

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.871 of 2017 (O&M)

Date of Decision: 21.02.2017

Sukhwinder Kaur

... Appellant

Versus

Narinder Kaur and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. D.S. Virk, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1. This is a regular second appeal. The original suit was brought by the sons and daughters of late Des Raj who died while in service as a Driver with the Chandigarh Transport Undertaking Chandigarh. Their mother Balwinder Kaur had predeceased her husband dying in the year 2000. Des Raj died in September 2005. The sons were minor when the mother died. As the story goes the 3rd defendant Sukhwinder Kaur, mother of a daughter through previous marriage was engaged as a Caretaker to bring up the minor son of Des Raj. By then the daughters -plaintiff Nos.1 & 2 were married and settled in their respective matrimonial homes. One of the brothers lived with his sisters while the other resided with Sukhwinder Kaur. The 3rd defendant had taken possession of the entire house on the death of Des Raj. Plaintiffs No.1 & 2 approached the 3rd defendant a number of times asking her to vacate the house but she refused to do so.

2. After the death of their father the plaintiffs moved an application before the Chandigarh Administration for release of service benefits, gratuity etc. in their favour. The claim was not processed since the 3rd

defendant had by then staked claim on the benefits by projecting that she was Balwinder Kaur. Since there was a dispute, the Chandigarh Administration held its hands and that is when the suit was brought against the defendants Chandigarh Administration and Sukhwinder Kaur making twofold prayers that private defendant be restrained from alienating the property of their father or executing an agreement to sell in respect of the house which stood in the name of the late Des Raj situated in Village Sohana, Tehsil Kharar, District Ropar without the written consent of the plaintiffs and further claiming a permanent injunction against the official defendants from releasing the service benefits to the 3rd defendant without their consent. A mandatory injunction was sought against defendants No.1 & 2 to release all the benefits of the deceased father and to grant family pension to the sons of the deceased.

3. The case went to trial and evidence was recorded on the issues framed. Sukhwinder Kaur admitted in the witness box that she was married to Karam Singh and from her previous marriage she had given birth to a daughter namely, Parneet Kaur. Thereafter, Karam Singh deserted and divorced her in the presence of the village Panchayat and also in the Police Station. Admittedly she had not obtained any decree or divorce from her previous husband. She deposed that Des Raj had agreed to marry her with the consent of family members and other common relatives. She produced photographs of marriage, copy of voter card, ration card, original electricity bills in which the 3rd defendant is shown along with the name of Des Raj as occupants of the suit residence. She produced a copy of the status report of the Life Insurance Policy in which the 3rd defendant is mentioned as wife

and nominee of Des Raj. She produced a copy of the Adhar Card and the certificate issued by Principal of Mata Sahib Public School dated October 22, 2005 where Des Raj held out to the Principal that Parneet Kaur was his daughter and studying in Nursery class. Affidavits of those who were amongst the gentry at the time of marriage were produced. There were even a certificate issued by the District Magistrate, SAS Nagar, Mohali of legal heirs of deceased Des Raj in which name of Sukhwinder Kaur was entered as wife/widow. These documents were objected to by the plaintiffs on the ground that they were either prepared by the 3rd defendant or were issued to her and her daughter much after the death of Des Raj. 3rd defendant rebutted this by stating that the documents were applied for during the life time of Des Raj but did not deny they were received thereafter.

4. After appreciating the evidence on record the trial Court was of opinion that marriage between Des Raj and 3rd defendant was performed in the presence of their relatives, but at the same time, the Civil Judge (Junior Division) Chandigarh was of the considered view that marriage was not valid. It was a void marriage because the marriage between Sukhwinder Kaur and Karam Singh subsisted in law since it was not dissolved by a decree of divorce. The 3rd defendant admitted that Karam Singh was still alive. Hence, the marriage was in contravention of the provisions of Section 5 of the Hindu Marriage Act, 1955 ("the Act") and void under Section 11 thereof. There was no proof of performance of any ritual or ceremony according to which marriage was performed. The marriage was not proved by any certificate issued by any Gurudwara Sahib or Mandir to prove the ceremonies of marriage. The presumption under Section 7 of the Act was

not available to the parties. The photograph only showed the couple exchanging sweets with each other.

5. Having held the marriage to be void, the trial Court applied the law in Vidhyadhari v. Sukharna Bai, (2008) 2 SCC 238 holding that if husband contracts second marriage and nominates second wife for pension, Provident Fund and other benefits then may be the second marriage is void but the second wife would be entitled to get succession certificate to obtain the benefits. That was a case where the second marriage though void had lasted 20 to 25 years and that was thought long enough period for the community to accept the couple as man and wife. Moreover, Vidhyadhari was a nominee of the deceased Government servant and the mother of his four children. Since the 1st wife was living, the Supreme Court exercised its equitable jurisdiction in ordering sharing of money which represented the estate of the deceased received from Government service as employee.

6. In the present case, no evidence has been led or produced on record that the 3rd defendant was a nominee of Des Raj in Government record. The trial Court having held thus far went forward to decree the suit partly; to the extent that plaintiffs No.3 & 4 (sons of Des Raj) along with defendant No.3 are entitled for release of service benefits left behind by Des Raj. However, I find that there is no apportionment in the verdict of the trial Court dated July 30, 2014 and one can only assume that 1/3rd rights have been granted to each.

7. Aggrieved by the judgment and decree of the trial Court, the children of Des Raj appealed to the Additional District Judge, Chandigarh who by his judgment dated October 24, 2016 has accepted the appeal and

dismissed the suit in toto with costs in favour of the plaintiffs. The 3rd defendant has been restrained from alienating, mortgaging, disposing and executing the agreement to sell at the hands of the 3rd defendant. The official defendants have been restrained from releasing service benefits of late Des Raj to defendant No.3 without the written consent of the plaintiffs. A direction has been issued to release all benefits in favour of the plaintiffs and to start family pension to the sons of Des Raj.

8. The Appellate Court has affirmed the finding of the trial Court that the marriage was indeed void. Law did not countenance a Panchayati divorce which was the admitted factual matrix. The Appellate Court revisited the evidence and reached its conclusion on the issue of marriage against the 3rd defendant. The Appellate Court was not swayed by the voluntary statement made by the 3rd defendant that Des Raj had adopted Parneet Kaur. No adoption deed was executed or signed regarding adoption with Des Raj. The marriage between Sukhwinder Kaur and Karam Singh subsisted. The Appellate Court examined the Punjab Service Rules, Vol. II-Chapter 6 dealing with family pension scheme which prescribed that only wife is entitled to get the service benefits of her deceased husband who is a Government employee. A lady claiming herself to be second wife is not entitled to get service benefits. The ceremonies of marriage between the 3rd defendant and Des Raj were not proved by the 3rd defendant. Moreover, no issue was born out of alleged marriage of Des Raj and 3rd defendant who no doubt were in residence together. What existed between Des Raj and the 3rd defendant can be described as live-in relationship which may or may not have been sanctified by performing the customary ceremonies of marriage

in the presence of a gathering of relatives. When adoption was not proved Parneet Kaur would have no right of inheritance or succession to the property left behind by Des Raj. There can be no quarrel with findings of the lower Appellate Court in reversing the judgment and decree of the trial Court with proper reasons.

9. The progressive law in D.Velusamy v. D.Patchaiammal, AIR 2011 SC 479 would not apply in this case, a case which was cited at the hearing. The Supreme Court held that a live-in relationship is not in the nature of marriage but deserves certain protections.

10. No substantial question of law arises in this appeal for consideration on the second appeal side and the same is accordingly dismissed being without merit.

(RAJIV NARAIN RAINA)
JUDGE

21.02.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*