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

**RSA-4624-2016 (O&M)
Date of decision : 28.05.2018**

Krishna and another

... Appellant(s)

Versus

Kamla and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.P. Dhull, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM-11972-C-2016

For the reasons stated in the application, which is supported by an affidavit, the application is allowed and the delay of 36 days in filing the appeal is condoned.

RSA-4624-2016

The appellants-defendants have not been able to defend the suit filed by the respondents-plaintiffs claiming declaration and permanent injunction along with proforma defendant Nos.4 to 6 to be owners of the suit land mentioned in para Nos.1(a) & (b) of the plaint by challenging the mutation bearing No.17796 in favour of defendant No.1/appellant, which has been decreed by the trial Court and affirmed by the lower Appellate Court.

The respondents-plaintiffs instituted the suit claiming aforesaid

relief on the premise that plaintiff No.1-Kamla was married to Hari Ram son of Diwan Chand and plaintiff Nos.2 and 3 are the real sons of Hari Ram, whereas proforma defendant Nos.4 to 6 real daughters. Defendant Nos.1 to 3 were totally strangers and claimed to be wife, son and daughters of Hari Ram and got the mutation entered on the demise of Hari Ram, therefore, sought rectification of the revenue record, but was not acceded to, thus, cause of action arose to file the suit.

The appellants-defendants contested the suit by giving the status to the plaintiff No.1 to be of imposter by claiming herself to be lawfully and legally wedded wife of Hari Ram, much less, children.

Since the parties are at variance, the trial Court framed the five issues.

The plaintiffs examined five witnesses and brought on record certain documents (Ex.PW1/A, Ex.PW1/B, Ex.PW2/A, Ex.P3/A and Mark 20 to 23), whereas the defendants examined four witnesses and tendered in evidence certain documents, which are marked.

The trial Court found favour with the plaintiffs by holding that the defendants had not been able to prove the marriage with the deceased Hari Ram. The appeal laid before the lower Appellate Court against the findings of the trial Court also met with the same fate.

Learned counsel appearing on behalf of the appellants-defendants submits that the respondents-plaintiffs failed to lead evidence in terms of the provisions of Section 50 of the Indian Evidence Act to prove that she was lawfully wedded wife of Hari Ram and the children i.e. plaintiff Nos.2 & 3 and proforma defendant Nos.4 to 6 being sons and

daughters of Hari Ram, whereas on the contrary, the appellants-defendants have been able to bring on record the documentary evidence i.e. ration card etc., to prove legally wedded wife, much less, children of Hari Ram. Hari Ram had been living with the appellants-defendants since long, therefore, the possession followed the title. There is a gross illegality, perversity, much less, abdication and urges this Court for setting aside the concurrent findings of fact.

I have heard learned counsel for the appellants-defendants and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Dhull, for, the factum of marriage between the plaintiff-Kamla and Hari Ram had been proved through the testimony of brother, which is in compliance of provisions of Section 50 of the Indian Evidence Act. On the other hand, the appellants-defendants have not been able to prove the existence of lawful and legal marriage with Hari Ram. It is a settled law that during the life time of the first wife, without any decree of divorce, second marriage is illegal. It has not been deciphered as to whether the entries in the documents reliance laid were actually that of Hari Ram or some other one. Defendant No.1 was also required to lead evidence in terms of the provisions of Section 50 of the Indian Evidence Act. Having failed to do so, in my view, the onus discharged by the plaintiffs had not been rebutted. This is what the import of the impugned judgments and decrees granting the declaration, aforementioned as well as relief of possession.

As an upshot of my observations, I do not find any illegality and perversity in the concurrent findings of fact and law or involvement of

any substantial question of law. No ground is made out for interference.
Accordingly, the present regular second appeal is dismissed.

28.05.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No