

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.2874 of 2016

Date of decision:11.7.2017

Amar Kaur

...Appellant

Versus

Charanjit Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.H.S.Bath, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgments and decrees passed by the learned courts below, recording their concurrent findings of facts, dismissing the suit for declaration of the plaintiff by the learned trial court as well as dismissal of her first appeal by the learned first appellate court, she has approached this court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned appellate Court in para 2 of its impugned judgment, are that the present appellant Amar Kaur instituted a civil suit against the present respondent Charanjit Kaur for seeking declaration that she was owner in possession being co-sharer of the suit land, as described and detailed in the suit, situated in the revenue estate of Village Killa Kavi Santokh Singh, Tehsil and District Taran Taran, being the sole legal heir of her deceased son Rajwinder Singh, in the alternative suit for seeking joint possession of the suit land being co-

sharer and for seeking joint possession of the suit land being co-sharer and for seeking declaration that Mutation No.2459 sanctioned of the inheritance of deceased Rajwinder Singh in favour of respondent Charanjit Kaur was illegal, null and void and for permanent injunction restraining the defendant from alienating the suit land further.

Stated briefly, the case of the plaintiff was that Rajwinder Singh was owner in possession of the suit land. He expired on 17.7.2008 issue-less and widow-less without performing any marriage. After his death plaintiff, being his mother and sole Class-I Legal Heir, was entitled to succeed to his estate. Defendant at the back of the plaintiff got sanctioned Mutation No. 2459 regarding inheritance of the estate of deceased Rajwinder Singh in her favour in connivance with unknown persons by impersonating the Village Nambardar Santokh Singh. She never married Rajwinder Singh during his life time. Plaintiff came to know in the first week of April, 2010 regarding the same.

Having been put to notice, defendant appeared and filed her contesting written statement, raising more than one preliminary objections. Defendant Charanjit Kaur also filed a separate suit for permanent injunction, restraining the defendants in her suit from digging the earth from the land owned by her husband Rajwinder Singh.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is owner in possession being co-sharer of 385/1940 share out of land as stated in the head note of plaint situated in the revenue estate of Killa Kavi Santokh Singh, Tehsil and District Taran Taran? OPP

2. Whether the plaintiff is entitled to joint possession of the land as detailed in the head note of plaint?OPP
3. Whether the plaintiff is entitled to declaration as prayed for?OPP
4. Whether the plaintiff is entitled to permanent injunction restraining the defendant from selling, alienating or creating any kind of charge on the suit property and also restraining the defendant from intyerfering in any manner in the lawful and peaceful exclusive possession of plaintiff?OPP
5. Whether the suit is not maintainable?OPD
6. Whether the plaintiff has not come to the court with clean hands, if so its effect?OPD
7. Whether the plaintiff has got no locus standi to file the present suit?OPD
8. Whether the plaintiff suit is misuse and abuse of process of law?OPD
9. Relief?

Since no appeal has been filed by respondent-Smt. Charanjit Kaur against the dismissal of her suit, issues framed by the learned trial court in her case are not being referred here. With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that both the plaintiffs have failed to to prove their respective pleadings in their respective suits filed by them. Accordingly, both the suits were dismissed by the learned trial court, vide its common

impugned judgment and decree dated 22.7.2014. Only the present appellant filed her first appeal, however, the same was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 3.2.2016. Hence this second appeal, at the hands of the unsuccessful plaintiff.

Heard learned counsel for the appellant.

A bare perusal of the impugned judgments and decrees passed by both the learned courts below would show that the present one was a case of no evidence. Plaintiff-appellant miserably failed to prove her pleaded case to the effect that her son Rajwinder Singh died unmarried. On the other hand, defendant Smt.Charanjit Kaur successfully proved that she was legally wedded wife of late Shri Rajwinder Singh. The dispute between the parties was qua the estate of late Shri Rajwinder Singh left behind by him. Plaintiff-appellant being the mother of Rajwinder Singh was claiming to be the sole legal representative of Rajwinder Singh. Defendant-respondent Charanjit Kaur was claiming herself to be the legally wedded wife of Rajwinder Singh and inheritance after the death of her husband.

Appellant being the plaintiff, onus was on her to prove her pleaded case, but she failed to do so. Having been left with no other option, the learned trial Court dismissed the suit and the judgment and decree dated 22.7.2014 rendered by the learned trial court were also rightly upheld by the learned Additional District Judge, while dismissing the first appeal of the plaintiff-appellant. Having said that, this Court feels no hesitation to conclude that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, the learned first

appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 19 to 21 of its impugned judgment, which deserve to be noticed here, read as under:-

“Weighing the evidence on record on the basis of preponderance of probabilities coupled with the statement of Head Granthi of village Gurdwara, where the religious rites of the marriage had taken place coupled with the marriage invitation card Ex. D1 and the photographs Ex. D2 to Ex. D4. It stands sufficiently established on record that the marriage of Charanjit Kaur respondent had taken place with Rajwinder Singh on 17.7.2007 at Brar Mariage Palace, Talwandi Road, Mudhki, District Ferozepur, and now on account of some reasons best known to appellant Amar Kaur, she is disputing the said fact.

The death of Rajwinder Singh has also taken place due to burn injuries on account of setting up on fire whose true facts have again not come on record. Though for proving the photographs their negatives and the photographer, who has clicked the photographs and developed the negatives, is required to be examined, however, in absence of it the photographs produced on record in original do have some corroborative value. The law relied upon by the learned counsel for the appellant is not applicable to the facts and circumstances of the present case. The marriage has been performed on as per Sikh rites and not Hindu rites.

In these facts and circumstances and in the light of said discussion and observations, wherein two close relatives of the deceased Rajwinder Singh deposing in favour of respondent, the Ex-Sarpanch of village of residence of Rajwinder Singh deposing in favour of respondent, supported by marriage invitation Card, the statement of the Head Granthi of village

Gurdwara where religious rites has taken place and the corroborative value of photographs, it stands duly established on record that Charanjit Kaur respondent definitely got married with Rajwinder Singh on 17.7.2007 and accordingly, she is legally wedded wife and upon his death is the Class-I Legal Heir alongwith the appellant Amar Kaur to inherit the estate of deceased Rajwinder Singh, which has already taken place in case in hand as per the Mutation No. 2459.”

Defendant-Smt.Charanjit Kaur brought on record sufficient evidence in the form of Exhibits D1 to D4 with a view to prove her marriage with Late Shri Rajwinder Singh and she successfully proved this crucial aspect, which led to passing of the impugned judgments and decrees in her favour. On the other hand, plaintiff-appellant could not bring on record the relevant and cogent evidence so as to discharge her onus, being the plaintiff. In such a situation, she was rightly non suited by both the learned courts below and no fault can be found with the impugned judgments and decrees, which deserve to be upheld, for this reason also.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus***

Purshottam Tiwari, 2001 (3) SCC 179.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

11.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

