

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

**RSA No.3667 of 2010 (O&M)
Date of decision:24.01.2018**

Dev Singh (deceased through LRs) ... Appellant

Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the appellant.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Rajinder Goyal, Advocate
for respondents No.13, 19, 20 to 22 and 24.

Mr. Surinder Garg, Advocate with
Mr. Lalit Sharma, Advocate
for respondents No.30 to 40 and 42 to 45.

AMIT RAWAL J. (Oral)

C.M.No.10779-C of 2010

For the reasons stated in the application which is duly supported by an affidavit, delay of 18 days in re-filing the appeal is condoned.

C. M. stands disposed of.

RSA No.3667 of 2010 (O&M)

Appellant-plaintiff is in Regular Second Appeal against the

concurrent findings of facts and law, whereby, the suit challenging the mutation bearing No.2573 dated 21.06.1960 and claiming right in the property, has been rejected.

Before I could advert to the arguments of learned counsel for the parties, it would be in the fitness of things to give short preface of the matter for adjudication of the dispute.

The plaintiff instituted a suit claiming the aforementioned relief on the premise that he was born out of the wedlock of Mangal Singh and Narati Devi. Mangal Singh died about 55 years back leaving behind his widow Narati Devi and son Dev Singh. The appellant-plaintiff was minor and Narati Devi, mother of the appellant performed Kareva marriage with one Jagir Singh, i.e., elder brother of Mangal Singh and started living in the village Kanhaheeri, whereas, the land in dispute was situated within the revenue estate of Cheeka Tehsil Guhla. It has been proved on record that Mangal Singh was married to Narati Devi and one son was born. However, the authorities did not believe the version of Narati Devi that it was Dev Singh @ Natha, son of Narati and rejected the claim, resultantly, the suit was filed. Though at that time, the plaintiff was aged 13 years but acquired the majority much earlier and instituted the suit in the year 2001 by challenging the same on the premise that during the mutation proceedings, numberdar of village Cheeka where the land in dispute was situated was not examined.

The aforementioned suit was contested by the defendants on the premise that few of the defendants had taken the property on mortgage from

State and Mangal and part of the land was also sold. The trial Court on the basis of evidence dismissed the suit and the appeal filed before the lower Appellate Court also met with the same fate.

Mr. Arun Jain, learned Senior counsel assisted by Mr. Amit Jain, Advocate appearing on behalf of the appellant submitted that suit for declaration, possession and injunction, *ibid*, was instituted on the aforementioned pleadings and in support thereof, examined himself as PW1, Narati Devi as PW2 and Sukh Ram, brother of Narati as PW3. Since numberdar of village Cheeka was not available owing to passage of time but DW8, DW10 and DW11 admitted Narati Devi to be wife of Mangal Singh. The provisions of Section 50 of Indian Evidence Act, 1872 (in short “1872 Act”) which is statutory requirement of law, have been proved to the hilt.

During the course of hearing, contents of the impugned mutation has been shown to this Court to establish that concededly, Narati Devi was wife of Mangal Singh and had performed kareva marriage with Jagir Singh and one son was also born out of their wedlock. In view of the statement of Narati Devi, relationship of appellant-plaintiff being son of Mangal Singh and Narati Devi had been established to the hilt but the Courts below abdicated in not considering the aforementioned plea, much less, there is illegality and perversity in the judgments and decrees under challenge and urged this Court to formulate the substantial questions of law as drawn in the memorandum of appeal.

Mr. Rajbir Singh, AAG, Haryana, Mr. Rajinder Goyal, Advocate for respondents No.13, 19, 20 to 22 and 24 and Mr. Surinder

Garg, Advocate with Mr. Lalit Sharma, Advocate for respondents No.30 to 40 and 42 to 45 jointly submitted that plaintiff has miserably failed to discharge the onus as enshrined under Section 101 of 1872 Act and to prove that plaintiff was son of Mangal Singh and Narati Devi. The mutation proceedings revealed that Narati Devi was wife of Mangal Singh but it was not established that whether Dev Singh was actually a son of Narati Devi or somebody else. They further submitted that the concurrent findings of facts and law cannot be tinkered with until and unless, there is gross illegality and perversity and thus, urged this Court for dismissal of the present Regular Second Appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jain.

It would be apt to reproduce the Section 50 of 1872 Act which reads as under:-

“Section 50 in The Indian Evidence Act, 1872

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). Illustrations

(a) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant. Comments Contradiction in evidence of relationship of witness of trifle nature, not material in a partition suit”.

The plaintiff attempted to prove the relationship of son born out of wedlock of Mangal Singh and Narati Devi through the testimony of attesting witnesses, PW2-Narati Devi and PW3-Sukh Ram. Both are the interesting witnesses. Nothing prevented the appellant-plaintiff to produce Jagir Singh, who had appeared in the mutation proceedings but was rejected by the revenue authorities to establish that Dev Singh was the son born out of wedlock of Mangal Singh. At the time of mutation, numberdar of village Cheeka where the land was situated had also not been examined as he could have been the best witness to establish the relationship.

In my view, the plaintiff has miserably failed to prove the relationship, much less, ingredients of Section 50 of 1872 Act. No explanation has come forward despite the fact that plaintiff had allowed the third party rights to be created. There could have been some force in the submissions of Mr. Jain, had the suit been instituted by Narati Devi as the

relationship of husband and wife had not been proved. In the absence of the same, I am of the view that self-serving statement of Narati Devi did not prove the pleaded case of the appellant.

As an upshot of my findings, I am of the view that the concurrent findings of facts and law do not warrant any interference, much less, no substantial questions of law arise for adjudication of the present appeal.

No other point has been argued.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 24, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No