

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1855 of 2014 (O&M)
Date of Order:01.12.2017

Smt. Sunita @ Manjila

..Appellant

Versus

Smt. Poonam Rani and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Saini, Advocate,
for the appellant.

Mr. R.S.Budhwar, Advocate,
for respondents no.1 and 2.

ANIL KSHETARPAL, J (Oral)

C.M.No4515-C-2014

Prayer in this application is for condonation of delay of 27 days
in filing the appeal.

For reasons mentioned in the application, which is supported by
an affidavit, the delay of 27 days in filing the appeal is condoned.

Application is allowed.

MAIN CASE

Plaintiff-appellant is in regular second appeal against the
judgment passed by the learned additional District Judge, Kurukshetra.

Plaintiff had claimed herself to be wife of late Sh. Jit Singh son
of Karam Singh.

On the other hand, defendants No.1 to 4 had claimed that
defendant no.1-Poonam Rani is wife of Jit Singh, whereas defendants no.2
to 4 are children of Jit Singh from the co-habitation of Jit Singh and

Poonam Rani, defendant no.1.

Both the Courts have concurrently found that since marriage of Poonam Rani was during the subsistence of marriage with Jit Singh with Sunita @ Manjila, therefore, it was a void marriage. This finding is not challenged before this Court. However, learned first appellate Court has held that since defendants no.2 to 4 are children of Jit Singh from second marriage, therefore, they are entitled to share in the property.

I have heard counsel for the parties at length and with their able assistance gone through the photocopies of the record produced before me by the counsels.

Learned counsel for the appellant has submitted that there was no pleadings with regard to defendants no.2 to 4 being children of Jit Singh, therefore, the finding of the first appellate Court is totally erroneous.

In the considered opinion of this Court, the argument of learned counsel for the appellant is wholly fallacious. Defendants no.1 to 4 while filing the written statement has specifically pleaded that defendant no.1 is the wife and defendants no.2 to 4 are the children of Jit Singh. The pleadings to that effect is extracted as under:-

“8. That the suit is bad for non-joinder and mis-joinder and wrongly naming the defendants and wrong addresses of defendants. The defendant no.1 is name only Poonam Rani and not Dhoona as alleged and defendant no.1 is not the wife of Nezem as alleged and address of defendant no.1 of west bengam is wrong as she is resident of House No.373, Ward No.14 committee Bazar Shahabad(M) and she is legally wedded wife of Jit

Singh now deceased. The plaintiff fraudulently and micheviously not disclosed the father's name of defendant no.2 to 4 whereas the defendants no.2 to 4 are children of deceased Jit Singh and defendant no.1 is their mother. Hence the plaint is wrong and illegal and void. The School certificates, birth certificates, ration card, voter list, shows that the defendant no.1 is wife of Jit Singh and defendants no.2 to 4 are children of Jit Singh which are attached. The plaintiff has further defrauded this learned court by not mentioning the earlier litigation decided because the present plaintiff Sunita had earlier filed petition u/s 125 Cr.PC vide petition no.2/3/98 which was not decided on merits by the Court but was dismissed as withdrawn being false and fictitious and bogus on 16.4.2001 from the Court of Shri Sanjeev Arya Ld. JMIC Kurukshetra titled as Sunita v. Jit Singh, wherein said Jit Singh respondent of case u/s 125 Cr.PC in written statement dated 1.5.95 filed in that court has stated that present plaintiff is not his wife, rather present defendant no.1 is legally wedded wife of Jit Singh. Jit Singh filed affidavit dated 23.11.95 in that petition stating that defendant no.1 herein is the legally wedded wife of Jit Singh. Again on 1.5.95 Jit Singh filed another affidavit in which he stated that present plaintiff is not the wife of Jit Singh rather the present plaintiff is living with Asgar Muslaman as his wife. Said Asgar

Muslman resides at Ladwa. Certified copies of affidavits and written statement of Jit Singh are enclosed and be read as forming part of this written statement. Hence plaintiff has concealed all the abovesaid true and material facts from this learned court and hence deserves no sympathy or relief from this learned court rather liable for penal action.”

Still further, defendants had produced on file certificates from the office of Registrar of Birth and Death, which are Ex.D1, Ex.D16 and Ex.D17. All these three certificates prove that defendants no.2 to 4 are children of Jit Singh @ Ajit Singh.

Learned counsel for the appellant has pointed out that in one of the certificate i.e. Ex.D16, name of the mother has been mentioned as Sunita, who is the plaintiff.

No doubt, the certificate, Ex.D16 shows the name of mother to be Sunita. However, it is not the case of the plaintiff that Renu Bala was daughter of Sunita. The father's name has been correctly mentioned. The certificates are much before the date of death of Jit Singh. At that time, there was no dispute between the parties.

Next submission of learned counsel for the appellant is that the property is ancestral in nature and, therefore, defendants no.2 to 4 were not entitled to any share in the property.

In the considered opinion of this Court, there is no substance in the argument of learned counsel. The learned Courts below have discussed the evidence and found that the property is self acquired. Learned counsel for the appellant could not show any misreading of evidence or non-reading

of evidence in the findings of the Courts below.

Taking into consideration that defendants no.2 to 4 are proved to be children of Jit Singh although from the void marriage, hence they would still be entitled to share in the property.

In view thereof, this Court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate Court.

The regular second appeal is dismissed.

December 01, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No