

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 103

Regular Second Appeal No.4412 of 2017 (O & M)
Date of Decision: September 14, 2017

Chairman, Punjab School Education Board

..... APPELLANT

VERSUS

Kashmira Singh

..... RESPONDENT

. . .

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

. . .

PRESENT: - Mr. Harit Sharma, Advocate, for the appellant.

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Jaspal Singh, J

1. Delay condoned.
2. The instant appeal has been preferred by the Chairman, Punjab School Education Board, Mohali against judgment & decree dated March 18, 2017 passed by the Additional District Judge, Hoshiarpur whereby judgment & decree dated April 06, 2015 passed by the Civil Judge (Junior Division), Hoshiarpur has been set aside and consequently suit filed by the plaintiff – respondent has been decreed.
3. Plaintiff – respondent, Kashmira Singh preferred a suit for mandatory injunction directing the appellant – defendant to make payment of retiral benefits of Smt. Kashmir Kaur, being her brother. Kashmir Kaur was working as Superintendent in Punjab School Education Board (for short, 'Board'). She expired on November 11, 2007. Her husband namely Prem

Singh son of Joginder Singh, resident of Patiala had already died on October 03, 2003. Plaintiff is the real brother and only legal heir of Kashmir Kaur who died intestate. Plaintiff obtained a succession certificate by filing an application in the court of Civil Judge (Senior Division), Hoshiarpur which was dismissed. Then he filed MCA in the court of District Judge, Hoshiarpur which was allowed. Plaintiff approached the defendant to claim retiral benefits of Kashmir Kaur on the basis of succession certificate but defendant refused to accede to his request as the succession certificate was obtained with regard to debts and security only with regard to his deceased sister, moreover, he was not a class -1 heir.

3. Defendant contested the suit by filing written statement. Defendant took the plea that as per Section 11 (1) of General Provident Fund Regulations (for short, 'Regulations), plaintiff is not entitled for pension benefits as he is not a family member of the deceased. Defendant further pleaded that plaintiff is not class-1 legal heir of deceased and therefore present suit is bad for non joinder of necessary party and no cause of action arises. Defendant submitted that as per office record, Kashmir Kaur expired intestate leaving behind her son Amrinder Singh who was nominated as her nominee to receive Provident Fund and death benefits, and further, Amrinder Singh is a class-1 legal heir. Accordingly, defendant prayed for dismissal of suit.

4. From the pleadings of parties, issues were framed by the trial court. In order to substantiate their case, parties led evidence. After hearing learned counsel for the parties and perusing the record, trial court, vide judgment & decree dated April 06, 2015, dismissed the suit of plaintiff holding that since Amrinder Singh, son of Kashmir Kaur, is a class-1 legal heir, plaintiff is not entitled to receive benefits of her deceased sister.

5. Plaintiff went up in appeal against the judgment & decree rendered by the trial court. The lower appellate court, vide impugned judgment & decree dated March 18, 2017 set aside the decision of trial court; decreed the suit filed by the plaintiff by accepting his appeal and directed the defendant to make payment of retiral benefits of Kashmir Kaur subject to his furnishing indemnity bonds with one surety of total amount of retiral benefits to indemnify the better claimant who may come forward in future date.

6. Now, aggrieved defendant – appellant has approached this Court against the judgment & decree dated March 18, 2017 passed by the lower appellate court.

7. While assailing the impugned judgment & decree, learned counsel for the appellant – Board has vehemently argued that the same is not in consonance with the settled proposition of law. Misreading of rules and facts has resulted into miscarriage of justice. Counsel for the appellant has referred to Section 11(1) of Regulations to submit that plaintiff is not entitled to pension benefits as he is not a family member of Kashmir Kaur. Kashmir Kaur had a son namely Amrinder Singh, who is entitled to receive the aforesaid benefits. Plaintiff claims himself as class-1 legal heir of Kashmir Kaur whereas as per Section 15 of the Hindu Succession Act, 1956, plaintiff comes in class-D. Accordingly, learned counsel prayed for acceptance of the instant appeal and setting aside of the impugned judgment & decree rendered by the lower appellate court.

8. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant but does not find any legal weight therein.

9. It was the case of plaintiff that Kashmir Kaur died issueless and her husband had already predeceased her on October 03, 2003 as per his death certificate Ex.P2. It is pertinent to mention here that after the death of Kashmir Kaur, plaintiff being her real brother, had filed an application under Indian Succession Act titled 'Kashmir Singh vs. General Public' to claim succession certificate with regard to debt, security and amount lying in the name of Kashmir Kaur in different banks which was dismissed by the court of Civil Judge (Junior Division), Hoshiarpur, vide order dated October 03, 2009, however, plaintiff approached the District Judge by filing MCA No.27 of November 09, 2009 and the aforesaid decision was reversed by the District Judge, Hoshiarpur vide order dated September 01, 2011 and the application filed by the plaintiff was allowed. Since, no one had appeared to contest the same, succession certificate has been issued in favour of plaintiff. So, it is duly proved that plaintiff is the only legal heir of deceased. Moreover, nobody has claimed the amount of provident fund of Kashmir Kaur except the plaintiff. Plaintiff is even ready to furnish indemnity bond of the amount which might be paid to him, indemnifying the better claimant, if any, who may come forward in future date. Though, in the nomination form (Ex.D1), name of one Amrinder Singh appears as son of Kashmir Kaur, but at the same time, it also finds mention that she has no faith in any of the relatives. Moreover, death certificate (Ex.P1) of Kashmir Kaur shows that only her father's name is mentioned therein and name of husband has not been mentioned. Even in the present case, testimony of plaintiff has gone un rebutted to the effect that Kashmir Kaur had died issueless. Succession certificate is also in favour of plaintiff and nobody has come forward to rebut the same.

10. Though, as per Section 11(1) read with Proviso of the Regulations, amount of provident fund is to be paid to the nominee and nomination shall not be in favour of any person or persons other than members of family, defendant – appellant has not been able to show that brother does not come under the definition of family in absence of any issue or husband of the lady. Even as per the Hindu Succession Act, brother is one of the legal heirs entitled to property in the absence of any issue and husband of a lady. Moreover, except plaintiff, none has claimed the retiral benefits of Kashmir Kaur.

11. In the light of what has been discussed above, no legal question, muchless any substantial question of law arises in the instant appeal. There is no infirmity or illegality in the judgment & decree dated March 18, 2017 passed by the lower appellate court and the same is upheld. Consequently, instant appeal is dismissed with no order as to costs.

September 14, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No