

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

RSA No.3825 of 2017 (O&M)

Date of decision:11.09.2017

Pinki Rani

.....Appellant

Versus

Board of School Education, Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vansh Malhotra, Advocate,
for the appellant.

Ritu Bahri, J.

CM Nos.9474-9475-C of 2017

For the reasons mentioned in the applications, same are allowed and delay in filing & re-filing of the appeal is condoned.

RSA No.3825 of 2017

This appeal has been directed against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Addl. Civil Judge (Senior Division), Kurukshetra and the District Judge, Kurukshetra, whereby suit filed by the plaintiff-appellant for declaration with consequential relief of mandatory injunction, has been dismissed.

Pinki Rani-plaintiff (appellant herein) filed a suit for declaration with consequential relief of mandatory injunction alleging that marriage of her parents was performed on 23.07.1967 and she was born out of this wedlock on 09.03.1969. This date of birth was recorded in the record of Sub Registrar (Birth & Death), Municipal Council, Thanesar, District Kurukshetra, at registration No.100 dated 11.03.1969. She had passed matriculation examination in the month of March, 1983. However, the

defendants had wrongly recorded her date of birth as 07.03.1965. In this regard, she had approached the defendants a number of time for correction of her date of birth as 09.03.1965, but they did not do so on one pretext or the other. Ultimately, they had refused to correct the date of birth of plaintiff in the matriculation certificate as well as other records. Hence, the suit.

Upon notice, defendant No.1 did not appear before the trial Court and was proceeded against exparte. Defendant No.2 (respondent No.2) filed written statement taking preliminary objections with regard to maintainability; locus standi; estoppel; Court fee etc. On merits, it was stated that as per Right to Education Act, 2009, a child of 14 years, may have to complete its elementary education. Correction of date of birth of the plaintiff would unsettled the settled record. It was further stated that as per new claimed date of birth, the age of plaintiff would be 13+ in 10th standard. A child of 13+ of age was not eligible to sit in secondary standard examination. It was further stated that the plaintiff was enrolled in defendant No.2-school after submission of form(s), duly signed by her father, wherein her date of birth was mentioned as 07.03.1965. The plaintiff passed secondary examination in the year 1983 and the present suit was filed after a lapse of 30 years. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether correct date of birth of plaintiff is 09.03.1969 instead of 07.03.1965 as alleged? OPP
2. If, above issue is proved, whether the plaintiff is entitled to decree of declaration with consequential relief of mandatory injunction as prayed? OPP
3. Whether present suit is not maintainable? OPD

4. Whether present suit is hopelessly time barred? OPD
5. Whether plaintiffs have not come to the Court with clean hands and concealed the true and material facts from Court? OPD
6. Whether the present suit is bad for want of notice under Section 80 CPC? OPD
7. Whether present suit is bad for want of ad-valorem Court fee? OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

While dismissing the suit, trial Court had observed that plaintiff did not mention a single word in her plaint as to for what purpose, she wanted to correct her date of birth after a long period of 44 years. During the course of arguments, it had come on record that she was working a clerk in the University, but this fact had not been disclosed by the plaintiff in her plaint. None of her parents was examined to prove the fact that their marriage was performed on 23.07.1967. Rule 7.3 and Note 2 of Punjab Financial Rules, Volume-I, Chapter 7, Page 97, provides that in record to the date of birth of a declaration of age made at the time of or for the purpose of entry into Government service, shall as against the Government employee in question, be deemed to be conclusive unless he/she applies for correction of his age within two years from the date of his/her entry into Government service. Further, the first Appellate Court while dismissing the appeal has made reference to the judgments passed by this Court in **Ambika Kaul vs. Central Board of Secondary Examination and others**, LPA No.1613 of 2014 and **Shubham Attri vs. Central Board of Secondary Examination and others**, LPA No.373 of 2015 (decided on 21.05.2015), wherein it was observed that the right to seek actual date of birth has to be

exercised within three years of attaining the majority on the basis of the birth certificate issued by the Registrar of Births and Deaths. After expiry of this period, the concerned person was bound by the date given in the matriculation certificate.

The present suit has been filed the plaintiff (appellants) in the year 2013 i.e. after lapse of more than three years of attaining the majority. Therefore, the suit was hopelessly barred by time.

Learned counsel for the appellants has not been able to refer any judgment contrary to the law laid down by this Court that in **Ambika Kaul** and **Shubham Attri's** cases (supra). Hence, after going through the impugned judgments passed by the Courts below, no illegality, much less perversity, has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

11.09.2017
ajp

(RITU BAHRI)
JUDGE

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