

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 127

Regular Second Appeal No.3854 of 2017 (O & M)
Date of Decision: August 11, 2017

Surender Mohan

..... APPELLANT

VERSUS

Usha Devi & others

..... RESPONDENTS

. . .

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

. . .

PRESENT: - Mr. L.S. Chahal, Advocate, for the appellant.

Mr. Ranjan Lohan, Advocate, for Caveator – respondent
No.1.

. . .

Jaspal Singh, J

The instant regular second appeal has been preferred by appellant – Surender Mohan, feeling aggrieved against judgment & decree dated May 04, 2017 passed by the Additional District Judge, Karnal, whereby judgment & decree dated November 11, 2013 rendered by the Additional Civil Judge (Senior Division), Karnal, decreeing the suit preferred by the appellant – plaintiff has been set aside.

Brief facts of the case are that in the Year 2009, a civil suit (No.310 of 2009) came to be filed by respondent No.1 – Usha Devi against the Principal, DIET, Shahpur, (Karnal); Director General, School Education, Haryana; and State of Haryana through Collector, Karnal, for declaration to

deceased Suresh Singh, is entitled to receive all the outstanding dues with respect to her husband, while he was posted as Lecturer in DIET, Shahpur, District Karnal, with all consequential benefits alongwith interest from the date of accrual till realization. Aforesaid civil suit was decreed by the trial court, vide judgment & decree dated May 11, 2010, with a declaration to the effect that plaintiff – respondent No.1 Usha Devi is the only legal heir of deceased Suresh Singh being his legally wedded wife as well as his nominee and held her entitled to receive all the outstanding dues with respect to deceased Suresh Singh with all consequential benefits with simple interest @ 6% per annum from the date of accrual till realization.

It is in this background, appellant - plaintiff instituted a civil suit seeking declaration for setting aside the aforesaid judgment & decree passed in Civil Suit No.310 of 2009, alleging it to be illegal, null & void and not binding upon his rights. Further, relief of permanent injunction has been sought to restrain the defendant Nos.2 to 4 from disbursing the outstanding dues with respect to deceased Suresh Singh to defendant No.1 Usha Devi.

In his suit, appellant – plaintiff averred that Suresh Singh was working as Lecturer at Shahpur, Karnal. He was unmarried and died on June 22, 2008. Appellant claims himself to be only legal heir of Suresh Singh being the son of his real brother Dilawar Singh. Appellant – plaintiff averred that after the death of Suresh Singh, many civil suits were filed by him and defendant No.1 – Usha Devi at Bijnor (UP). Petition under Section 372 of the Indian Succession Act was also filed by him at Karnal. Appellant – plaintiff alleged that defendant No.1 – Usha Devi obtained the impugned judgment & decree by playing fraud by claiming herself to be the widow of Suresh Singh, however, appellant – plaintiff was not a party to that suit.

Singh and therefore, impugned judgment & decree is liable to be set aside because Suresh Singh was a bachelor.

The civil suit was contested by the defendants by filing written statements. Defendant No.1 –Usha Devi, in her written statement took preliminary objections regarding maintainability, locus standi, concealment of material facts, jurisdiction etc. She claimed herself to be legally wedded wife of deceased Suresh Singh, besides the fact that Suresh Singh mentioned her as his wife in his personal information form, and that, she had received ₹ 10,000/- on account of death of Suresh Singh, under a scheme of the Government. She, in her written statement, submitted that Suresh Singh was real brother of Jagdish Singh and she married Suresh Singh after the death of her first husband i.e. Jagdish Singh.

Defendant Nos.2 to 4, in their written statement took preliminary objections regarding maintainability, locus standi, cause of action, court fee etc. It was admitted that Suresh Singh was working as Lecturer at Shahpur, Karnal as well as the fact that Suresh Singh mentioned the name of defendant No.1 – Usha Devi as his spouse in the service record.

Both the parties adduced and concluded their evidence in support of their respective claim(s).

After hearing learned counsel for the parties and perusing evidence on record, suit filed by the appellant – plaintiff was decreed by the trial court vide judgment & decree dated November 11, 2013, holding him entitled for decree of declaration to the effect that judgment & decree Ex.P15/ Ex.P16/ Ex.D6/ Ex.D6A is not binding on his rights and same is bad for non-joinder of necessary parties i.e. appellant – plaintiff and same is liable to be set aside. Further, defendant Nos.2 to 4 were restrained from

Succession Petition No.17/2010 filed by appellant – plaintiff under Section 372 of the Indian Succession Act.

Dis-satisfied with judgment & decree dated November 11, 2013, respondent - defendant No.1, Usha Devi, filed an appeal which has been allowed by the first appellate court vide impugned judgment & decree dated May 04, 2017 whereby the judgment & decree passed by the trial court has been set aside.

Now, appellant – plaintiff, Surender Mohan, being aggrieved against the aforesaid judgment & decree dated May 04, 2017 passed by the first appellate court, has filed the instant regular second appeal.

While assailing the impugned judgment & decree, learned counsel for the appellant has vehemently contended that the same is liable to be set aside as the same is erroneous, illegal, perverse and the first appellate court has misdirected itself in not referring to the complete facts of the case. The impugned judgment is bad in the eyes of law as it has been passed without just and proper appreciation of facts as well as evidence on record. The court below has completely ignored the pleadings as well as documentary evidence, perusal of which shows that the stand put-forth by respondent No.1 is malafide and illegal.

Learned counsel for the appellant further contended that Suresh Singh never married and died on June 22, 2008 leaving behind his only legal heir i.e. appellant – plaintiff who is none else but son of his real brother Dilawar Singh. Respondent No.1 has failed to establish that she is the widow of Suresh Singh, rather she is widow of Jagdish Singh son of Ghanshyam Singh. In the entire pleadings, neither the date of marriage has been unfolded nor any averment has been made as to how and in what

manner, the alleged marriage between Suresh Singh and Usha Devi took place. Thus, impugned judgment & decree dated May 04, 2017 passed by the Additional District Judge, Karnal, is not sustainable in the eyes of law and is liable to be set aside. Consequently, the judgment & decree delivered by the lower court deserves to be restored.

On the other hand, learned counsel for respondent No.1 has supported the judgment & decree passed by the first appellate court. Defendant Nos.2 to 4 asserted in their written statement that Suresh Singh mentioned the name of Usha Devi as his spouse in his service record. Moreover, it is proved on record that on the death of her husband Suresh Singh, Usha Devi received a sum of ₹ 10,000/-, under the scheme of Government, vide cheque No.067742 dated July 02, 2008 drawn at The Karnal Central Cooperative Bank Limited. Further, Voter Identity Card No.CBC/131 8476 (Ex.D-10) issued in favour of Usha Devi depicts the name of her husband to be Suresh Singh and her age as on January 01, 2001 to be 45 years, on the same address which she claimed in the instant lis. Learned counsel further contended that Usha Devi was firstly married with Jagdish Singh and after his death, she contracted the marriage with Suresh Singh, and they had been living as husband and wife during his lifetime. He, accordingly, prayed for dismissal of instant appeal.

This Court has given an anxious thought to the rival contentions of learned counsel for the parties and perused the record available on file but find no legal or factual substance in the submissions of learned counsel for the appellant.

The sole point for determination in the instant regular second appeal is whether Usha Devi, respondent – defendant No.1 is the legally wedded wife of Suresh Singh, since deceased or not? Perusal of

documents, Ex.P1 to Ex.P14 shows that there is no finding of civil court that Usha Devi is not the legally wedded wife of Suresh Singh, since deceased. On the other hand, certified copy of statement of DW1 Shahil Sharma, Principal, DIET, Sharpur, shows that as per school record, Suresh Singh filled the document Ex.PW4/A mentioning the name of his spouse as Usha Devi. Moreover, appellant – plaintiff Surender Mohan has failed to produce any proof in respect of legal heirs of deceased Suresh. DW2 Rajinder Jain, Clerk, DIET, Shahpur, in case titled ‘Usha Devi vs. Principal, DIET’ produced document Ex.DW5/A showing that Suresh Singh filled personal information form (Ex.D9) disclosing Usha Devi as his wife/ spouse. Ex.D7 is the copy of cheque issued by Principal, DIET, Shahpur, vide which, Usha Devi was paid a sum of ₹ 10,000/- under Government scheme, on the death of her husband Suresh Singh. Ex.D10 is the voter identity card of Usha Devi wherein also, the name of her husband is mentioned as Suresh Singh. Apart from it, documents Ex.D13, D14, D15, D16 and Ex.D28 to D43 have been proved by respondent – defendant No.1 which prove that she is widow of Suresh Singh.

Perusal of documents produced by both the parties shows that Suresh Singh himself admitted Usha Devi to be his wife during his life time. An admission is the best evidence that an opposing party can rely upon and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Admissions, if true and clear are by far the best proof of the fact admitted. The aforesaid observation was made by the Hon’ble Apex Court in *Sirinivasa vs. S. Padmavathamma, 2010(4) RCR (Civil) 210*.

Adverting to the fact and evidence available in the case in

hand, Suresh Singh (since deceased) had himself disclosed in various

documents that Usha Devi is his legally wedded wife. All the original documents, produced by respondent – defendant No.1 were in her possession. Though, Dilawar Singh was shown as nominee of PF of Suresh Singh Rajput (since deceased), in nomination form dated April 16, 1984 (Ex.PW3/A) but it is also mentioned therein that ‘nominee shall become invalid in the event of any subsequent acquiring family’. Since, Suresh Singh himself admitted Usha Devi as his legally wedded wife, then nomination form Ex.PW3/A loses its value and pales into insignificance. In this view of the matter, this Court is of the considered view that the lower appellate court has rightly concluded and observed that Ms. Usha Devi is the legally wedded wife of deceased Suresh Singh. Thus, there is no illegality, infirmity or irregularity in impugned judgment dated May 04, 2017 passed by the first appellant court which is hereby upheld and affirmed.

In the light of what has been discussed above, there is no merit in the instant regular second appeal and the same is dismissed with no order as to costs.

August 11, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No