

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2360 of 2016 (O&M)

Date of Decision: May 07, 2018

Ramesh Chand

...Appellant

Versus

General Public & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.R.K.Malik, Senior Advocate with
Mr.Sandeep Dhull, Advocate,
for the appellant.

None for the respondents.

AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree 28.7.2015, whereby the suit for mandatory injunction filed against the defendants seeking relief of correction of date of birth, has been dismissed by the trial Court and affirmed by the Lower Appellate Court vide judgment and decree dated 1.10.2015.

The suit aforementioned was instituted by the plaintiff on the premise that his date of birth was 2.10.1970 as per the record of the register of the Registrar of Birth and Death of Faridabad, but was wrongly recorded in the matriculation certificate as 1.5.1966 as well as in the other concerned school records by Board of School Education, Bhiwani-defendant No.2. The department was requested to rectify the date of birth, but all the efforts went in vain giving cause of action to the plaintiff to institute the suit.

Defendant No.1-General Public was proceeded ex-parte.

Defendant No.2-Board of School Education was also proceeded ex-parte.

Plaintiff stepped into the witness box as PW-1 and brought on record birth certificate Ex.P1, school leaving certificate as Ex.P2 and some marked documents.

The trial Court, on the basis of the aforementioned evidence, dismissed by the suit by holding that since the date of birth in the certificate was 2.10.1970, but in the transfer certificate the same was mentioned as 1.5.1970, so there was doubt regarding the birth certificate and transfer certificate Ex.P1 and Ex.P2 issued on 29.8.2005. In the matriculation certificate, whose photocopy put forth as Mark-A, showed his date of birth as 1.5.1966.

Along with the appeal, CM No.17747-C of 2016 for placing on record the information dated 25.2.2016 obtained under the Right to Information Act sought as Annexure R-1 by way of additional evidence, proved the date of birth of the appellant-plaintiff as 2.10.1970, i.e., the entry as per the birth record of Village Banswa was of year 1970. The aforementioned piece of evidence is essential and necessary for the adjudication of the lis, for, both the Courts have non-suited the appellant-plaintiff as relevant documents had not been brought on record. Only photocopies were there. No harm and prejudice would be caused in case date of birth is corrected, for, in the matriculation certificate, it is mentioned as 1.5.1966 and in the primary school, as 1.5.1970, whereas the actual date of birth is 2.10.1970. The attested copies of Ex.P-1 and Ex.P-2 were already on record, which were sufficient to prove the date of birth and, thus, prayed for setting-aside the findings under challenge by decreeing the suit.

I have heard the learned counsel for the appellant, appraised the

paper book and of the view that there is no force and merit in the submissions of Mr.Malik.

There had been a spate of litigation at the behest of similarly situated persons seeking correction of date of birth by making them younger to the one recorded in the record of the school. The aforementioned suit had been filed in 2011. In case the date of birth is 1.5.1970, the age of the appellant-plaintiff would have been 41 years, for, no explanation has come forth in not getting the date corrected initially at the time of entertaining the education, during the school or later on. The information obtained under the Right to Information Act would not help the appellant to seek correction, for, it is too late in a day to seek correction of the same, for, three dates have come forward. In the matriculation certificate, it has been shown as 1.5.1966, in primary school as 1.5.1970, whereas in the record of the birth, which is sought to be placed on record by way of additional evidence, is 2.10.1970, which is the one sought to be corrected in the records of the matric and primary school. I am afraid the aforementioned relief cannot be granted to the appellant as no declaration had been sought. The suit for mandatory injunction simpliciter is not maintainable in the absence of relief for declaration.

No family member has been examined in support of the aforementioned claim, i.e., father or the mother or any relative. The findings of fact and law arrived at by the Courts below would not bring the submission of Mr.Malik within the realm of to enable me to form a different opinion than the one arrived at.

The appellant is estopped to claim the relief at belated stage.

Similar view is taken by this Court in **Regular Second Appeal No.3985 of**

2015 (Ankit Chahal Versus Central Board of Secondary Education and others), decided on 29.7.2016.

For the reasons stated above, no ground for interference is made out. Appeal stands dismissed.

May 07, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No