

RSA No. 1193 of 2017 (O&M)

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

**RSA No. 1193 of 2017 (O&M)
Date of Decision: 2.3.2017**

Pushpinder Kaur Sodhi

.....Appellant

Vs.

Amandeep Kaur and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Kawaljyot Singh, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgments and decrees passed by the learned courts below, whereby suit for declaration filed by the plaintiff was partly decreed by the learned trial court and first appeal of the defendants was also partly accepted by the learned first appellate court, defendant No.1 has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned trial court in para 2 of its impugned judgment, are that house in question fell to the share of Kuljit Singh, father of plaintiff, in a partition between brothers which was held on 4.3.1992 and was recognised in a decree passed by the court of Sub Judge 3rd Class, Patiala, in Suit No. 264 dated 27.7.1991 decided on 7.4.1992

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titled as Jasjit Singh and others Vs. Kuljit Singh. Kuljit Singh was married to Inderjit Kaur and plaintiff is daughter of Kuljit Singh and Inderjit Kaur. Pushpinder Kaur, defendant was living with Kuljit Singh as a keep in the year 1983 and defendant No.2 alleged himself to be son of defendant No.1 out of the illegal and void union of defendant No.1 and Kuljit Singh. Inderjit Kaur, mother of plaintiff had died on 4.5.1987 and defendant No.2 alleged himself to be born on 3.3.1984, i.e. much before the death of Inderjit Kaur. As such, defendant No.2 was illegitimate son of Kuljit Singh and Pushpinder Kaur. Kuljit Singh died on 29.10.2006. At that time, plaintiff had been married and she had been living with her in-laws.

After death of Kuljit Singh, plaintiff being the only legal heir being daughter is owner of the property of late Kuljit Singh, including the house in dispute. Defendant No.1 was not legally wedded wife and was only a Keep of Kuljit Singh. As such, she as well as her son defendant No.2 had no right, title or interest in the estate left by Kuljit Singh. The house in dispute was inherited by Kuljit Singh. As such, same is ancestral and coparcenary property. Thus, as per provisions of the Hindu Succession Act, 1956 (hereinafter referred to HAS) only plaintiff is exclusive owner of suit property. Defendants enticed the plaintiff and had fraudulently obtained her signatures on some blank papers alleging that they were leaving the said house to plaintiff and they wanted a receipt for the same from the plaintiff and obtained her signatures on a blank paper. But, thereafter they forged some documents on the blank papers on which her signatures were obtained. Plaintiff had requested many times to defendants to hand over the vacant possession of suit property to her, but defendants refused to do so. Plaintiff was entitled to vacant possession of the suit properly alongwith use and occupation charges of the said house by the defendants after death of S.

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Kuljit Singh @ Rs. 10,000/- per month which is rental value of the said house.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial court framed the following issues.

- 1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP.*
- 2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP.*
- 3. Whether the suit in the present form is not maintainable? OPD.*
- 4. Whether the plaintiff has locus standi to file the suit? OPP*
- 5. Whether the plaintiff has cause of action to file the presen suit? OPD*
- 6. Whether the plaint is liable to be rejected U/o. 7 CPC? OPD*
- 7. Whether the suit is properly valued for the purpose of Court and jurisdiction? OPP7*
- 8. Whether the Court has got no jurisdiction to try and decide the present suit? OPD*
- 9. Relief.*

Vide order dated 21.3.2014, following additional issues were framed:-

- 2-A Whether plaintiff is entitled to decree of vacant possession as prayed for? OPP*
- 2-B Whether plaintiff is entitled to recovery of use and occupation charges @ Rs 10,000/- per month from 29.10.2006, till delivery of possession? OPP*

With a view to prove their pleaded cases, both the parties brought on record documentary as well as oral evidence. After hearing

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learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has proved her case but partly. Accordingly, suit of the plaintiff was partly decreed. Plaintiff was declared daughter of late S. Kuljit Singh Sodhi and was declared owner of the property to the extent of one half share.

Preliminary decree was passed in favour of the plaintiff and defendants were granted three months to handover the vacant possession of one half share of the suit property, failing which preliminary decree shall be deemed to become final. Defendants were also restrained from alienating the suit property more than the share of defendant No.2. Accordingly, the suit was partly decreed vide judgment and decree dated 31.3.2014. Dissatisfied, defendant No.1 filed her first appeal, which came to be partly accepted by the learned first appellate court, modifying the decree of the learned trial court to the extent that plaintiff alongwith defendant No.2 would be entitled to joint possession of the suit property, vide impugned judgment and decree dated 26.9.2016. Hence this regular second appeal at the hands of defendant No.1.

Heard learned counsel for the appellant.

A bare reading of both the impugned judgments rendered by learned courts below would make it crystal clear that the learned trial court as well as the learned first appellate court dealt with each and every relevant aspect of the matter in minute details. Plaintiff duly proved her case by leading cogent and convincing evidence that she is a daughter of late S. Kuljit Singh Sodhi.. Sufficient documentary as well as oral evidence was brought on record, including MACT award dated 7.1.1989 Ex.P-9, rendered by learned Motor Accident Claims Tribunal in MACT case No. 82/6.11.1987 (Kuljit Singh Sodhi and another Vs. Bhag Singh and others).

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This claim petition under Section 110-A of MACT was filed by late S. Kuljit Singh Sodhi as well as his daughter, Amandeep Kaur, for claiming compensation on account of death of Smt. Inderjeet Kaur, who was wife of late S. Kuljeet Sing Sodhi and mother of Amandeep Kaur. This claim petition was allowed by the learned MACT, vide award dated 7.1.1989. Having said that, this Court feels no hesitation to conclude that learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees, which deserve to be upheld.

In fact, as per voluminous documentary as well as oral evidence available on record, defendant-appellant could not bring on record any cogent evidence to show that plaintiff was not the daughter of late S. Kuljeet Singh Sodhi. Similarly, appellant-defendant No.1 could not prove that she was legally wedded wife of late S. Kuldeep Singh Sodhi. Pleaded case on behalf of the plaintiff was that daughter No.1 was the mistress of late S. Kuljit Singh Sodhi and defendant No.2 was an illegitimate child. This was the reason that learned trial court held that plaintiff as well as defendant No.2 as owners to the extent of one half share each in the suit property.

Similarly, learned first appellate court was justified in modifying the decree of the learned trial court to the extent that plaintiff and defendant No.2 would be entitled to joint possession of the suit property. In this view of the matter, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as Andhra Pradesh High Court.

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1) Jinia Keotin and others Vs. Kumar Sitraman Manjhi and others, 2003 (1) SCC 730(SC)

Neelamma and others Vs. Sarojamma and others, 2006 (9) SCC 612

2) Bharatha Matha and another Vs. R. Vijaya Renganathan and others, 2010 (11) SCC 483(SC)

3) Ch. S. Hanumantha Rao & others Vs. R. Sainath and others, 1999 (3) CivCC 447. (AP HC)

Before arriving at a judicious conclusion, learned first appellate court re-considered the factual as well as legal aspect of the matter and appreciated the same in correct perspective. Relevant findings recorded by learned first appellate court in para 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“The appellant claims right over the property by virtue of the fact that she is wife of Kuljit Singh Sodhi but it is asserted by the contesting respondent that there was no valid marriage between the appellant and Kuljit Singh Sodhi, father of the plaintiff. It may be mentioned here that there is no dispute regarding the fact that the plaintiff/contesting respondent is the daughter of Kuljit Singh Sodhi. Whereas it is claim of the plaintiff that she was born from the wedlock of Kuljit Singh Sodhi and Inderjit Kaur, it is a fact which is disputed by the appellant. However, the documentary evidence on the record establishes the fact that the plaintiff was the daughter of Kuljit Singh Sodhi having been born from his wedlock with Inderjit Kaur. That during his life-time, Kuljit Singh Sodhi had, for himself and next friend of present plaintiff, approached the Motor Accident Claims Tribunal for compensation on account of death of Inderjit Kaur in a motor vehicle accident speaks for the fact till her death on 04.05.1987, Kuljit Singh Sodhi treated Inderjit Kaur as his legally wedded wife. There is nothing on record to suggest that marriage between Kuljit Singh

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Sodhi and Inderjit Kaur was void and in fact defendant No. 1 in particular, is barred from taking any such stand because of the fact that she never came in touch with Kuljit Singh Sodhi at the time when marriage between Kuljit Singh Sodhi and Inderjit Kaur was solemnized. That being so, it is asserted by the appellant that her marriage with Kuljit Singh Sodhi was a valid marriage but in the absence of any evidence to the fact that marriage of Kuljit Singh Sodhi and Inderjit Kaur had been dissolved by a competent Court, for all intents and purposes, relationship between the appellant and Kuljit Singh Sodhi, even if they had been practically treating each other as husband and wife, would not be a valid marriage because it is not even pleaded by the appellant that after the death of Inderjit Kaur, Kuljit Singh Sodhi remarried her even though they were living together as husband and wife prior the death of Inderjit Kaur on 04.05.1987. Second ceremony of marriage between the appellant and Kuljit Singh Sodhi would have taken away the effects of marriage between the two, which is said to have been solemnized on 02.02.1982, as being void but in the absence of such pleadings or evidence of subsequent marriage, for all intents and purposes, the appellant can not be held to be legally wedded wife of Kuljit Singh Sodhi and thus not entitled to inherit the property.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a 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 regard, reliance can be placed on the judgments of the Hon’ble Supreme Court in **Naryanan Rajendran and**

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**another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286 and
Santosh Hazari Vs. 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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

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Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No