

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 123

Regular Second Appeal No.1544 of 2017 (O & M)
Date of Decision: *September 25, 2017*

Lakhwinder Kaur

..... APPELLANT

VERSUS

Joginder Kaur & Others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Ishaan Pasricha, Advocate, for the appellant.

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Jaspal Singh, J

The instant regular second appeal has been preferred by defendant No.5 – appellant against judgments & decrees passed by the courts below, whereby suit filed by respondent No.1 – plaintiff has been decreed by the trial court holding that plaintiff is entitled to receive family pension on account of death of her husband namely; Mehnga Singh alongwith arrears thereof from the date of its accrual and further defendant No.4 is restrained from releasing the family pension of the plaintiff in favour of defendant No.5 alleging herself wife of deceased husband of plaintiff; and appeal filed by the appellant has been dismissed by the lower appellate court.

Brief facts of the case are that respondent No.1 – plaintiff instituted a civil suit for declaration with consequential relief of permanent injunction fully detailed in the plaint, alleging that she is legally wedded wife of deceased Mehnga Singh son of Bhola Singh, Tehsil Batala, District Gurdaspur, who died on November 02, 2011 leaving behind plaintiff and seven children. Mehnga Singh was working as Assistant Lineman at Qadian, Tehsil Batala and superannuated on September 30, 2007. He was granted pension vide order dated May 15, 2008 which was further revised vide revised pension payment order No.11938/10-11 dated May 27, 2011. Mehnga Singh expired on November 02, 2011. Plaintiff averred that defendant No.5 – appellant alleging herself to be wife of Mehnga Singh got recorded her name in pension payment order issued by defendant No.1, fraudulently and malafidely in order to grab the money of husband of plaintiff, whereas she never married to him. Plaintiff further alleged that defendant No.5 – appellant is wife of Sarwan Singh son of Kartar Singh, resident of village Athwal, Tehsil Batala, District Gurdaspur. Plaintiff alleged that action of defendant Nos.1 to 4 in not releasing the family pension in her favour is illegal, unlawful, unconstitutional and against the rules & natural justice.

Defendants contested the suit by filing separate replies, raising preliminary objections and denying plaintiff's averments on merit. Replication was not filed by the plaintiff. From the pleadings of parties, issues were framed by the trial court and parties led their evidence in order to substantiate their case.

After hearing learned counsel for the parties and appreciating the evidence as well as documents on record, suit filed by the plaintiff was decreed by the trial court vide judgment & decree dated September 29, 2014. Feeling aggrieved, defendant No.5 – appellant preferred an appeal before first appellate court which was also dismissed vide judgment & decree dated December 15, 2016.

While challenging the aforesaid judgments & decrees passed by the courts below, learned counsel for the appellant has vehemently contended that same have been passed erroneously, without application of mind, illegal, perverse, arbitrary, unreasonable and against law & facts. Misappreciation of evidence has resulted into miscarriage of justice. As such, impugned judgments & decrees of both the courts below do not sustain in the eyes of law and are liable to be set aside.

The point in controversy is that appellant – defendant No.5 has claimed herself to be wife of deceased Mehnga Singh. Respondent No.1 – plaintiff is also claiming herself to be legally wedded wife of Mehnga Singh. Sanjeev Sharma, Accounts Officer, GP Fund Section, PSPCL, Patiala was examined as PW-1 who proved on record application of allotment of GPF account as Ex.PW1/1, copy of application written by Assistant Engineer as Ex.PW1/2, copy of form for allotment of GPF account as Ex.PW1/3, copy of nomination form submitted by Mehnga Singh as Ex.PW1/4. The said documents clearly prove that at the time of allotment of GPF account, name of respondent No.1 – plaintiff, Joginder Kaur finds mention as his wife as nominee.

PW-2 ucha Singh, Clerk, Election Office, Gurdaspur, produced original record of voter list of Vidhan Sabha Constituency No.4 Shri Hargobindpur and proved copies thereof as Ex.PW2/1 and Ex.PW2/1. List Ex.PW2/2 shows the names of Mehnga Singh and his family members at Serial No.214. Serial No.215 shows the name of Joginder Kaur and name of her husband as Mehnga Singh. In the same list, Serial No..437 vote shows the name of Lakhwinder Kaur, appellant and name of her husband as Sarwan Singh son of Kartar Singh. Plaintiff herself stepped into witness box as PW-3 and proved on record copies of documents regarding retirement of Mehnga Singh, ration card, voter list, photograph, identity card issued by the Election Commission of India and postal receipts. She also proved copies of certificates of PSEB issued to her children as Ex.P11 to Ex.P17, wherein father's name is mentioned as Mehnga Singh and that of mother's as Joginder Kaur (plaintiff). Inspector Mukhtiar Singh, office of Food Supply, Gurdaspur was examined as PW-4, who produced original record of ration card in favour of Sarwan Singh son of Kartar Singh, as well as copy of application filed by him as Ex.PW4/1, in which, Lakhwinder Kaur, appellant is shown as his wife. Though, appellant alleged that Mehnga Singh performed marriage with her but there is no proof of her marriage with Mehnga Singh. Moreover, name of Joginder Kaur is mentioned as nominee in the GPF Account.

It is the plea of appellant that subsequently Mehnga Singh started residing with her but there is no document to prove that Mehnga Singh got divorce from Joginder Kaur. So, in the event of

existence of marriage with Joginder Kaur, Lakhwinder Kaur cannot claim family pension. Even if the appellant is considered as second wife of Mehnga Singh, even then, she cannot claim family pension in the life time and existence of Mehnga Singh's marriage with Joginder Kaur.

In the light of what has been discussed above, there is no question of law much less substantial question of law in the instant appeal. Finding no merit in the appeal, same is dismissed whereby judgments & decrees passed by the courts below are affirmed.

No costs.

September 25, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No