

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

RSA No.915 of 2017 (O & M)
Date of decision :16.08.2017

Baldev Singh @ Dev Singh

...Appellant

Versus

Jaswinder Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.S. Jattana, Advocate
for the appellant.

ANIL KSHETARPAL, J.

Defendant-appellant has filed the present Regular Second Appeal against the judgment passed by the learned Additional District Judge, Mansa.

Plaintiffs-respondents, claiming to be daughter-in-law and grand son of defendant-appellant, filed a suit for grant of maintenance under the Hindu Adoption and Maintenance Act, 1956. Jaswinder Kaur-plaintiff No.1 had claimed that she was married to Gamdoor Singh on 20.01.2006. During their married life, Neetu-plaintiff No.2 was born on 14.12.2006. Unfortunately, Gamdoor Singh expired on 07.01.2007. Plaintiff claimed maintenance and also prayed for creation of a charge on the property.

Defendant contested the suit. The marriage between Jaswinder Kaur-plaintiff No.1 and Gamdoor Singh was not disputed, however, it was stated that when the ceremony of marriage was completed, the defendant came to know that Jaswinder Kaur-plaintiff No.1 was already married with one Jagdeep Singh and thereafter they left the marriage place.

Learned trial court choose to dismiss the suit. Plaintiff filed the

first appeal, which has been accepted.

Learned First Appellate Court has framed the following points for determination:-

“ (i) Whether the marriage dated 20.01.2006 solemnized between Jaswinder Kaur and Gamdoor Singh is a valid marriage in accordance with law obtainable to the parties?

(ii) Whether the alleged marriage of Jaswinder Kaur with Jagdev Singh, prior to her marriage with Gamdoor Singh, has been valid so as to create any legal hindrance in her marriage with Gamdoor Singh?

(iii) Whether appellant/plaintiff No.2 namely Neetu is the legitimate child of Gamdoor Singh?

(iv) Whether respondent Baldev Singh is under obligation to maintain the appellants?

(v) Whether a charge can be created upon the property of the respondent described in the plaint?”

Learned trial court after considering each of the points on the basis of evidence available on the file and the law, decreed the suit filed by the plaintiffs and fixed maintenance at the rate of Rs.5,000/- per month. Learned First Appellate Court has also held that the amount of maintenance shall be a charge on the property of the defendant.

Learned counsel for the appellant has submitted the same arguments which were addressed before the learned First Appellate Court.

Learned First Appellate Court has dealt with each of the submissions in

detail.

Learned counsel for the appellant has further submitted that there is evidence available on the file that Gamdoor Singh was impotent. Learned counsel produced his blood test report Ex.DW-3/A. A perusal of the report does not show that Gamdoor Singh was impotent. Learned counsel for the appellant has further relied upon the statement of DW-3. Even statement of DW-3 does not improve the case of the defendant.

Learned counsel for the appellant has further submitted that Jaswinder Kaur-plaintiff No.1 was already married with Jagdeep Singh. He submits that once she was already married and there was no divorce between the parties, the marriage between Gamdoor Singh and Jaswinder Kaur-plaintiff No.1 be declared as illegal.

I have considered the submissions, however, it is not possible to agree with the learned counsel for the appellant.

Learned First Appellate Court has dealt with the aforesaid argument under issue No.(ii). Learned court has held that valid marriage between Jaswinder Kaur-plaintiff No.1 and Jagdev Singh is not proved on the file. The finding recorded by learned First Appellate Court in Para 22 is as under:-

“22. In the instant case parties are admittedly 'sikh' by religion. Even Jagdev Singh is stated to be a 'sikh' and, therefore, proper ceremony for solemnization of the marriage was the 'Anad Karj' Ceremony. There is no evidence on the record which indicates that the marriage of Jaswinder Kaur with Jagdev Singh was solemnized by performance of

customary rites and ceremonies (Anand Karaj) applicable to either of the parties. On the contrary even in the cross-examination of Jaswinder Kaur- PW2 and PW3- Baljinder Singh, it has come out that the marriage was performed through exchange of garlands which admittedly is not the requisite customary rites and ceremony applicable to either of the parties. In the absence of the same, the alleged marriage of Jaswinder Kaur with Jagdev Singh has no existence in the eyes of law. Once this Court has reached to this conclusion that the alleged earlier marriage of Jaswinder Kaur with Jagdev Singh had no existence in the eyes of law, there was no legal impediment or hindrance in the solemnization of marriage of Jaswinder Kaur with Gamdoor Singh, which admittedly was solemnized by way of 'Anad Karj' ceremony. Accordingly, this point is decided against the respondent and in favour of the appellants."

It is further established from the record that when Jaswinder Kaur-plaintiff No.1 was pregnant, she was examined at Punjab Health Centre. Gamdoor Singh was shown as husband whereas Baldev Singh-appellant was shown as father-in-law. Even the birth certificate of Neetu-plaintiff No.2 proves that Gamdoor Singh has been shown as father and Baldev Singh-appellant has been shown as grand-father.

Learned counsel for the appellant has not been able to point out

judgment passed by the learned First Appellate Court is in detail and after re-appreciating the evidence available on the file.

Finding no merit in the present appeal, the same is ordered to be dismissed.

16.08.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No