

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3255 of 2013(O&M)

Date of Decision: 11.1.2017

Union of India & anr.

... Appellants

Versus

Bharti Rani & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. KK Chahal, Advocate,
for appellant No.1-UOI.

Mr. Sandeep Arora, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J.

C.M. No.8757-C of 2013

For the reasons in the application, delay of 110 days in filing the appeal is condoned.

Application stands disposed of.

RSA No. 3255 of 2013(O&M)

Heard the learned counsel for the parties at some length.

The Union of India has appealed against the order dated September 12, 2009 passed by the learned Civil Judge, Junior Division, Jalandhar in Civil Suit No.134 of 2002 and the order in first appeal passed by the learned Additional District Judge, Fast Track Court, Jalandhar, decreeing the suit of the plaintiffs, who are the offspring of Makhan Singh and Bharti Rani claiming a share in family pension and other retiral benefits through their father Makhan Singh, a BSF employee who died in harness.

The Trial Court has held that the marriage between Makhan Singh and

Bharti Rani is void and therefore, the lady is not entitled to a share in family pension but plaintiffs No.2 to 5 being the legitimate children of their parents would be legally entitled to a share in family pension with the legally wedded wife and her children through Makhan Singh. A direction has been issued to the 1st defendant-Union of India to release share of plaintiffs No.2 to 5 in the family pension of deceased Makhan Singh in their favour. By partly decreeing the suit, the learned Additional District Judge has agreed with the reasoning of the trial Court while relying on Section 16 of the Hindu Marriage Act, 1955 which confers legitimacy of children of void and voidable marriages whether the child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under the Act and whether or not the marriage is held to be void otherwise than on a petition under this Act. The argument raised by the appellant BSF/IOI that rules of service do not permit splitting up of the claim like this, is wholly fallacious and untenable. We are concerned here with the law of succession and the rights conferred by Section 16 HMA when property is not ancestral in nature but was the self acquired of the deceased employee which forms part of his estate left behind intestate.

In view of the settled legal position, the judgments and the decree of the Courts a quo do not suffer from any error and accordingly the present appeal must fail with the observation that it is misconceived, frivolous and a sheer waste of public money and time of the court where the Union of India in the BSF appears to be totally ignorant of the law of the land on the subject. Moreover, I am told that the first family of late Makhan Singh has not challenged the decree in appeal which is final qua them.

I would, therefore, dismiss this appeal with costs of ₹20,000/-
to be paid to the plaintiffs No.2 to 5, who are the respondents herein.

(RAJIV NARAIN RAINA)
JUDGE

11.01.2017
monika

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>