

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

RSA No. 4271 of 2017 (O&M)

DATE OF DECISION : 31.10.2017

Rajwinder Kaur and another

.... APPELLANTS

Versus

Kashmir Kaur and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Gagandeep Singh Sirphikhi, Advocate,
for the appellants.

* * *

AVNEESH JHINGAN, J.

The present regular second appeal is at the behest of defendants No.1 and 2 being aggrieved of the concurrent judgments and decrees passed by the courts below decreeing the suit of the plaintiffs.

The parties are being addressed as per their original position in the plaint.

Plaintiff Kashmir Kaur filed a suit for recovery of ₹ 1,09,318/-, which included ₹ 81,581/- being 1/3rd share of ₹ 2,44,744/- and interest with effect from 01.01.2010 to 31.10.2012. The dispute arose after the death of Bhupinder Singh son of Kundan Singh, with regard to the amount of his life insurance policy, as the plaintiff and defendants No.1 and 2 were Class I legal heirs. Bhupinder Singh during his life time obtained Life Insurance

Policy No.161866245 dated 05.03.2004 for a sum of ₹ 2,00,000/-. He died due to heart attack on 06.10.2009 and was survived by a widow, minor son (defendants No.1 and 2) and mother (plaintiff). There were strained relations between defendant No.1 and the deceased. After the death of Bhupinder Singh, Life Insurance Corporation of India (defendants No.3 and 4) made payment of the policy amount to defendants No.1 and 2. The plaintiff being mother and Class I heir of the deceased claimed her 1/3rd share out of the said amount with interest. On refusal by the defendants, suit was filed by her.

On notice, written statements were filed by defendants No.1 and 2 and separately by defendants No.3 and 4.

The learned trial court framed issues.

In support of the suit, plaintiff herself appeared as PW.1 and produced certified copy of statement of defendant No.1, order dated 18.5.2014 passed by Lok Adalat and copy of death certificate as Ex.P2, Ex.P3 and Ex.P4, respectively. Defendant No.1 herself stepped into the witness box as DW.1.

The learned trial court, after considering the facts of the case and the evidence produced before it, decreed the suit vide judgment and decree dated 21.07.2015.

Aggrieved of the said judgment and decree, defendants No.1 and 2 filed appeal, which was dismissed by learned District Judge, Gurdaspur, vide judgment and decree dated 01.09.2016.

The issues, which were decided by the learned courts below and have not been challenged in the present appeal, are that the dispute related inter-se plaintiff and defendants No.1 and 2. There was no dispute with the LIC as they made the entire payment to the nominee. The nominee is only authorised to receive the amount or to manage the property and no beneficiary interest is conferred upon the nominee. The plaintiff is Class I heir of the deceased and is entitled to 1/3rd share of the life insurance policy of the deceased. These issues though have been decided against defendants No.1 and 2 but the same have not been challenged in the present appeal.

In the grounds of appeal, the following substantial questions of law have been framed :-

- (i) Whether in the presence of the pleadings and evidence on record which clearly spells out that no cause of action had accrued to the plaintiff/respondent no.1 herein within the jurisdiction of the Court at Batala, the findings of the learned courts below are legally sustainable ?
- (ii) Whether the impugned judgments and decrees, the findings of which are based on inferences which could never be drawn from the documents and also on surmises and conjectures, can be legally sustained ?
- (iii) Whether the judgments which are based on non-reading and misreading of the pleadings as also the evidence, can be legally sustained ?

However, at the time of arguments, learned counsel for the appellants only pressed question no. (i). The issue raised is whether the courts at Gurdaspur

had territorial jurisdiction to decide the issue as at the time of institution of the suit, defendant No.1 was not residing within the territorial jurisdiction of Gurdaspur, but was residing in District Amritsar.

Reliance was placed upon an affidavit Ex.DW.1/A filed by defendant No.1, wherein she gave her address as 'Mehta Chowk, Tehsil Baba Bakala, District Amritsar'. Reliance was placed upon Aadhar Card of defendant No.1.

On the other hand, the plaintiff placed on record copy of case filed by defendant No.1 against Bhupinder Singh deceased under Section 125 Cr.P.C. Reliance was placed upon Ex.P3 decision of Lok Adalat and Ex.P6 an affidavit filed by defendant No.1 in another case titled as Kashmir Kaur Vs. LIC. In both these documents, address of defendant No.1 was mentioned as 'Village Atwal, P.S. Ghuman, Tehsil Batala, District Gurdaspur'.

The Aadhar card of defendant No.1 and her affidavit show her address of District Amritsar, but what is not coming forth is since when she is residing in District Amritsar. During the course of arguments, a specific question was asked to learned counsel for the appellants if he can give the date of issuance of Aadhar card. He expressed his inability to disclose the same. Even without going into controversy as to whether Aadhar card itself would be a residential proof or not, in the present case the same cannot be relied upon as the allegation of defendant No.1 that at the time of institution of the suit i.e. November, 2012, she was not residing within the territorial

jurisdiction of Gurdaspur, is not supported by the Aadhar card. There is no evidence on record to show that the jurisdiction of the court at Gurdaspur was barred.

The cogent findings recorded by the learned first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first appellate court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

October 31, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes