

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

**RSA-1509-2016 (O&M)  
Date of Decision:- 03.10.2017**

**Sukhwinder Singh**

**.....Appellant**

**Versus**

**Parvinder Singh through mother and another**

**.....Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. R.S. Chauhan, Advocate,  
for the appellant.

Mr. Gulzar Mohd., Advocate,  
for the respondents.

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**RITU BAHRI, J. (Oral)**

**CM-4185-C-2016**

After hearing the learned counsel for the parties, going through the record, to my mind, since there are sufficient grounds, so, the leave to appeal is granted to the petitioner.

**CM-4184-C-2016**

For the reasons mentioned therein, the application is allowed. Delay of 18 days in filing the present appeal is hereby condoned.

**RSA-1509-2016**

Appellant has come up in Regular Second Appeal against the judgment and decree passed by both the Courts below whereby the suit filed by Parvinder Singh for declaration to the effect that Sukhwinder Singh son of Shri Major Singh is presumed to be dead having not heard for a continue period of seven years and his share in the land mentioned in the plaint situated in the revenue estate of village Nandanpur, Tehsil and District Jalandhar, as entered in the jamabandi for the years 2003-04, devolved on the plaintiff and defendant No.1 in equal shares.

The land in dispute originally owned and possessed by Major Singh father of the appellant. After his death, the land measuring 22 kanal 13 marlas was devolved upon his four legal heirs in equal shares to the extent of 5 kanal 13 marlas each. His legal heirs are Simar Kaur, Tarsem Singh, Tarsem Kaur and Sukhwinder Singh. On the death of Simar Kaur, her share in the suit property to the extent of 5 kanals 13 marlas had devolved upon her two sons, namely, Tarsem Singh and Sukhwinder Singh and daughter Tarsem Kaur in equal share and now they became owner to the extent of 7 kanal 13 marlas each. Tarsem Singh father of the plaintiff and brother of the appellant had sold his share i.e. 7 kanal 10 marlas and similarly Tarsem Kaur sold 5 kanal 13 marlas out of her share and her share remained only 1 kanal 17 marlas. Sukhwinder Singh inherited 7 kanals 10 marlas of land out of the suit property.

Sukhwinder Singh had disappeared on 24.10.1995 and despite best efforts to locate him, he could not be found. In this regard, DDR No.22 dated 12.11.1995 was registered at Police Station Maqsudan.

From the pleadings of the parties, the following issues were

framed by the learned trial Court: -

1. Whether plaintiff is entitled to relief of declaration as prayed for? OPP
2. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the present suit is bad for non-joinder of necessary parties? OPD
6. Whether petitioner has not come to the court with clean hands? OPD
7. Whether the suit of the plaintiff is barred by the law of limitation? OPD
8. Whether proper court fee has not been affixed and as such suit is liable to be dismissed because of the deficiency of the court fee? OPD
9. Relief.”

The trial Court decreed the suit and returned the findings that Sukhwinder Singh had not been heard for the last 7 years and no evidence was led by the defendants that he was heard of. The plaintiff, being son of Tarsem Singh, was held entitled to be share of ½ share as Sukhwinder Singh since declared to be dead, unmarried and childless. Divorce deed (Ex. D1) between father of the plaintiff and mother would not debar him from inherited the property of Sukhwinder Singh as he was minor at that time.

Aggrieved by the judgment and decree of the trial Court, an appeal was filed by Tarsem Kaur and the finding of facts recorded by the learned trial Court was upheld by the Lower Appellate Court.

The present appeal has been filed by appellant-Sukhwinder

Singh himself, taking the plea that he has now appeared and judgments of both the Courts below are liable to be quashed as he still alive and cannot be presumed to be dead.

During the course of hearing of connected case bearing RSA-117-2016, on 28.07.2016, Mr. Mehar Chand son of Sawan Ram, Lambardar of village Nandanpur, Jalandhar and Shr. Ram Sarup, who is member of Gram Panchayat, village Nandanpur, Jalandhar, have appeared in the Court and they have tendered their identity cards. They have identified Sukhwinder Singh, who was present in the Court and stated that he had been missing for the last more than seven years. Appellant-Tarsem Kaur was present in Court also identifies her brother Sukhwinder Singh (present appellant). Thereafter, the District & Sessions Judge, Jalandhar was directed to submit a fact-finding report of inquiry in the aforesaid context after collecting material evidence preferably within a period of two months.

Pursuant to the said order, a detailed fact-finding report dated 14.12.2016 has been sent by the District & Sessions Judge, Jalandhar.

Perusal of the above-said report shows that the identity of the present appellant Sukhwinder Singh has been duly proved by examining the video-graphic CD and photographs of marriage of Paramjit Kaur (sister-in-law of Sukhwinder Singh), who admitted that in her marriage, the photographs were clicked and the said photographs are in her possession. She admitted that photograph of Sukhwinder Singh was also clicked as he had also attended the said marriage.

RW-2 Kuljit Kaur, who is real sister of Paramjit Kaur, has also admitted the fact that Tarsem Singh arranged the photographer to snap the photographs of the marriage but the photographs have not been produced, hence, an adverse inference stands against Paramjit Kaur.

Sukhwinder Singh has produced a copy of Aadhar card EX.E3 where his date of birth was mentioned as 20.4.1978. He was also involved in a case under Section 107/151 Cr.PC, registered vide DDR No.19 dated 4.1.2016 at Police Station Kum Kalan, District Ludhiana and the copy of the calendar is Ex.E1.

After hearing the learned counsel for the parties and after perusing the detailed fact-finding report dated 14.12.2016, this Court is of the view that the identify of appellant-Sukhwinder Singh has been duly established, therefore, keeping in view the said report, the impugned judgment and decree passed by both the Courts below are hereby set aside.

Accordingly, the present Regular Second Appeal is allowed.

( RITU BAHRI )  
JUDGE

October, 03, 2017  
naresh.k

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether reportable        | No  |