

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.1110 of 1990 (O&M)

Date of Decision: December 14, 2018

Fatta Singh (deceased) through L.Rs

...Appellant

Versus

Kartar Kaur (deceased) through L.Rs & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Ms. Alka Sarin, Advocate,  
for the appellant.

Mr. R.K.Girdhar, Advocate,  
for the respondents.

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**AMIT RAWAL, J.**

The present Regular Second appeal at the instance of appellant-defendant is directed against the judgment and decree dated 11.05.1990, whereby the appeal of the respondent-plaintiffs against the judgment and decree dated 21.02.1987 of the trial court, whereby the suit for declaration was dismissed, has been allowed. In other words, the suit has been decreed.

Respondent-plaintiffs claimed the declaration to be owners of land measuring 48 kanals 8 marlas, i.e., 1/3<sup>rd</sup> share of land measuring 145 kanals 5 marlas bearing different khasra numbers referred to in the plaint, situated in Village Mahni Khera, Tehsil Muktsar being legal heirs of Baldev Singh son of Fatta Singh and also for joint possession with consequential relief of injunction restraining the defendant from alienation.

It was alleged that Baldev Singh son of Fatta Singh, husband of

Kartar Kaur plaintiff No.1 and plaintiffs Nos.2 and 3 Naib Singh and

Balwinder Singh were his sons. Baldev Singh, during his life time, purchased land from Ishar Singh son of Kishan Singh vide sale deed dated 10.02.1981. He died on 17.02.1981. Besides the plaintiffs, no one was legal heir of Baldev Singh. In the absence of the plaintiffs, defendant proclaiming himself the father, got the mutation bearing No.1833 sanctioned in his favour. About six months back, other son of Baldev Singh, namely, Sukhdev Singh, died issueless.

The aforementioned suit was contested by denying the relationship of the plaintiffs as wife and children of Baldev Singh. It was further alleged that Baldev Singh was unmarried and, therefore, died issueless. Veero, his mother, had predeceased him and the defendant was the only legal heir of Baldev Singh. In fact, Kartar Kaur was real aunt of Baldev Singh, who was not married with Kartar Kaur.

Since the parties were at variance, the trial court framed the following issues:-

- “1. Whether the plaintiffs are entitled to the declaration and possession of the suit land as alleged in the plaint? OPP*
- 2. Whether the suit is not maintainable in the present form? OPD*
- 3. Relief.”*

Plaintiff, in support of their case, examined PW-1 Sher Chand, PW-2 Kartar Kaur plaintiff, PW-3 Bhagwan Kaur, PW-4 Satish Kumar and brought on record application for ration card Ex.P1, copy of order Ex.P2, copy of voters list Ex.P3, insurance policy Ex.P4 and copies of jamabandies Ex.P5 and Ex.P6.

On the other hand, defendant examined DW-1 Gurdial Singh, DW-2 Darshan Singh, DW-3 Fatta Singh and also brought on record copy

of mutation Ex.D1, copy of order Ex.D2, birth certificates Ex.D3 to Ex.D6.

The trial court, on the basis of the evidence and the statements of the witnesses, dismissed the suit, but the Lower Appellate Court, as noticed above, decreed the suit.

Ms. Alka Sarin, learned counsel appearing on behalf of the appellant-defendant submitted that the Lower Appellate Court, being the last court of fact and law, was required to examine the statements of all the witnesses, particularly that of plaintiff Kartar Kaur and inadvertence or non-reference is itself a perversity. She drew the attention of this court to the cross-examination of the plaintiff, who feigned ignorance about the relatives or brothers of Fatta Singh. Even she did not remember the year in which her children were born. She admitted that she was living at Village Mahni Khera for a period of fifteen years and her vote and ration card were not issued there. Even she did not remember the name of the Granthi, who performed the marriage with Baldev Singh or any entry was made with Nambardar. She could not give any evidence to prove that three sons were born from her womb and loins of Baldev Singh. Plaintiff Kartar Kaur has miserably failed to lead evidence in terms of the provisions of Section 50 of the Indian Evidence Act.

Initiation of ejectment proceedings against the plaintiffs and Baldev Singh cannot a ground in conferring the relationship of husband and wife. The statements of the witnesses and other evidence cannot be brushed aside and ignored. In the mutation proceedings, notice was issued to the children including Kartar Kaur, but she did not appear. From the perusal of the birth certificates Ex.D3 to Ex.D6, it has been proved on record that from the wedlock of Kartar Kaur and Gurdial Singh, one daughter and three sons

were born and their birth entries were recorded in the register to be residents of Mahni Khera. No ration card or voters list of Village Mahni Khera has been produced to establish that plaintiff Kartar Kaur and her sons resided with Baldev Singh. Ration Card Ex.P1 and voters list Ex.P3 were contradictory as they were of the years 1980. An attempt was made to prove the same through the testimony of PW-4 Satish Kumar S.I. Department of Food and Supply and as per the testimony of the said witness, it surfaced that he was not posted in the year 1980 at the station and did not know whose signatures were in Urdu. In other words, the aforementioned documents have not been proved. No witness from Village Mahni Khera has been produced to prove that Kartar Kaur and Baldev Singh resided together or performed marriage.

Mr. R.K.Girdhar, learned counsel representing the respondent-plaintiffs supported the judgment and decree rendered by the Lower Appellate Court under challenge by relying upon Ex.P2, copy of the ejectment order which showed that Jagat Ram had filed an ejectment petition against the plaintiff and Sukhdev Singh from the house at Malout, in which Kartar Kaur was described as widow of Baldev Singh while other plaintiffs to be the sons. PW-1 submitted that plaintiff Kartar Kaur was living in the house of Jagat Ram and the aforementioned statement and the cross-examination have gone un-rebutted. The application for obtaining the ration card Ex.P1 was signed by Baldev Singh and thumb marked by Kartar Kaur. Voters list Ex.P3 also showed that the plaintiffs were living in the house situated in Ward No.6. Insurance policy was taken in the year 1974 which was under the name of Kartar Kaur where she was recorded as Kartar Kaur wife of Baldev Singh, House No.254 Gali No.4, Camp Road, Malout

Mandi, District Faridkot and, thus, urged this court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book, records of the courts below and of the view that there is force and merit in the submissions of the learned counsel for the appellant-defendant.

It would be apt to reproduce Section 50 of the Indian Evidence Act, which reads thus:-

50. Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).”

The plaintiff has miserably failed to lead evidence as per the provisions extracted supra. Except the mother PW-3 Bhagwan Kaur and PW-1 Sher Chand Shopkeeper, no other relation or a person from the Village where Kartar Kaur was allegedly living with Baldev Singh has been examined. She feigned ignorance with regard to the name of the Granthi or was unable to give the proof regarding the birth of the children. In fact, it has been proved on record that she was married to Gurdial Singh, who, in examination-in-chief stated to be brother of father-in-law. She candidly admitted that the ration card and voter card were not of Village Mahni Khera.

Lower Appellate Court has abdicated in solely relying upon the

proceedings of ejectment, wherein Jagat Ram has branded Kartar Kaur to be wife of Baldev Singh. That would not dispense with proof of relationship as per the provisions of Section 50 *ibid*. PW-2 Kartar Kaur plaintiff was unable to produce any person from Village Hari Ke Burj to prove that she was married to Baldev Singh.

PW-4 admitted that it was correct that on application Ex.P1, the status and ages were in different ink and remaining writing was in different ink. In Ex.P1, Ward No.9, House No.4/38, name of Baldev Singh son of Fatta Singh and number of family members were written in black ink, whereas the ages were written in blue ink. In 1980, Baldev Singh was stated to be aged 45 years, Kartar Kaur 44 years, Sukhdev Singh 22 years, Naib Singh 18 years and Balwinder Singh 15 years, but in the voters list Ex.P3, which was also prepared in 1980, Ward No.6 and House No.256 were written and the ages of Baldev Singh 40 years, Kartar Kaur 38 years, Sukhdev Singh 26 years, Naib Singh 26 years and Balwinder Singh 21 years. Despite that, both the documents relate to the same year, house number, ward number, much less ages are at variance. Jagat Ram has not been examined, so the Lower Appellate Court could not have formed an opinion as to under what circumstances, Kartar Kaur was branded to be wife of Baldev Singh.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts

of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back. For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29] ”*

*“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law*

*which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”*

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the reasons mentioned above, in my view, there is falsity and perversity in the judgment and decree rendered by the Lower Appellate Court. The same are set-aside and that of the trial court restored. Suit of the respondent-plaintiffs is dismissed. Decree-sheet be prepared accordingly.

Appeal stands allowed.

**December 14, 2018**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**  
**Whether Reportable:**

**Yes/No**  
**Yes/No**