

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

R.S.A. No.5300 of 2012 (O&M)

Date of Decision:- 10.05.2017

Smt. Phool Kaur

....Appellant

vs.

State of Haryana and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Amita Gupta, Advocate,
for the applicant-appellant.

Mr. D.K. Mittal, DAG, Haryana,
for respondent No.1-State.

Mr. Zahid Hanief, Advocate,
for respondents No. 2 to 4.

DAYA CHAUDHARY, J.

Appellant Smt. Phool Kaur has filed the present regular second appeal before this Court to challenge the judgment and decree dated 24.11.2011 passed by the Civil Judge (Junior Division), Gurgaon and judgment and decree dated 28.9.2012 passed by the learned Additional District Judge, Gurgaon.

Briefly, the facts of the case as made out in the present regular second appeal are that the appellant/plaintiff filed a suit for declaration that her son Yogender @ Pinki had been missing since 2.11.2000. He was handicapped as he could not speak since childhood and was mentally retarded. He was married to Smt. Sushila. Out of that wedlock, two children namely, Jawahar Singh (son) and Samrita (daughter) were born.

Appellant pleaded that her son is no more in this world as he had suffered civil death. He was having 5.1/2 acres of agricultural land. The suit as well as the appeal were dismissed by both the Courts below. The property left by Yogender @ Pinki is now in the hands of respondents No. 2 to 4. In case, it is declared by this Court that Yogender @ Pinki is no more in this world, then his succession would open and the appellant, being mother, would also be entitled to 1/4th share which comes to 1.25 acres of land.

Notice of motion was issued in this appeal on 18.2.2013. The case was adjourned for 5.3.2014 on request of learned counsel for respondent No.2 to get instructions in the matter as there was possibility of compromise between the family members being closely related. Thereafter, appeal was admitted on 28.3.2014.

During the pendency of the appeal, C.M. No.8094-C of 2015 was filed wherein notice was issued on 22.7.2015. Thereafter, the order for hearing of the main appeal was passed on 7.9.2016. Subsequently C.M.No. 1250-C of 2017 was filed for fixing the main appeal for hearing. It is mentioned in said application that son of appellant is presumed to be dead as he is missing since 2.11.2000 and a period of more than 16 years had passed. Son of appellant Yogender @ Pinki was handicapped and he could not speak since his childhood. FIR No. 153 dated 19.5.2001 was registered under Section 364 IPC at Police Station Sadar, Rohtak stating that said Yogender @ Pinki was kidnapped from the house of his sister Smt. Samrita. His whereabouts were not known for the last more than 16 years. As per provisions of Section 108 of the Indian Evidence Act, 1872, Yogender @ Pinki is presumed to be dead. It is also mentioned in the application that

the appellant is 89 years of age and the case be listed for final hearing on some actual date.

The case came up for hearing on 29.3.2017 and learned counsel for the applicant-appellant submitted that a compromise had been arrived at between the parties and same has been affirmed by learned counsel for respondents No. 2 to 4. Respondent Nos. 2 to 4, namely, Jawahar, Smt. Samrita, Smt. Sushila were also present in the Court, who were identified by their counsel. The case was adjourned on request of learned State counsel to verify the status of the FIR.

Status report has been filed by learned State counsel wherein it has been submitted that the matter was investigated by the police. During investigation, Police Station Sadar, Rohtak broadcasted the description of missing person and pamphlets were also pasted at different places. Notices were sent under Section 160 Cr. P.C. to the persons mentioned in the FIR, namely, Jawahar, son of Yogender @ Pinki, Smt. Samrita-daughter and Smt. Sushila, wife of missing Yogender @ Pinki. Notices were also sent to Rajesh son of Jai Bhagwan, Balwan son of Gyashu, residents of village Khor Tehsil Pataudi, Jawar alias Matta son of Ram Sharan, resident of village Pataudi, Balle son of Kali Ram resident of Village Gadholi and Seema daughter of Mahabir resident of Village Rithal Phought to come present in the police station.

In pursuance of notices issued under Section 160 Cr.P.C., all persons appeared in the Police Station and joined investigation. They were interrogated but they did not give any clue regarding missing of Yogender @ Pinki. Thereafter, Deputy Superintendent of Police, Meham also

interrogated said persons but still no clue was found. Sh. Mahender Singh, Ex. Sarpanch along with seven persons of Village Khor, Tehsil Pataudi, District Gurgaon disclosed before the police regarding dispute between the parties but they also could not tell anything about disappearance of Yogender @ Pinki. The investigation of the case was handed over to Crime Investigation Agency, Rohtak but no clue was found regarding missing person. Thereafter, untrace report was filed as whereabouts of disappeared person could not be traced out.

Learned counsel for the appellant as well as learned counsel for respondents No. 2 to 4 have affirmed the factum of compromise arrived at between the parties. Respondents No. 2 to 4, namely, Jawahar, Smt. Samrita and Smt. Sushila, son, daughter and wife of Yogender @ Pinki respectively have been specifically asked about the compromise by the Court and they have affirmed the factum of compromise. Said persons have been identified by their counsel.

Both the parties have specifically stated that a compromise has been arrived at between them and they are satisfied with that. They are not interested in pursuing the litigation. Said compromise deed has been signed by Smt. Sushila, Smt. Samrita and Jawahar in the presence of two witnesses. Compromise arrived at between the parties is reproduced as under:-

“We Sushila wife of Late Yoginder @ Pinki, Jawahar son of Late Yoginder @ Pinki and Smt. Samrita daughter of Yoginder @ Pinki have entered into compromise with Smt. Phool Kaur wife of Late Dalel

Singh, whereby we have agreed to get her suit for declaration that late Yoginder @ Pinki be presumed dead be decreed in her favour as Yoginder @ Pinki is missing since 21.1.2000 i.e. for past 16 years and 5 months. We have not been able to trace Yoginder @ Pinci till date. We have further agreed to give her one-fourth share in property of late Yoginder @ Pinki.

Sd/-Witnesses

Sd/- Sushila, Jawahar, Samrita”

A perusal of compromise shows that it has been settled that Smt. Sushila, Smt. Samrita and Jawahar have agreed to give one fourth share in the property of late Yogender @ Pinki to appellant-Smt. Phool Kaur (mother of Yogender @ Pinki). In my considered view the compromise is in accordance with the provisions of Order 23 CPC. There is no legal impediment in the same. It is also in the interest of the parties and justice. Compromise entered into between the parties is taken on record and is accepted. Parties are bound by the terms of the compromise.

Accordingly, in view of compromise arrived at between the parties, the appeal is disposed of in terms of compromise. The compromise arrived at between the parties shall form part of decree. Decree sheet be drawn accordingly.

May 10, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No