

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

**CM-11409-C of 2012 in/and
RSA No.4161 of 2012 (O&M)
Date of decision : 24.08.2017**

Bir Chand and others

..... Appellants

versus

Karam Chand and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.K.Handa, Advocate
for the applicants-appellants.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Gagandeep Singh Virk, Advocate
for respondents No.1 to 4.

AJAY TEWARI, J.(ORAL)

CM-11409-C of 2012

For the reasons recorded in the application, the same is allowed
subject to all just exceptions. Delay of 21 days in re-filing the appeal is
condoned.

RSA No.4161 of 2012

This appeal has been filed against the judgment of the lower
Appellate Court reversing that of the trial Court and thereby dismissing the
suit filed by the appellants.

The brief facts are that the joint ancestor was Mangal who had three sons, namely Jai Ram, Dattu and Bhola. Jai Ram was married to Punni Devi and had one son-Lachhman. Jai Ram died around the time India got independence. Thereafter Dattu also died on 08.01.1953. The claim of the appellants is that they would also be entitled to inherit the property of Dattu alongwith the son of Jai Ram. The case of the respondents on the other hand was that after the death of Jai Ram his wife Punni Devi had contracted kareva marriage with Dattu (and this had happened more than 60 years ago) and that is why after the death of Dattu on 08.01.1953 his entire property was mutated in the name of Punni Devi showing her to be his wife. As per the respondents, on 21.06.1960 Punni Devi gifted the entire property which she had inherited from Dattu in favour of her son Lachhman whose legal representatives the respondents are. The trial Court held that the respondents were not able to prove the kareva marriage of Punni Devi with Dattu and consequently decreed the suit. The lower Appellate Court, in my opinion took a more correct view and noticed that once the marriage was alleged to have taken place more than 60 years ago it would be impossible for the respondents to have produced any direct evidence and held that at this point of time it would not be irrelevant to consider the direct evidence about the way in which Dattu and Punni Devi were being perceived by society. The lower Appellate Court noticed that PW-2 a witness of the appellants (who was about 80 years old when he gave evidence) had admitted that he had seen Punni Devi and Dattu living as husband and wife. The lower Appellate Court noticed that PW-6 also admitted that in their community there was a practice of kareva marriage. The Appellate Court

recorded as being the wife of Dattu. The lower Appellate Court also noticed that the 3rd surviving brother Bhola never filed civil suit against Punni Devi or the gift deed made by Punni Devi in favour of her son-Lachhman. It was on the cumulative analysis of all these circumstances that the lower Appellate Court held that the trial Court was wrong in expecting direct evidence of kareva to have come on the record and held that by a preponderance of probability the respondents had been able to prove, if not the actual kareva marriage, atleast the relationship which was there between Punni Devi and Dattu.

Learned counsel for the appellants has argued that the approach of the trial Court was correct and once the respondents had alleged that there was a kareva marriage between Punni Devi and Dattu it was incumbent upon them to have proved it. He has argued that the reason why no action was taken by the third brother was because even till date the property continues to be joint. That, however, that is not a complete answer. In my opinion, the argument of learned counsel for the appellants may have applied if the suit had been filed within some period of time where direct evidence of the kareva marriage was available. Once the suit was filed after 60 years it was not unreasonable for the lower Appellate Court to come to the conclusion that the absence of direct evidence of the kareva marriage would not be the determinative factor in the case.

In the totality of circumstances, I regret my inability to agree with the arguments of learned counsel for the appellants that the approach of the trial Court represented the correct position in law while that of the lower appellate Court is wrong.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

24.08.2017
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No