

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 221

Regular Second Appeal No.1486 of 2014 (O & M)
Date of Decision: July 24, 2017

Jangir Singh (deceased)

..... APPELLANT

VERSUS

Punjab State through District Collector, Mansa & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. J.P.S. Sidhu, Advocate, for the appellant.

Ms. Sudeepti Sharma, Additional Advocate General,
Punjab.

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Jaspal Singh, J

CM No.3550-C of 2014

Heard.

Delay of 46 days in filing the appeal is condoned.

Application is allowed.

RSA No.1486 of 2014

1. The instant appeal has been preferred by the appellant – plaintiff against judgment & decree dated November 30, 2012 passed by the Civil Judge (Senior Division), Mansa, whereby suit for declaration & mandatory injunction has been dismissed as well as judgment & decree dated September 03, 2013 passed by the District Judge, Mansa, whereby

2. Shortly put, facts giving rise to the instant appeal are that Jangir Singh – plaintiff instituted a suit for declaration and mandatory injunction submitting that he was husband of Bhagwan Kaur (deceased), who voluntarily retired on February 28, 1999 from the post of Ward Attendant in Mata Kaushalaya Government Hospital, Patiala. She expired on October 07, 2008. However, before her death, pension was transferred from Punjab & Sind Bank, Patiala to Punjab National Bank, Branch Budhlada, District Mansa, upon her request under Savings Account No.00780-0109/17857. It is the case of plaintiff that after demise of Bhagwan Kaur, he is entitled to family pension being her husband and his name was duly mentioned in her service record as well as pension papers. Plaintiff submitted that he is having no source of livelihood. Plaintiff is being looked after by her daughter Manjit Kaur (unmarried) who is working at PHC Malikpur Khiala, District Mansa. Plaintiff is also having his son namely Zora Singh. Plaintiff pleaded that Manjit Kaur and Zora Singh being beyond norms, are not entitled to family pension, it be sanctioned in his favour with effect from the date of death of Bhagwan Kaur i.e. October 07, 2008. Death certificate No.0415838 dated October 22, 2008 of Bhagwan Kaur bears the name of Jangir Singh. The name of Bhagwan Kaur finds mention in Ration card No.51 at Malikpur in the family card of Manjit Kaur (now wife of Jarnail Singh). Plaintiff and his wife Bhagwan Kaur used to live with their daughter Manjit Kaur at Zirimandi, Ward No.1, Budhlada. The action of respondents – defendants depriving the plaintiff of family pension is illegal, malafide and against service/pension rules. Consequently, he preferred a civil suit claiming family pension w.e.f. October 07, 2008 alongwith interest @ 18% per annum on delayed payments.

3. Respondents – defendants contested the suit. Defendant Nos.1 and 2 filed joint written statement taking preliminary objections with regard to locus standi and cause of action etc. On merits, it was submitted that Bhagwan Kaur voluntarily retired on February 28, 1999 from Mata Kaushalaya Government Hospital, Patiala. Pension was sanctioned in her name. At the time of submitting the pension papers, she submitted her own photograph with the Department, instead of submitting a joint photograph with plaintiff. During her service, she availed Earned Leave from November 04, 1993 to November 22, 1993 on account of death of her husband. Bhagwan Kaur never submitted her Ration Card with the Department depicting that plaintiff is her husband. Therefore, plaintiff is not entitled to family pension.

4. Defendant No.5 filed separate written statement taking objections that suit is bad for non-joinder of necessary party i.e. Union of India as the office of defendant No.5 comes under the control of Union of India. Notice under Section 80 CPC was not served upon defendant No.5 which is mandatory as per law. On merits, it was submitted that Bhagwan Kaur (deceased) voluntarily retired on February 28, 1999 from the office of defendant No.2. As per list of family members which was signed by her and countersigned by her Pension Sanctioning Authority i.e. defendant No.2, status of her husband was mentioned as Late Shri Jangir Singh and her daughter and son were married.

5. From the pleadings of parties, issues were framed. Parties led evidence in support of their cases. After hearing learned counsel for the parties and perusing the documents on record, trial court dismissed the suit of plaintiff vide judgment & decree dated November 30, 2012. Aggrieved

dated September 03, 2013 passed by the lower appellate court. Now, plaintiff has approached this Court challenging the aforesaid judgments & decrees passed by the courts below, through the instant regular second appeal.

6. Learned counsel for the appellant has argued that impugned judgments & decrees passed by the courts below are against the law & facts and principles of natural justice. Misreading & misappreciation of evidence as well as legal proposition has resulted into miscarriage of justice. The courts below have gravely erred in dismissing the suit filed by the appellant only on the ground that deceased Bhagwan Kaur had mentioned in her leave application form that she is taking leave due to death of her husband, even though the form was not filled by her. She only can sign in Punjabi. Respondents, without even verifying the facts & without conducting any enquiry whether her husband is alive or not, denied the family pension to appellant. Appellant - Plaintiff proved his identity by leading sufficient evidence but the same has been ignored by the courts below. The judgments & decrees passed by both the courts are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal.

7. Per contra, learned counsel for the respondents – State has supported the judgments passed by the courts below submitting that the same are absolutely in consonance with the settled canons of law and evidence available on record. The appeal preferred by the appellant being devoid of merits is liable to be dismissed.

8. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and perused the documents available on file but does not find any legal or factual substance

9. Admittedly, Bhagwan Kaur retired voluntarily from Mata Kaushalaya Government Hospital, Patiala and her pension was sanctioned. As per her service record i.e. Form No.1, she has been shown as wife of one Jangir Singh, who is resident of Ward No.1, near Surjit Singh, M.C. Budhlada Mandi, VPO Budhlada, District Mansa. Plainiff has failed to prove that he ever resided at such place. Rather, during his cross-examination, he deposed that he is residing at village Chak Ram Singh Wala. Service record of Bhagwan Kaur shows that she availed Earned Leave w.e.f. November 04, 1993 to November 22, 1993 on the pretext of death of her husband Jangir Singh. Moreover, service record of Bhagwan Kaur shows the status of her husband as 'late Jangir Singh', meaning thereby that Jangir Singh, husband of Bhagwan Kaur, is already dead. PW-2 Hardev Singh and PW-3 Karnail Singh stated that after her retirement, Bhagwan Kaur was residing at Patiala alongwith her children. Plaintiff relied upon photocopy of Ration Card (Ex.P3) issued in the name of Jarnail Singh son of Kuna Singh, resident of Malikpur Khiala. Ex.P3 has already been discarded by the courts below on the ground that during his corss-examination, plaintiff himself admitted that he is residing at village Chak Ram Singh Wala since day one, whereas as per Ex.P3, he is claiming that he is residing at village Malikpur Khiala. Moreover, he could not tell whether Bhagwan Kaur used to visit village Malikpur Khiala or not. Copy of Gratuity Order (Ex.P9) depicts that there was no family pensioner. PW-3 Karnail Singh deposed that ration card was issued to Bhagwan Kaur alongwith her children. Plaintiff, during his cross-examination, stated that he did not know if Bagwan Kaur was on Earned Leave from November 04, 1993 to November 11, 1993. Pension papers of Bhagwan Kaur disclose the status of her husband as 'late Jangir Singh'. She

2008. During her life-time, she never moved an application that name of her husband be entered in her pension papers or that, he is alive. She either resided at Patiala or at Budhlada, whereas plaintiff was residing at village Malikpur Khaila as per his claim. There is no explanation as to why Bhagwan Kaur moved application for grant of leave on the ground that her husband has died; or why in pension papers, name of her husband was preceded by word 'late'. Plaintiff is required to stand on his own legs. Plaintiff failed to prove that he was same Jangir Singh, husband of Bhagwan Kaur (since deceased).

10. In the light of what has been discussed above, this Court finds no illegality or perversity in the impugned judgments & decrees passed by the courts below which are upheld. Consequently, instant regular second appeal is dismissed with no order as to costs.

July 24, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No