuri, Fatehgarh Sahib. He has stated that Jaspal Singh son of Subeg Singh, resident of village Dussain never came to Gurudwara for car sewa. No person from village Dussain or govt. or non-govt. official

came for service of summons at Dera Car Sewa. The testimony of this witness, who is an independent person, is credible and there is no reason to discard the same. Sajjan Kumar Process-server appears to have indulged in mischief by making a false report of service of Jaspal Singh, for the reasons as stated by him that he knew father of Jaspal Singh and also Jaspal Singh. His report is either result of his urge to help his acquaintance or of some other ulterior motive. This fact is proved from documentary evidence, I will discuss in later part of this judgment.

23. Surjit Kaur plaintiff while appearing as PW2 has reiterated her version in her affidavit Ex.PW2/A tendered in her examination-in-chief. She has stated that Jaspal Singh, her son is alive and this fact is told to her by many relations who met Jaspal Singh in many Gurudwaras. She further stated that Jaspal Singh visits her house at Dussain once in a year but refused to settle there as he is afraid of Sarabjeet Kaur and her relatives.

24. The above statement of Surjit Kaur is apparently false and against the facts on record. It is quite strange, unnatural and even unethical that a mother is stating that her son comes to meet her once a year and before the Assistant Collector 2nd Grade, Pundri, District Kaithal, she is claiming inheritance to the estate of Jaspal Singh by propounding his Will dated 08.10.1988. In her application moved on 20.12.2009, she nowhere stated that Jaspal Singh was ever heard, seen or contacted by anyone at any point of time till the date of filing of the application. She only stated in the application that she is not having any definite evidence regarding death of Jaspal Singh. This evidence leads to a very safe conclusion that Surjit Kaur was convinced that Jaspal Singh is not in this world, otherwise, she would

not have moved this application (Ex.D3) before the revenue authorities, rather, would have alleged that her son is alive. As already discussed in para 18(v) above, the plaintiff, her husband and other son have taken plea regarding Jaspal Singh going missing since September, 1989 which the first Appellate Court in the judgment Ex.P3 has discussed in detail. Subeg Singh, father of Jaspal Singh had been pursuing criminal revision No.39 of 1998 against the order dated 22.07.1997 passed by Judicial Magistrate 1st Class, Kaithal, dismissing the complaint about kidnapping of Jaspal Singh by father and brother of Sarabjeet Kaur. That revision petition was dismissed by this Court on 12.02.2003. This belies the statement of Surjit Kaur that Jaspal Singh had been meeting her relatives and also visiting her at village Dussain once in a year.

25. The motive for the plaintiff and her family to put forth a false claim that 'Jaspal Singh is alive', is quite evident. They had a lot of litigation civil and criminal with Sarabjeet Kaur and her family. It has come on file that after marriage on 19.11.1987, Sarabjeet Kaur lived with Jaspal Singh for a short period till 1988 and in 1989 Jaspal Singh had gone missing. It is the lust for property of Jaspal Singh, in possession of family of plaintiff which has played a major role and led the plaintiff, a mother to falsely proclaim that her son Jaspal Singh is alive despite the fact that she is convinced about his not surviving. The motive is to deprive the appellants-defendants and keep them away from the estate of Jaspal Singh as long as the plaintiff can. The plaintiff went to the extent of denying the relationship of Sarabjeet Kaur as wife of Jaspal Singh and Harpreet Kaur as his daughter, forgetting the fact that it had been so pleaded by her husband in

the criminal case filed by him against the family of Sarabjeet Kaur.

26. The Courts below have taken note of the fact that Sarabjeet Kaur did not appear as witness but this could be no reason to discard the testimony of DW1 Harpreet Kaur, daughter of Jaspal Singh. She has stated that her grand parents want to deprive them of their share in the property of her father Jaspal Singh, who is missing for the last 18-19 years (before submitting her affidavit Ex.DW1/A dated 08.10.2008). She and her mother and their relatives searched for Jaspal Singh but he could not be traced. Her mother is doing labour and had taken loan from her relatives for her brought up. They had also gone to Fatehgarh Sahib Car Sewa to inquire about Jaspal Singh but came to know that Jaspal Singh of village Dussain never came there and performed any sewa. She is the best person to know about her father. She has stated that from the day of attaining the age of discretion, she has not seen her father Jaspal Singh but has only seen his photograph. In her cross-examination, a suggestion was given to her that her father died 3-4 months before her birth which she admitted. This shows that the plaintiff is sure that Jaspal Singh is not in this world, but has take up the plea of his being alive, just to deprive his wife and daughter of his estate.

27. In view of the above facts and circumstances, statement of plaintiff Surjit Kaur PW2 that Jaspal Singh is alive, is not credible.

28. The Courts below have taken note of the fact that Jaspal Singh was impleaded as party in the criminal case and civil proceedings by Sarabjeet Kaur which shows that he was alive and she had never pleaded before the Court till her civil and criminal proceedings continued up to the

year 2000 and she filed RSA No.1634 of 2000.

29. As is evident from the facts discussed above that not only Sarabjeet Kaur but the plaintiff and her family members were also having no doubt in their mind that Jaspal Singh has not been seen or heard of after September 1989. Even Subeg Singh husband of plaintiff had continued with his complaint filed against brother and father of Sarabjeet Kaur till the year 2003, wherein he presented before the Court that after September, 1989, Jaspal Singh has not been seen or heard of. The civil and criminal proceedings were initiated by Sarabjeet Kaur in the year 1993. At that time, there was no occasion for her to take the plea that her husband has not been heard of for the last more than seven years. This plea was rather raised by Subeg Singh father of Jaspal Singh in the complaint filed in the year 1990. He alleged that Jaspal Singh had not been seen after September, 1989 and was kidnapped by father and brother of Sarabjeet Kaur. He continued with this plea even before this Court in Criminal Revision No.39 of 1998, which was disposed of in February, 2003. This shows that for about 14 years, Subeg Singh father of Jaspal Singh continued with his plea that Jaspal Singh has not been seen or heard of by anybody.

30. In her application (Ex.D3) filed before Assistant Collector 2nd Grade, Pundri, plaintiff Surjit Kaur did not say that Jaspal Singh was alive, rather she pleaded that she does not have firm evidence of death of Jaspal Singh and claimed inheritance to the estate of Jaspal Singh on the basis of his Will dated 08.10.1988. The facts discussed above leave no doubt to conclude that report of service of Jaspal at Fatehgarh Sahib Gurudwara is manipulated and false.

31. It also weighed before the Courts below that Sarabjeet Kaur left her matrimonial home in the year 1988 itself and was residing separately. She had also married with one Kulwant Singh, as such, could not have any reason to hear or know if Jaspal Singh was alive.

32. The above observation has been made keeping in view the solitary fact that in the year 1988 as per the case of father of Jaspal Singh, Sarabjeet Kaur had gone to her parents when she was family way and delivered a child there. The Courts below have ignored the fact that even father of Jaspal Singh and the plaintiff are also proclaiming before the authorities that Jaspal Singh has not been heard of after 1989. The statement of plaintiff that Jaspal Singh was visiting village Dussain and alleged service of summons on him at Fatehgarh Sahib Gurudwara is all manipulated, false, procured one and against facts, a fact established by the documentary evidence on record. How a mother in her application before the revenue authorities can plead that she has inherited the estate of Jaspal Singh on the basis of his Will, if Jaspal Singh had been coming to her or she had even slightest inclination that he was alive. Claiming the estate of Jaspal Singh by plaintiff on the basis of Will allegedly left by Jaspal Singh is a circumstance which weighs against the plaintiff but has been ignored by the Courts below. The Courts below while recording the above findings, has also missed the fact that even father of Jaspal Singh had been contesting and representing the Court upto the year 2003 that Jaspal Singh has not been heard of. Even afterwards, he never represented before any authorities that Jaspal Singh has been seen or he met them. The above averments of the plaintiff appears to have been actuated by their sheer greed and intention

to deprive wife and daughter of the property of Jaspal Singh. It is not only Sarabjeet Kaur, who in natural course would have heard about Jaspal Singh, even if she had gone to her parents' house for delivery of child. Harpreet Kaur, daughter of Jaspal Singh has also not heard of or seen her father for the last 19 years when she appeared to depose in this case. The fact that Sarabjeet Kaur married Kulwant Singh in November, 1991 show that she and her parents were under this impression that Jaspal Singh is no more in this world. Even that marriage of Sarabjeet Kaur with Kulwant Singh was dissolved by decree of divorce dated 04.05.1994 passed by District Judge, Patiala.

33. Here a question which arise for consideration is as to what could be the fate of marriage of Sarabjeet Kaur with Kulwant Singh. Before pondering over this fact, it will be relevant to determine as to whether it can be ascertained from the evidence on file as to when Jaspal Singh is to be presumed as dead.

34. In case of *Smt. Bhanumati Dayaram Mhatre Vs. Life Insurance Corporation of India 2008 AIR(Bombay) 196*, son of petitioner had gone missing on 13.11.1995 and intimation to Life Insurance Corporation was given on 08.08.1996. Insurance Company informed the husband of petitioner that matter regarding the insurance policy of son of petitioner will be settled only after seven years from the date he had gone missing. Hon'ble Division Bench observed in the facts while making reference to provisions of Section 107 and 108 of Evidence Act, 1872 as follows:-

“4. Sections 107 and 108 of the Indian Evidence Act, 1872 (for short “the Act”) contain the provisions relating

to the burden of proving death of a person and read as under :—

“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 the 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.”

Section 107 says that when the question is whether a person is dead or alive and it is shown that he was alive within 30 years (immediately preceding the date when the question arises), the burden of proving that he is dead is on the party who contends that the person is dead. When any party to a proceeding asserts that a person is dead and it is shown that the person was alive within 30 years immediately preceding the date when the question is to be decided, the burden of proving that the person is dead is on the person who asserts the person to be dead. Section 108 of the Act is in the nature of exception to the rule contained in section 107 of the Act and states that when a person has not been heard of for 7 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 asserts that the person is alive. In other words, if a person has not been heard of for a period of more than 7 years by the persons who would naturally have heard of him if he had been alive, then a presumption arises of his death. Though section 108 of the Act raises a presumption of death of a person if he has not been heard of for a period of 7 years by the persons who would naturally have heard of him, it raises no presumption as to the date of his

death. The date of his death, if disputed, must be proved as any other fact.

5. Section 3 of the Evidence Act prescribes the standard of proof by defining the word “proved” as follows:

“*Proved*— A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

If the test of preponderance of probability laid down by section 3 of the Act is applied, that is to say a fact is said to be proved if the Court considers its existence to be so probable that a prudent man ought, under the circumstances of the particular case, to act upon certain supposition that it exists, then it would have to be held that Kushal has died on 13th November, 1995 or soon thereafter. If he was alive after 13th November, 1995, there was no reason for him not to contact his immediate family members. It is not the case that Kushal left the house in distress or he was under some disability which prevented him from returning home or even contacting his family members. Nor is it shown that Kushal was missing in such circumstances or could be at such place wherefrom he could not even contact his parents or close family members. Considering the fact that Kushal was not under any distress or disability nor was he in the situation wherefrom he could not contact his family members coupled with the fact that he has not contacted his family members at all since 13th November, 1995 and has been declared to be dead by the declaratory decree of the competent Court makes us, as men of ordinary prudence, believe that Kushal must have died on 13th November, 1995 or soon thereafter.”

SSC 131 after pondering over the law on the point, observed in para 13 and 14 as follows:-

“13. On the basis of the abovesaid authorities, we unhesitatingly arrive at a conclusion which we sum up in the following words. The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in [Sections 107 and 108](#) of the Indian Evidence Act, 1872. In the scheme of [Evidence Act](#), though [Sections 107 and 108](#) are drafted as two Sections, in effect, [Section 108](#) is an exception to the rule enacted in [Section 107](#). The human life shown to be in existence, at a given point of time which according to [Section 107](#) ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in [Section 108](#). If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years the presumption raised under [Section 107](#) ceases to operate. [Section 107](#) has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. [Section 108](#), subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under [Section 108](#) is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to [Section 108](#) would arise only on lapse of seven years and would not by

applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise.

14. If an issue may arise as to the date or time of death the same shall have to be determined on evidence-direct or circumstantial and not by assumption or presumption. The burden of proof would lay on the person who makes assertion of death having taken place at a given date or time in order to succeed in his claim. Rarely it may be permissible to proceed on premise that the death had occurred on any given date before which the period of seven years' absence was shown to have elapsed.”

36. As per the observations of Apex Court in *LIC of India Vs. Anuradha(supra)*, the issue relating to date or time of death has to be determined on the basis of evidence direct or circumstantial led by the parties on file.

37. Admittedly, Jaspal Singh has not been seen by anybody after September 1989. Even father of Jaspal Singh has alleged in his complaint, which was dismissed vide judgment Ex.D1 that Jaspal Singh was taken away in the month of September, 1989 by brother and father of Sarabjeet Kaur and was not seen thereafter. The Court observed that Jaspal Singh had left the house in the year 1989 and his whereabouts are not known till date. Though, there is no direct evidence about the date of death of Jaspal Singh but from the above evidence, plaintiff and defendants are in unanimity that

Jaspal Singh has not been heard of after September 1989. Even a suggestion was given to Harpreet Kaur that Jaspal Singh had died 3-4 months before her birth on 23.03.1989. In these circumstances, it can be very well presumed that Jaspal Singh was no more in this world from the day he was not heard of by his family and September/October, 1989 can be taken as month of death of Jaspal Singh.

38. The next question which arise for consideration is that as to what is the effect of marriage of Sarabjeet Kaur with Kulwant Singh on 17.11.1991, which was dissolved on 04.05.1994. In case of ***Surjit Kaur Vs. Jhujhar Singh 1980 AIR (Punjab) 274***, such marriage was held to be null and void. In that case, one Surjit Kaur had married Sardul Singh on 13.02.1955 and obtained decree of judicial separation from him in March, 1960. She averred that Sardul Singh left India in March 1955 and has not been heard of by her and by those who would have naturally heard of him if he would alive. She had married respondent Jhujhar singh on 24.05.1970, which was held to be null and void. The observations recorded in para 19 to 21 to that effect are reproduced as follows:-

“19. Another point urged by the learned counsel for the appellant is that irrespective of the presumption under Section 107 of the Indian Evidence Act in favour of the respondent that Sardul Singh shall be presumed to be alive during the 30 years after 1960 when the appellant obtained a decree for judicial separation against him, the respondent shall have to prove that he was alive on May 24, 1970, after the appellant has succeeded in raising a presumption under Section 108 of the Indian Evidence Act that he was dead on November 11, 1976. This contention is again fallacious. Assuming that it is for the

respondent to prove that Sardul Singh was alive on May 24, 1970, the onus stands discharged in view of the favourable presumption in his favour under Section 107 of the Indian Evidence Act. Now the appellant asserts that Sardul Singh was dead on May 24, 1970. The onus to prove this fact will be on her. Even if a presumption is raised in her favour under Section 108 of the Indian Evidence Act that Sardul Singh was dead on November 11, 1976, it will be erroneous to hold that in this situation it will be for the respondent to prove that Sardul Singh was alive on May 24, 1970. The onus to prove that Sardul Singh was dead on May 24, 1970, shall continue to be on the appellant irrespective of the presumption that may be raised in her favour under Section 108 of the Indian Evidence Act that he was dead on November 11, 1976.

20. The learned counsel for the appellant has then contended that the decree of declaration of nullity of marriage prayed for by the respondent should be refused to him under Section 23(1)(d) of the Act because of inordinate delay in filing the petition by him on November 11, 1976, when the marriage had taken place on May 24, 1970. This contention is also without merit. The appellant had given out at the time of her marriage with the respondent that she was a divorcee. The respondent having learnt that she was not a divorcee and her previous husband Sardul Singh was alive on May 24, 1970, filed the present petition. The respondent has thus not caused unnecessary or improper delay in instituting the proceedings. This apart, the marriage between the parties being null and void, it shall not stand validated on account of alleged delay in filing the petition. The decree prayed for, therefore, cannot be refused on this ground.

21. In view of discussion above, it is proved that Sardul Singh, previous husband of the appellant was alive

on May 24, 1970, when she remarried the respondent. The marriage between the parties is, therefore, null and void. A similar finding of the trial Court under issue No. 1 is affirmed.”

39. In view of my above discussion, if it is taken that Jaspal Singh died in September/October, 1989, his succession opened immediately thereafter. In that eventuality, he had three class-I heirs i.e. mother, wife and daughter. In second eventuality, if presumption of death is drawn under Section 108 Evidence Act on the expiry of 7 years from the day he was not heard of, the marriage of Sarabjeet Kaur with Kulwant Singh was illegal null and void and being the wife of Jaspal Singh, she continued to be legal heir of her husband Jaspal Singh on the day presumption of his death arise.

40. Next point which arise for consideration is as to whether the decree passed in civil suit No.731 of 2004 can be set aside for concealment of fact or misrepresentation. The main relief claimed in that suit was that Jaspal Singh had not been heard of since September, 1989 by the plaintiffs i.e. Sarabjeet Kaur and Harpreet Kaur and other persons who would have naturally heard of him had he been alive. The contention so raised by the appellants in that suit was legal, valid, justified and duly proved even in this case. The declaration was sought that Jaspal Singh be declared as 'civil dead' and plaintiffs are only class-I heirs of Jaspal Singh. The suit was decreed for declaration to the effect that “*Jaspal Singh is declared as civil dead; Harpreet Kaur and Sarabjeet Kaur were declared as class-I heirs of Jaspal Singh*”. Admittedly, it was pleaded before the Court that Jaspal Singh had left behind only his wife and daughter as class-I heirs and no reference was made to plaintiff Surjit Kaur. This omission may be

deliberate on the part of plaintiffs Harpreet Kaur and Sarabjeet Kaur (now appellants-defendants). The decree in question could be modified to the extent that plaintiff is also one of the class-I heir of Jaspal Singh along with Harpreet Kaur and Sarabjeet Kaur but the misstatement of this fact in no manner, effects the main relief allowed by the Court declaring Jaspal Singh as 'civil dead'. The Courts below have committed grave error of law while setting aside the decree dated 04.10.2005 with the observation that there was concealment of fact.

41. As already observed in forgoing paragraphs that Jaspal Singh has not been heard of and had gone missing since September, 1989. If the decree declaring him civil dead is set aside, it means that inheritance to the property of Jaspal Singh will never open and the plaintiff will succeed in her design to deprive the appellants-defendants from inheriting the property of Jaspal Singh. The Courts below have not taken note of the fact that plaintiff has made wrong averment in the plaint that Jaspal Singh is alive. She has made apparently wrong statement that Jaspal Singh was served in a Gurudwara at Fatehgarh Sahib or that Jaspal Singh met her relatives in various Gurudwaras and had been visiting her at village Dussain once in a year. It is documentary evidence on record which include the averments made by her husband in criminal complaint filed by him and the submission made by plaintiff herself in her application (Ex.D3) before the revenue authorities which have nailed the falsehood of averments of plaintiff. The plaintiff has gone to the extent of denying that Jaspal Singh is father of Harpreet Kaur while her husband Subeg Singh has admitted this fact in the criminal complaint filed by him. Plaintiff has even denied Sarabjeet Kaur as

wife of Jaspal Singh. The Courts below have ignored all these misstatements by the plaintiff while decreeing her suit and have not realised the consequences of setting aside the decree in civil suit No.731 of 2004. It did not take into account the plea raised by Subeg Singh in criminal complaint No.198 of 1991, wherein he had projected before the Court that Jaspal Singh has been killed by the relatives of Sarabjeet Kaur after being taken for treatment.

42. As a sequel of my above discussion and keeping in view the facts and circumstances discussed above, it can be safely observed on the basis of the evidence on record that Jaspal Singh had gone missing since September, 1989 and the judgment and decree passed in civil suit No.731 of 2004 declaring Jaspal Singh as 'civil dead', do not suffer from any illegality on this score. Plaintiff being one of the class-I heir of Jaspal Singh is also entitled to inherit the suit property with the appellants-defendants.

43. Consequently, both the substantial questions of law are decided in favour of appellants-defendants and against the respondent-plaintiff. The appeal is accepted and judgment and decree passed by the Courts below are modified to the extent that the suit of the plaintiff challenging the decree dated 04.10.2005 passed by Additional Civil Judge (Senior Division), Kaithal in civil suit No.731 of 2004 titled as "Harpreet Kaur and another Vs. General Public", is set aside, however, being class-I heir of Jaspal Singh, respondent-plaintiff shall also be entitled to 1/3rd share in the estate of Jaspal Singh along with the appellants-defendants.

October 07, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No