

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

RSA No.4173 of 2015

Rohit

...Appellant

Versus

Central Board Secondary Education, Preet Vihar and Anr.

....Respondents

Date of Order: 14.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Deepak Jindal, Advocate for the appellant.

Mr. Nitin Kant Setia, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Plaintiff-appellant is challenging concurrent judgments and decrees passed by both the courts below whereby his suit seeking mandatory injunction for correction in his date of birth from 13.8.1990 to 16.8.1990 in respect of Matriculation Certificate has been dismissed vide judgment and decree dated 22.8.2012 passed by learned Civil Judge (Jr. Division), Talwandi Sabo and the findings affirmed in appeal by the lower Appellate Court vide judgment and decree dated 13.2.2015.

Plaintiff instituted the suit on the premise that due to inadvertence, his date of birth in Matriculation Certificate was recorded to be 13.8.1990 instead of 16.8.1990. He approached the defendants-respondents in this regard but in vain.

Upon notice, the defendants appeared and filed written statement objecting that the suit of plaintiff is not maintainable as he sought mandatory injunction without seeking declaration and that the suit was barred by limitation. They averred that the plaintiff passed Matriculation Examination in the year 2006 and the Certificate was issued in May 2006

whereas the suit was filed after expiry of four years whereas any correction in date of birth of candidate in case of genuine clerical error could be made within two years of date of declaration of result.

Both the parties in order to prove their cases led their respective evidence.

On the basis of preponderance of evidence, the trial court dismissed the suit recording that the plaintiff had not applied for correction in his date of birth within the period of limitation. The appeal preferred against the same was also dismissed by the lower Appellate Court.

Learned counsel for the appellant submitted that the findings recorded by both the courts below are patently illegal and the same are liable to be set aside. The learned courts below have proceeded on wholly misconceived and perverse approach, while passing the impugned orders, which have resulted in serious miscarriage of justice. Plaintiff attained his majority in the year 2008 whereas the suit was filed in 2010, therefore, the plea of limitation could not have been raised against him. Immediate after gaining knowledge of the incorrect date of birth being recorded by the defendants, the plaintiff requested the defendants number of times but no heed was paid.

On the other hand, learned counsel for the defendants submitted that both the courts below have rightly dismissed the suit on the basis of correct appreciation of evidence. The plaintiff could have approached the defendants for correction within the reasonable time but he failed to do so. He thus prayed for upholding of the impugned judgments and decrees.

I have heard learned counsel for the parties and appraised the paper book. The question with regard to the correction in the date of birth

of the candidate came up for consideration before Division Bench of this Court in LPA No.1613 of 2014 titled **Ambika Kaul Vs. Central Board of Secondary Education and Others, 2015 (3) SCT 350** wherein this Court in paragraph 40 of its judgment has observed as under:

“40. The other question which may arise is that the date of birth was given in the school records by the parents of a child when he was minor, therefore a minor on attaining the date of majority can dispute the date of birth given in the matriculation certificate.”

Presently case is squarely covered by the ratio of aforesaid judgment, for, the appellant had approached the defendants within the period of limitation as soon as he attained the majority in the year 2008 whereas the suit was filed in 2010. The entry/information of births and deaths is a relevant fact and mandatory requirement to be given and entered in the registers meant for the purpose. It is assumed that a person has a legal right to seek correction in his date of birth on attaining the majority.

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 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 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.

Keeping in view the aforementioned, the judgment and decrees passed by both the courts below are not sustainable in law and the same are set aside. The suit of the plaintiff is hereby decreed while granting liberty to the plaintiff-appellant to get his date of birth corrected in the record of the defendants. Decree sheet be prepared accordingly.

The second appeal is allowed in the above terms.

May 14, 2018
manoj

^(AMIT RAWAL)
JUDGE

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