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

**RSA No. 1673 of 2010 (O&M)
Decided on: 07.09.2017**

Dial Singh and others

.....Appellants

versus

Jasbir Kaur and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. V.K. Sandhir, Advocate,
for the appellants.

Mr. Tarundeep Kumar, Advocate
for respondent No. 1.

Rajbir Sehrawat, J.(Oral)

1. The present appeal has been filed, by the original defendant No. 2 and the legal representatives of defendant No. 3 in the suit, against the judgment and decree passed by the lower Appellate Court whereby through reversal of the judgment and decree of the Trial Court, the suit filed by the present respondent-plaintiff was partly decreed.
2. The brief facts of this case are that Sawan Singh @ Swaran Singh was the owner of the suit land. He had three sons namely, Sardara Singh, Gurmukh Singh and Bawa Singh. These three sons inherited the land from Swaran Singh measuring 88 Kanals 3 marlas. The plaintiff-Jasbir Kaur claimed to be the only daughter of one of the sons, namely, Gurmukh Singh and on account of death of Gurmukh Singh, she claimed half share of the property of Gurmukh Singh, the remaining having left with her mother, Swaran Kaur.

3. It is also to be noted that Swaran Kaur was originally the wife of Sardara Singh. However, after the death of Sardara Singh, she performed a marriage, in the form of *Chandder Andazi* in the presence of Guru Granth Sahib, with Gurmukh Singh. The plaintiff claimed to be born out of the wedlock of Gurmukh Singh and Swaran Kaur and claimed to be the only daughter born out of this wedlock. However, even Gurmukh Singh expired later on and this Swaran Kaur again performed marriage, as *Chandder Andazi* in the presence of Guru Granth Sahib, with Bawa Singh. The plaintiff-Jasbir Kaur claimed the half share from the property of her father-Gurmukh Singh described in the headnote of the plaint. It deserves to be mentioned here that there was no dispute regarding the inheritance of the other two brothers namely, Sardara Singh and Bawa Singh. The dispute related to inheritance of third brother Gurmukh Singh only, whose only daughter-plaintiff claimed to be.
4. On the notice being given, the defendants denied the claim of the plaintiff asserting that the plaintiff-Jasbir Kaur was not the daughter of Gurmukh Singh. Even the claimed mother of the plaintiff, i.e., Swaran Kaur, who was impleaded as defendant No. 2 in the suit also filed a written statement denying the assertions of the plaintiff to be her daughter.
5. The parties led their respective evidence. After appreciating the evidence and hearing the parties, the learned Trial Court dismissed the suit filed by Jasbir Kaur by holding that she was not proved to be the daughter of Gurmukh Singh.

6. The plaintiff filed the appeal before the lower Appellate Court. The lower Appellate Court partly allowed the appeal filed by the plaintiff and granted a share in the property of Gurmukh Singh. However, the lower Appellate Court also recorded the finding that defendant No. 4, namely, Amarjit Kaur was also daughter of Gurmukh Singh. Therefore, she would also be entitled to inherit the properties of Gurmukh Singh. Hence, the lower Appellate Court passed a decree granting 1/3rd share each to plaintiff Jasbir Kaur, as daughter, Swaran Kaur-defendant No. 2 as wife and Amarjit Kaur defendant No. 4, as second daughter of Gurmukh Singh.
7. No appeal was preferred against the judgment and decree of the lower Appellate Court by the plaintiff Jasbir Kaur against reduction of her share in the property of Gurmukh Singh by granting the share to defendant No. 4 Amarjit Kaur as daughter of Gurmukh Singh.
8. However, aggrieved of the judgment and decree passed by the lower Appellate Court, defendants No. 2 and 3 have filed the present appeal.
9. While arguing the case, learned counsel for the appellant has argued that plaintiff-Jasbir Kaur has not been able to prove that she was the daughter of Gurmukh Singh born out of the wedlock of Gurmukh Singh and Swaran Kaur. He has pointed out certain discrepancies in the statements of witnesses which were examined to prove the factum of the plaintiff-Jasbir Kaur being the daughter of Gurmukh Singh and claimed that the findings recorded by the lower Appellate Court are perverse.

10.As is mentioned above, appellant No. 1-Dial Singh, who was the defendant No. 3 in the suit, has no relation with the properties of Gurmukh Singh. He is the descendent from other line in the family i.e. son of Sardara Singh. Likewise, even the appellant No. 3-Swaran Kaur has no concern with the property of Gurmukh Singh in her capacity as wife of Bawa Singh, a status which she claimed to have acquired after death of Gurmukh Singh. However, since she was married to Gurmukh Singh also before Bawa Singh, therefore, she has a claim qua the property of Gurmukh Singh. The dispute is regarding the extent of her this right only

11.To deny any right in the property of Gurmukh Singh, to plaintiff-Jasbir Kaur, appellant No. 3 along with other appellants – defendants tried to assert that plaintiff-Jasbir Kaur is not the daughter of Gurmukh Singh born out of the wedlock of Gurmukh Singh with Swaran Kaur, the appellant No. 3/defendants in the suit. However, the respondent No.1-Jasbir Kaur as plaintiff led sufficient evidence in the form of documents from the school record and also produced the school authorities to prove the same. Not only that, the plaintiff-Jasbir Kaur also produced witnesses from the village to prove the factum that she was the daughter of Gurmukh Singh born out of the wedlock of Gurmukh Singh and Swaran Kaur. Therefore, the plaintiff succeeded in proving that she was the daughter of Gurmukh Singh. Although the counsel for the appellants has tried to point out certain discrepancies in the statement made by these witnesses which were produced to prove the factum of the plaintiff Jasbir Kaur being the daughter of

Gurmukh Singh, however, these discrepancies do not go to the root of the fact. These discrepancies are only peripheral and are quite natural in a testimony which was taken after several years of the event. Not only the evidence of the plaintiff proves that she was the daughter of Gurmukh Singh, even the witnesses examined by the defendants have admitted that Jasbir Kaur-plaintiff was the daughter of Gurmukh Singh. DW-1, Baljit Kaur admitted in her cross examination that she knew Jasbir Kaur-plaintiff and also admitted that Swaran Kaur is the mother of Jasbir Kaur-plaintiff. Even Amarjit Kaur-defendant No. 4 appeared as DW-2 and she admitted that the plaintiff-Jasbir Kaur is the daughter of Gurmukh Singh. Not only this; even the legal representatives of defendant No. 1-Bawa Singh, while appearing as witnesses before the Court, admitted in cross examination that Jasbir Kaur is the daughter of Gurmukh Singh. In view of this, no doubt is left that Jasbir Kaur is the daughter of Gurmukh Singh.

12. Not only this, Swaran Kaur, whom the plaintiff claimed to be her mother, was the defendant in the suit. She filed a written statement denying that the plaintiff was her daughter. However, she did not have the courage to appear as a witness before the Court and to say the same thing on oath before the Court. She did not appear as the witness to own her pleadings. Therefore, the adverse inference has to be drawn in that matter. She could have been the best witness to deny having given birth to the plaintiff. However, she could not muster the courage to make this claim before the Court and to face the cross examination on that point. Therefore,

there is nothing wrong in the findings recorded by the lower Appellate Court that plaintiff-Jasbir Kaur is the daughter of Gurmukh Singh and she is entitled to inherit the property coming from Gurmukh Singh along with her mother.

13.So far as coming share to Amarjit Kaur, defendant No. 4, in the properties of Gurmukh Singh is concerned, it deserves to be mentioned here that although she has not filed any counter claim claiming any share in the property of Gurmukh Singh, however it is also equally true that even Jasbir Kaur has not filed any appeal against the judgment and decree passed by the lower Appellate Court to dispute the right of defendant No. 4 in the property of Gurmukh Singh. This means that she has finally accepted the defendant No. 4 to be her sister. Therefore, there is nothing wrong if the three descendants of Gurmukh Singh namely plaintiff-Jasbir Kaur and Amarjit Kaur-defendant No.4 as the daughters and Swaran Kaur-appellant No.3 herein, who is the admitted wife of Gurmukh Singh.

14.No other point was argued.

15.In view of the above, there is no illegality or perversity in the findings recorded by the learned lower Appellate Court. Therefore, the judgment and decree passed by the lower Appellate Court are upheld and the present appeal is dismissed being devoid of any merits.

7th September, 2017

shabha

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	No