

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**RSA-812-1990 (O&M)
Date of Decision : 03.10.2017**

Kailash and Ors.

...Appellants

versus

Keshanti and Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amit Jain, Advocate
for the appellants.

Mr. C.B. Goel, Advocate
for the respondents.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This is a second appeal filed by the plaintiff against the concurrent judgements and decrees passed by the trial Court and the lower Appellate Court; whereby suit filed by the present appellants was dismissed and the appeal was also dismissed.

The brief facts of the case of the plaintiffs are that they were the owners in possession of the land bearing Khewat No.115 Khatoni No.136, Rect. No.24, Killa No.4 (8-0), 5 (4-6), 6 (3-19), Rect. No.29 Killa No.19/2 (1-1) 22 (8-0) 23 (8-0), Rect. No.30 Killa No.13 (8-0), 14 (8-0), Rect No.34 Killa No.8 (8-0), and Rect. No.34 Killa No.9(8-0), 18(6-15) total land measuring 72 Kanals 1 marla having 1/3rd share in it i.e. 24 Kanal 0 marla and khewat No.95/115 Rect. 138 (0-12), having share of 1/6th i.e. 2 marla and khewat khata No.78/96 Rect. No.24 Killa No. 7 (8-0), Rect. No.29 Killa No.21 (8-0), Rect. No.30 Killa No.15/2 (2-8), 23 (8-0), 24 (8-0), Rect. No.48 Killa No.21 (8-0), Rect. No.61 Killa No.1/2/2 (2-0) total measuring 44 kanals 7 marlas having one 1/3rd share i.e. 14 kanals 16 marlas.

Kehwat/Khata No.79/97 Rect. No.357 (0-2), 358 (0-2), total measuring 1 kanals 4 marlas having $1/6^{\text{th}}$ share i.e. one marla. Khewat/Khata No.83/103 Rect. No.62 Killa No.26 (1-5), total 1 kanal 5 marla having $1/8^{\text{th}}$ share i.e. 3 marla, khewat/khata No.94/114 rect. No.30 killa No.20 (5-16), 21 (6-0), 22 (8-0), rect. No.33 Killa No.1 (1-16), 2/1 (5-18), Rect. No.61 Killa No.2 (8-0), Rect. No. 65 killa No. 4 (8-0), 8 (8-0) 14/1 (6-14) 18 (8-0), 23/2/1 (1-8) measuring 67 Kanals 1 marla having $1/3^{\text{rd}}$ share i.e. 22 kanals 10 marlas. Thus the total area come to be 61 kanals 22 marlas situated in village Chhapra Tehsil Nuh, District Gurgaon. The plaintiffs and defendant No.2 and 3 have inherited the suit land from Giasi after his death on 30.08.1984. It is further claimed that Giasi Ram had four sons namely, Ganga Ram, Ratti Ram, Kishan Singh and Sia Ram. It is the further claim of the plaintiffs that Sia Ram was married to Keshanti-respondent No.1. However, Sia Ram expired on 26.11.1972 and Keshanti remarried Ratti Ram. Out of the marriage of Ratti Ram with Keshanti atleast two children were born. When Giasi Ram expired on 30.08.1984 respondent-Keshanti had already remarried Ratti Ram. Therefore, she had lost her right to inherit any share in the properties left by Giasi Ram; being the wife of the pre-deceased son, who had remarried before the succession opened. Therefore, it was claimed by the plaintiffs that Keshanti-respondent had forfeited her rights of inheritance after the second marriage. It is further pleaded by the plaintiffs that after the death of Giasi, the mutation was entered on 27.12.1984. In the mutation even Keshanti was recorded as one of the successors. Therefore, the plaintiffs challenged the right of Keshanti to inherit and also the mutation entered in the revenue authorities by filing the present suit.

The defendant No.1-Keshanti denied the facts mentioned in the

plaint. She denied that she ever re-married to Ratti Ram. She claimed that

she is legally entitled to inherit the property of her father-in-law being widow of the pre-deceased son.

Defendant No.3 filed written statement, however, he was proceeded ex parte and the same was the situation of defendant No.2, who too was proceeded ex parte. Therefore, it is only the Keshanti the present respondent No.1 who contested the suit.

The parties led their respective evidences.

After hearing the counsel for the parties and appreciating the record the trial Court recorded a finding that the plaintiffs have failed to prove on record the remarriage of respondent No.1 with Ratti Ram. Secondly, it was held by the trial Court that the existence of first marriage of Ratti Ram has come on record and therefore, the second marriage, in any case, would be void in the eyes of law. Hence, the suit of the plaintiffs was dismissed.

Aggrieved against the judgment and decree passed by the trial Court, the present appellants filed appeal before the lower Appellate Court. Before the lower Appellate Court, it has come on record, that the plaintiffs moved another application for amendment of the plaint and to take the plea that Ratti Ram had, in fact, abandoned his first wife and remarried with the respondent No.1. Further, they claimed, that the parties to the suit are Jat by caste and they are governed by customary law under which abandonment of wife by the husband amounts to divorce. However, that application of the appellants was dismissed by the lower Appellate Court.

On merits also, the lower Appellate Court recorded the finding that the appellants had failed to prove the factum of remarriage of respondent No.1 with Ratti Ram by leading any cogent evidence. Still further the finding is recorded by the lower Appellate Court that the first marriage of

Ratti Ram has come on record, therefore, the second marriage, in any case, would be void. Regarding the evidence on file it was observed by the lower Appellate Court that the plaintiffs have failed to connect to the respondent No.1 the documents placed on record by the appellants as Ex. P-3 and Ex.PY and claimed to be the birth certificate of the children from respondent No.1 and Ratti Ram. The lower Appellate Court observed that no presumption can be drawn from these documents that Keshanti was wife of Ratti Ram. Still further, it was held by the lower Appellate Court that the plaintiffs while appearing as PW-1 has categorically admitted that the first marriage of Ratti Ram was solemnized with Krishna Devi and that she was still alive on the date of making of the statement by this witness. Accordingly, finding no merit in the arguments of the appellants, the appeal was dismissed by the lower Appellate court. Hence the present appeal.

The learned counsel for the appellants has argued that the appellants have placed on record the birth certificate Ex.P-3 which shows that son Hari Ram was born out of the wedlock of Ratti Ram and Keshanti on 17.08.1976. To the same effect, they have placed on record the birth certificate Ex.-PY to show that a daughter named Preeti was born out of the same wedlock on 20.07.1987. Further, he has relied upon the voter list Ex.P-4; where the husband name of Keshanti is mentioned as Ratti Ram. Therefore, it is his argument that since it has been proved on record that Ratti Ram and Keshanti were living as husband and wife, therefore the presumptions shall be raised that there exists of valid marriage between them.

To buttress his arguments he relied upon the Supreme Court judgement reported in **2008 (1) RCR (Civil) 814 titled as “Tulsa and others vs. Durghatiya and Ors.** and for the same purpose he has relied upon

another judgement also reported in **2009 (3) RCR (Civil) 944 titled as *Challamma Vs. Tilaga and Ors.***

It is his further argument that the first wife; who is stated to be alive and on the basis of which the second marriage has been held to be void, is not examined as a witness in the case. Therefore, the adverse inference has to be drawn in this regard. Still further, he argues that once the presumption has been created by leading evidence in favour of the appellants, then it was the duty of the respondents to lead cogent evidence to disprove the factum of marriage between Ratti Ram and Keshanti.

On the other hand learned counsel for the respondents has argued that the respondent No.1 has denied having married Ratti Ram. It has also been denied that she gave birth to any child out of the wedlock with Ratti Ram. It is his argument that the appellants have failed to connect these documents Ex.P-3 and Ex.PY to respondent No.1. The next argument of the learned counsel for the respondents is that factum of marriage has to be proved by leading positive evidence. It cannot be a question of presumption. There is no provision in the Evidence Act which create such kind of presumption of valid marriage merely because of long co-habitation. He further argued that plaintiffs while appearing as a PWs has admitted that the first wife of Ratti Ram is still alive, even today. His further argument is that none of the witnesses have claimed in evidence that anyone of them have seen the marriage between the two taking place. Lastly, it is the argument of the learned counsel for the respondents that the plaintiffs have to stand on their own legs to claim relief prayed by them. They cannot rely upon any alleged weakness of evidence of the defendants.

Having considered the arguments raised by the counsel for the

parties and going through the record with able assistance of the learned

counsel for the parties, this Court comes to the conclusion that there is no illegality, irregularity or perversity in the findings recorded by the Courts below. There is no dispute qua the judgments cited by the learned counsel for the appellants to the effect that the long cohabitation may raise a presumption of existence of relationship as husband and wife between two persons. However, above said judgements are distinguishable in view of the facts of the present case.

In the present case, it has come on record by way of admission of the plaintiffs themselves that the first wife of Ratti Ram was still alive. Even the effort was made by the plaintiffs to create a new case by way of amendments. Even the amendments sought by the plaintiffs, though denied, shows that they are admitting the first marriage of Ratti Ram with Krishna Devi.

In view of this, even if there is presumption regarding the alleged second marriage, the second marriage becomes void as per the provisions of Hindu Marriage Act. Therefore, respondent No.1 cannot be said to have the status of wife of Ratti Ram. However, her status as a widow of Sia Ram shall remain attached to her throughout her life. Therefore, she can very well inherit the property of Giasi Ram.

This Court also finds substance in the arguments raised by the learned counsel for the appellant that there is no proof on record to show the long cohabitation between Ratti Ram and respondent No.1. There has been contradictory statements given by the witnesses produced by the plaintiffs regarding the names of the children and their parentage claimed to be of Ratti Ram. Besides these documents, no evidence is there on record to show the cohabitation as such. However, these documents itself cannot be the

Ratti Ram and respondent No.1. Possibility of some other persons being of the same names cannot be ruled out. The documents sought to be relied upon by the appellants were required to be completely connected to the respondent for claiming benefit of the same, to prove the fact of long cohabitation and of presumption of marriage

It is the arguments of the learned counsel for the appellants that DW-2 Ratti Ram while appearing as a witness; has admitted that Preeti is his daughter and she was born to Keshanti. Therefore, according to the learned counsel for the appellants the marriage stands proved. However, this arguments has also to be noticed only to be rejected. Merely because of child is born out of the mating of two persons does not show the existence of legal marriage. Child can be the product of an illicit relation too. This fact finds support by one of the suggestions put to the witness of the plaintiffs by the respondents that there was an illicit relationship between Ratti Ram and Keshanti.

It is the further argument of the learned counsel for the appellants that they had moved an application for amendment of the plaint and the same was dismissed along with the dismissal of the appeal and they are challenging that order of dismissal of the application also. However, there is no merit in this argument of the learned counsel for the appellants. The lower Appellate Court has rightly dismissed the application moved by the appellants at that belated stage. Moreover even if this application is considered to have been allowed then also, this is only a suicidal pleading by the plaintiffs; demolishing their case altogether. This is an admission of first marriage of Ratti Ram. There is nothing on record that there is any custom prevalent in the community that abandonment of wife amounts to divorce.

even any evidence of abandonment of his first wife by Ratti Ram.

No other argument was raised.

In view of the above, judgments and decrees passed by the lower Appellate Court are upheld.

The present appeal is dismissed being devoid of any merits.

3rd October, 2017

Manju

**(RAJBIR SEHRAWAT)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No