

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

RSA No.1436 of 2018 (O&M)

Date of decision: 08.03.2018

Manish

.....Appellant

Versus

Manohari Devi and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Robin Singh Hooda, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.3695-C of 2018

For the reasons mentioned in the application, same is allowed and
delay of 495 days in filing of the appeal is condoned.

RSA No.1436 of 2018

This appeal has been filed against the judgment dated 19.07.2016
passed by the Additional District Judge, Rohtak, dismissing an appeal filed
by plaintiff-appellant against the judgment and decree dated 25.02.2014
passed by the Civil Judge (Junior Division), Rohtak, whereby suit filed by
plaintiff-appellant for declaration and mandatory injunction, has been
dismissed.

Manish-plaintiff (appellant herein) filed a suit for declaration with
consequential relief of mandatory injunction alleging that he is the grandson
of Sh. Zile Singh son of Siri Chand. His father Sh. Satbir Singh had died on

Savitri Devi; and was born on 15.11.1984 at village Pooth Kalan, Delhi (parental home of his mother). After the death of Satbir Singh (plaintiff's father), his mother was thrown out of the matrimonial home by alleging that she was responsible for the death of her husband. Thereafter, she had gone to her parental home at village Pooth Kalan, Dehi. Later on, she performed her second marriage with one Zile Singh resident of village Jasrana, District Sonapat in the year 1990. Since then, plaintiff was living with his mother at village Jasrana. As per plaintiff, his grandfather was owner in possession of agriculture land and a residential house, details of which have been given in the plaint. Zile Singh (grandfather of plaintiff) died in the year 1996. Plaintiff-appellant alleged that being the son of predeceased son, he inherited the property of his grandfather to the extent of 1/6 share along with other co-sharers/defendants. It was further stated that the defendants-respondents have fraudulently and illegally got mutated the suit land in their favour, excluding the plaintiff, by furnishing false information to the revenue authorities. It was alleged that plaintiff-appellant had requested the defendants as well as revenue authorities to get corrected his share in the revenue record, but they have refused to do so. Hence, the suit.

Upon notice, defendant-respondents filed written statement by taking preliminary objections with regard to maintainability, time barred, clean hands, proper court fees, locus standi, concealment of facts etc. On merits, it was denied that the plaintiff was born on 15.11.1984 and was in the womb of Savitri Devi. It was also denied that the widow mother of plaintiff was thrown out of the matrimonial house. In fact, Savitri Devi was married with Satbir Singh on 12.04.1984. Unfortunately, Satbir Singh had expired on 25.06.1984. Thereafter, Savitri Devi performed *Karewa*

marriage with Raj Roop-defendant No.4 on 16.06.1985. It was further stated that after the death of female child, her behaviour had changed towards Raj Roop. Ultimately, in the year 1989, she left her in-laws house and had gone to her parental house. She never conceived pregnancy with the son of Satbir Singh. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

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

1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff has concealed true material facts before the Court and if so, its effect? OPD
6. Whether the present suit has not been correctly valued for the purpose of court fees? OPD
7. Whether the suit of the plaintiff is time barred? OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts below have returned a concurrent finding of fact that there was no evidence on record with regard to the date of birth of the plaintiff (appellant). However, it has come in evidence that after about two months of marriage, Satbir Singh had died in an accident. Marriage of Satbir

Singh was performed on 12.04.1984 and taking the date of birth of plaintiff-appellant as 15.11.1984, a period of nine months back from that date would be the month of February, 1984. As per evidence, the marriage was performed in the month of April, 1984. Hence, the presumption that Smt. Savitri Devi was carrying the child of Satbir Singh from the date of marriage i.e. 12.04.1984, was not held to be a convincing evidence. At the time of appearing in the witness box in the year 2013, plaintiff-appellant Manish had stated that he was 22 years of age. Hence, his date of birth would relate back to the year 1990-91. This is the date when Savitri performed her marriage with Zile Singh. Hence, plaintiff himself failed to establish any link with the family of defendant-respondents. Plaintiff further admitted that his mother Savitri had remarried with Zile Singh, resident of Jasrana, District Sonapat in the year 1990. Neither birth certificate nor any other document has been produced on record, which could show that Stbir Singh was the biological father of plaintiff-appellant. With these observations, the suit of plaintiff-appellant has been dismissed.

After going through the impugned judgments, it is apparent that plaintiff-appellant has failed to prove his case. There is no evidence on record to show that plaintiff-appellant was born out of the wedlock of Savti and Satbir Singh. There is no birth certificate or any other document available on record, showing the exact date of birth of plaintiff-appellant. In the absence of any cogent and convincing evidence, the suit of the plaintiff has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

08.03.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No