

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

RSA No.1327 of 2015

Gian Kaur

....Appellant

Versus

Baljeet Kaur

....Respondent

And

RSA No.1328 of 2015

Gian Kaur

....Appellant

Versus

Baljeet Kaur

....Respondent

Date of Order: 14.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarju Puri, Advocate for the appellant.

Mr. Sandeep Jain, Advocate for respondent.

AMIT RAWAL, J (ORAL)

This common order of mine shall dispose of aforesaid two appeals since common questions of law and facts are involved in the same.

Plaintiff-appellant has assailed concurrent judgments and decrees passed by both the courts below whereby suit bearing No.513 of 2009 seeking declaration that she is co-owner in joint possession of the land described in the plaint on the demise of her husband-Baldev Singh with consequential relief of permanent injunction restraining the defendant-respondent from interfering and dispossessing the plaintiff with the peaceful possession of the plaintiff, has been dismissed vide judgment and decree dated 07.3.2014 passed by learned Civil Judge (Sr. Division), SBS Nagar whereas the counter claim of the defendant-respondent has been decreed

and affirmed in appeal by the lower Appellate Court vide judgment and decree dated 13.3.2015.

Plaintiff instituted the suit on the premise that she was lawfully wedded wife of said Baldev Singh, who owned the land fully described in the plaint. Baldev Singh was earlier married to the defendant-Baljeet Kaur @ Mohinder Kaur and their marriage was dissolved by the decree of divorce dated 28.3.1984. After that defendant-Baljeet Kaur @ Mohinder Kaur filed a suit for declaration at Nawanshahr claiming herself to be the wife of Baldev Singh and challenged the divorce dated 28.3.1984. Said suit was dismissed vide judgment dated 13.3.1985. Baldev Singh thereafter married the plaintiff, which was consummated but the defendant started threatening the plaintiff to dispossess from the suit land stating that she had got sanctioned mutation in her favour regarding the suit land at the back of the plaintiff.

Upon notice, defendant-respondent filed written statement and denied the exclusive right of the plaintiff. She (defendant) came up with the plea that the plaintiff suppressed the material facts from the Court and she was legally wedded wife of Baldev Singh and the divorce granted by way of decree of divorce was not applicable. Defendant averred that she was the only wife and the plaintiff had not been in possession as joint owner as alleged.

From the pleadings of parties, the trial Court framed the following issues:

- “1. Whether the plaintiff is entitled to the declaration as prayed for?OPP*
- 2. Whether the plaintiff is entitled to the permanent injunction as consequential relief, as prayed for?OPP*

3. *Whether the plaintiff has suppressed the material facts from the Court?OPD*
4. *Whether the plaintiff is barred by his act and conduct to file the present suit?OPD*
5. *Whether the suit is not maintainable in the present form?OPD*
6. *Whether the principle of estoppel, acquiescence, latches applies to the present suit?OPD*
- 6-A. *Whether the counter claimant is the joint owner in possession of land measuring 45K-19Mls, as detailed in the head note of the counter claim?OPCC.*
7. *Relief.”*

The plaintiff in support of her pleadings examined PW2 Harmesh Lal and herself as PW1 besides bringing on record numerous documents i.e Ration Card, Voter Card, Aadhar Card, Bank Pass book, Passport, copy of judgment and decree dated 13.3.1985 as Ex.P13 & Ex.P14 and copy of divorce deed as Ex.P15 apart from the photographs of the marriage to prove that Baldev Singh was her husband.

On the other hand, defendants also tendered certain documents on record besides stepping up in the witness box as DW1.

On the basis of preponderance of evidence, the trial court while decreeing the counter claim of the defendant-respondent dismissed the suit. The appeal preferred against the same was also dismissed by the lower Appellate Court.

Learned counsel for the appellant submitted that both the courts below have gravely erred while dismissing the suit of the plaintiff, for, the judgment & decree dated 13.3.1985 vide which the suit filed by the defendant was dismissed, was not only pertaining to the challenge being laid to the decree of divorce but also related to declaration claiming herself

as wife. He submitted that once the said issue had attained finality the same could not be permitted to re-agitated in the counter claim as the same was barred by the principles of *res judicata*.

On the other hand, learned counsel for the defendant-counter claimant submitted that both the courts below have rightly dismissed the suit on the basis of correct appreciation of evidence. The claim set up by the counter claimant cannot be thrown out as has been projected by the plaintiff. Concededly, Baldev Singh had performed marriage with the defendant-respondent and the said marriage was not legally dissolved. The divorce deed as referred by the plaintiff as Ex.P15 is not binding upon the defendant. She was entitled to the estate left by Baldev Singh and has been very fair and honest before the Revenue Authorities thereby seeking mutation to the extent of half share, thus submitted that the concurrent findings of facts may not be interfered with.

After hearing learned counsel for the parties and perusing the case file minutely, I find force and merit in the submissions made by learned counsel for the appellant, for, concededly as per judgment (Ex.P.13 & P.14), respondent-counter claimant had claimed two reliefs, namely (i) she is lawful wedded wife of Baldev Singh and (ii) the dissolution of divorce granted vide judgment and decree dated 28.3.1984 was not sustainable. Both the reliefs were rejected. Present suit was filed in the year 2008, for, the plaintiff was constrained to file the same since the counter claimant-defendant had obtained mutation of inheritance exclusively in her name.

Once the matter in dispute directly and substantially had attained finality by not granting the status of wife, the same could not be permitted to be agitated in the counter claim. Both the courts below, in my

view, have committed illegality perversity while not appreciating the law in correct perspective. On the other hand, appellant-plaintiff has already brought on record material documents to show her status as wife of Baldev Singh, which has not been controverted. Thus the findings recorded by both the courts below in my view are not sustainable.

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 LR's 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 Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 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 LR's 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.

Keeping in view the aforementioned, the judgment and decrees passed by both the courts below are set aside. However, it is made clear that in case parties have already compromised the matter then nothing survives for execution.

Both the second appeals are allowed in the above terms.

May 14, 2018
manoj

‘(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No