

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

1. RSA No.1557 of 2014 (O&M)  
Date of decision : 26.09.2017

Phulpati @ Sunehri Devi (since deceased) through her LRs

...Appellant(s)

Versus

Lakhi Ram (since deceased) through his LRs and others

...Respondents

2. RSA No.1758 of 2014 (O&M)  
Date of decision : 26.09.2017

Phulpati @ Sunehri Devi (since deceased) through her LRs

...Appellant(s)

Versus

Narsi and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Sumeet Mahajan, Sr. Advocate with  
Mr. Amit Kohar, Advocate for the appellant(s).

Mr. Saurabh Bajaj, Advocate for the respondent Nos.1 to 8.

Mr. Ashish Aggarwal, Sr. Advocate with  
Mr. Kulwant Singh, Advocate for respondent No.9.

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**ANIL KSHETARPAL, J.**

By this common judgment, I shall be disposing of the above mentioned Regular Second Appeals as both the appeal arise from the same suit.

Plaintiff is in Regular Second Appeals against the judgment

passed by the Additional District Judge, Karnal.

The following substantial questions of law arise in the present case:-

1. Whether the plaintiff is entitled to relief particularly when it is found by the Courts that the plaintiff has not approached the Court with clean hands?
2. Whether the claim of the plaintiff is stale, outdated and time barred?
3. Whether a widow, who remarries under the custom with the brother of the deceased husband, divested the property inherited from the deceased husband on her remarriage?
4. Whether the judgments passed by the Courts below are result of mis-reading and non-reading of the evidence available on the file?

The plaintiff namely Phulpati filed a suit for declaration claiming that Phulla and Agyawati had two daughters namely plaintiff Phulpati and Smt. Sunder @ Sugni. It was claimed that Phulla died on 16.10.1951 and after his death, the entire property was mutated in favour of Agyawati vide mutation No.163 dated 12.09.1952. It was further claimed that Agyawati died somewhere in the year 1965 and defendant No.1-Narsi fraudulently got the mutation of inheritance sanctioned in his name vide mutation No.216 dated 11.06.1965. It was claimed that the defendant No.1-Narsi is not a legal heir of Agyawati. The plaintiff further pleaded that she came to know about the mutation in September, 1996 and hence the suit was filed on 26.02.1997.

The defendant No.1-Narsi had filed a written statement claiming that the plaintiff and the defendant No.1 are not the daughters of Phulla and

Agyawati. After the death of Phulla in the year 1951, Agyawati had contacted *krewa* (customary marriage) with Mansa, the brother of the deceased husband. However, before entering into the *krewa* marriage, she has become owner of the property. Defendant No.1-Narsi is the only son born out of the wedlock between Mansa and Agyawati.

The trial Court decreed the suit.

Two appeals were preferred before the learned First Appellate Court. Learned First Appellate Court after re-appreciating the evidence available on the file held that the suit filed by the plaintiff is liable to be dismissed. The First Appellate Court has held that the customary marriage between Mansa and Agyawati is proved and Narsi, defendant No1, is proved to be born out of the wedlock between Mansa and Agyawati.

The First Appellate Court has held that in fact Phulla had contacted three marriages and the plaintiff and the defendant No.2 i.e. Phulpati and Smt. Sunder @ Sugni were born out of the wedlock of Phulla with Manohari.

Now the stage is set for consideration on the questions of law, reproduced above.

***1. Whether the plaintiff is entitled to relief particularly when it is found by the Courts that the plaintiff has not approached the Court with clean hands:-***

It is now proved on the file that the plaintiff did not file the suit without disclosing true and correct facts. The plaintiff had concealed the material facts from the Court which are as under:-

- i) Phulpati and Sunder @ Sugni were daughters of Phulla and Manohari and not the daughters of Phulla and Agyawati.
- ii) The defendant No.2-Agyawati had contacted customary marriage i.e. *krewa* marriage with Mansa, the brother of the deceased husband.
- iii) Narsi is the son born out of the wedlock between Agyawati and Mansa.

The plaintiff while filing the suit failed to disclose these facts. In my considered opinion, the plaintiff is not entitled to any relief from the Court, once it is established that the plaintiff has concealed the material facts from the Court. Phulpati, when appeared in the witness-box, had admitted that her father namely Phulla had contacted 1-2 marriages.

**2. *Whether the claim of the plaintiff is stale, outdated and time barred:-***

It is not in dispute that the plaintiff is claiming inheritance from Agyawati who died in the year 1965. The suit was filed on 26.02.1997 i.e. after a period of 32 years. After the death of Phulla, Agyawati had performed *krewa* (customary marriage) with Mansa, the brother of her deceased husband. The mutation of inheritance of Agyawati was sanctioned in favour of Narsi-defendant No.1 on 11.06.1965. Narsi-defendant No.1 had further transferred the land by way of a family settlement, which was acknowledged and reiterated vide Civil Court decree dated 31.10.1973 in favour of the defendant Nos.3 to 9. In my considered opinion, the learned First Appellate court was correct in returning a finding that such suit was barred by time.

**3. *Whether a widow, who remarries under the custom with the brother of the deceased husband, divested the property inherited from the deceased***

***husband on her remarriage?***

Although, this question was not raised by the parties before the Courts below, hence, the parties cannot be permitted to raise the question for the first time in the second appeal, however, in the interest of justice, this Court feels that with a view to do justice between the parties, the question raised must be examined by this Court.

On the death of Phulla in the year 1951, Agyawati had contacted customary marriage i.e. *krewa* marriage with Mansa, the brother of her late husband. Learned counsel for the parties have referred me the provisions of The Hindu Widows' Remarriage Act, 1856 to contend that on remarriage of the widow, the property received from the first husband by the widow shall revert back to the next heirs of her deceased husband as per Section 2 of the Hindu Widows' Remarriage Act, 1856.

Section 2 of the Hindu Widows' Remarriage Act, 1856, is extracted as under:-

***“2. Rights of widow in deceased husband's property to cease on her marriage – All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any Will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.”***

On careful reading of the aforesaid Section, it is clear that if a widow has inherited only a limited interest in such property with no power of

alienation, the property shall revert back to the next heirs of her deceased husband. In the present case, it is nowhere established that Agyawati was only a limited owner. The mutation in favour of Agyawati does shows that Agyawati became absolute owner of the property. Therefore, Section 2 of the Hindu Widows' Remarriage Act, 1856 would have no applicability.

***4. Whether the judgments passed by the Courts below are result of mis-reading and non-reading of the evidence available on the file:-***

Learned counsel for the appellant(s) has submitted that Ex.DW7/A and Ex.DW4/A could not have been admitted in the evidence and, therefore, the reliance placed upon by the First Appellate Court on these documents was erroneous. Ex.DW4/A is the original family register of the family which is being maintained by the family for more than 100 years. The original family register has been produced on the file wherein different important events have been recorded and gift received during such ceremonies has been duly entered. Whereas Ex.DW7/A is a extract of the register maintained by the family Purohit. This extract has been proved by examining a witness i.e. DW7. This extract of the register is also dealing with the family events of the parties. No doubt, the author of Ex.DW7/A has not been examined, however, the family Purohit had deputed his man i.e. Madan Pal to appear and produce the aforesaid documents. He produced relevant pages from his register i.e. from Pages 356 to 358. This witness was duly cross-examined. He had submitted that they are doing the work of family Purohit of Ror Community to which the parties belong and they maintain this register for making an entry of every event for which the family Purohits are invited.

The date of birth of Phulpati is 25.09.1940 whereas the date of birth of Sugni @ Sunder is 13.10.1941. The marriage between Agyawati and Phula had taken place after the death of 2<sup>nd</sup> wife Manohari. The plaintiffs have failed to produce any evidence to prove that the plaintiffs are daughters of Agyawati. Learned First Appellate Court after appreciating the evidence available on the file has recorded a finding of fact that the plaintiffs are daughters of Phulla and Manohari. Such finding is not shown to be erroneous.

It is also admitted fact that Phulpati-plaintiff was married when she was 11 years old. In the family bahi (Register/Note book), marriage of the plaintiff is recorded in the year 2004 according to Vikram Samvat (Hindu Calender) which is equivalent to 1947 (English Calendar). It is also the statement of the plaintiff that Phulla during his lifetime had performed her marriage. So, obviously Phulpati was married much before 16.10.1951.

In view of the discussions made above, I do not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Both the appeals are dismissed.

All the pending miscellaneous applications are disposed of, in view of the aforesaid judgment.

**26.09.2017**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:- Yes/No**

**Whether reportable:- Yes/No**