

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

**RSA No.3550 of 1987 (O&M)
Date of Order:07.08.2018**

Bakhtawar

..Appellant

Versus

Sheo Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate,
for the appellant.

Mr. Vinod S. Bhardwaj, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court.

Dispute in the present case is with regard to the estate of Sohan, who is stated to have died on 17.09.1978. Plaintiff Bakhtawar, brother of Sohan claims that he died unmarried and issueless and therefore he is entitled to succeed to the entire property left by the deceased. Whereas defendant contested the suit and pleaded that she is married wife of Sohan with whom she entered into a kareva marriage (customary marriage) and lived together for 40-45 years. She further claims that after the death of Sohan, she is cultivating the land. It is further pleaded by her that previously she was married to one Jeet Ram, who died in the year 1936 and thereafter Sohan entered into a kareva marriage with the defendant. Sohan is alleged to have executed a Will and also suffered a civil court decree in

favour of Sheo Bai, defendant no.1-respondent.

Both the courts held that the decree suffered by Sohan in favour of Sheo Bai was not valid as the suit was filed on 01.09.1978. Admitting written statement was filed on 02.09.1978 and the judgment and decree was passed on 04.09.1978.

However, learned first appellate court held that Sheo Bai and Sohan were residing together for quite long and Sheo Bai even gave birth to a girl (daughter) Devki in the year 1940, who died after a month of the birth and hence, marriage between Sohan and Sheo Bai is proved. It is also admitted position on the record that one of the witness who appeared on behalf of the plaintiff-appellant Kanwar Singh, PW5 admitted that Sohan and Sheo Bai were living together. The death certificate of Devki has been produced on file as Ex.DC. The date of death is mentioned as 18.10.1940.

In the considered opinion of this court no ground to interfere is made out in the finding of the first appellate court with regard to relationship of husband and wife between Sheo Bai and Sohan.

Still further in the considered opinion of this court, the findings of the courts below ignoring a civil court decree dated 04.09.1978 suffered by Sohan in favour of Sheo Bai are also erroneous. Defendants, in order to prove the civil court decree in her favour has produced on file copy of the plaint, wherein Sheo Bai claims that she is wife of Sohan and in a family settlement, Sohan has agreed to give this property to plaintiff (in that suit i.e. Sheo Bai). Plaint is Ex.PP, whereas Sohan had filed admitting written statement on 02.09.1978.

Since the parties were not at issue, learned court after recording the statements of the parties and their counsel, decreed the suit. The

judgment, which has been passed by the court in accordance with Order 12 Rule 6 CPC is extracted as under:-

“In view of the statement of the parties and their counsel, the suit of the plaintiff is decreed as prayed for with no order as to costs. Decree sheet be prepared and file be consigned to records.

Announced.

*Sd/-
Sub Judge Ist Class
Rewari. 4.9.78”*

It is well settled that the decree passed by the court of competent jurisdiction cannot be set aside or ignored or doubted merely on the ground that it was passed within a period of 4 days.

Heavy burden lies on the plaintiff to prove that the aforesaid decree passed is result of fraud, result of some illegality for various reasons. In the present case plaintiff has not produced any evidence to deny the fact that Sohan neither voluntarily appeared before the court nor signed the written statement nor suffered a statement before the court. Merely because Sohan had died after a period of 13 days, would not make a civil court decree doubtful. A civil court decree cannot be set aside simply on the basis of doubts which the court may entertain. The decree passed by the competent court of jurisdiction can only be set aside once there is unimpeachable evidence proving that either the decree is result of fraud or a result of some illegality.

In view thereof, apart from upholding the judgment of the first appellate court with regard to kareva marriage between Sheo Bai and Sohan, the judgment and decree passed by the first appellate court is also modified and the decree passed by the court in the year 1978 is also upheld.

The regular second appeal is dismissed.

C.M.No.10054-C-2006

Since the review application has been withdrawn vide order dated 07.11.2006, therefore, no order is required to be passed in the application for condonation of delay.

August 07, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No