IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2520 of 2017 (O&M)
Date of decision: 09.01.2018

Sarwan Singh (deceased) through LRs .....Appellants

Versus

Santokh Singh and another .....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Hira, Advocate,
for the appellants.

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Ritu Bahri, J.

This appeal has been filed against the judgment dated 24.01.2017 passed by the Additional District Judge, Hoshiarpur, dismissing an appeal filed by plaintiff-appellants against the judgment and decree dated 05.04.2014 passed by the Additional Civil Judge (Senior Division), Garhshankar, whereby suit filed by plaintiff for declaration and permanent injunction, has been dismissed.

Sarwan Singh-plaintiff filed the aforesaid suit alleging therein that Dilbagh Singh son of Jawala Singh was the owner in joint possession of land measuring 8 Kanals 9 Marlas, as detailed in the head note of the plaint. He was the real brother of plaintiff and defendant No.2. Dilbagh Singh was wifeless & issueless and was a truck driver. Defendant No.1 was working as cleaner with him. It was further stated that sometimes, defendant No.1 used to visit village Ganguwal with Dilbagh Singh. Later on, defendant No.1 started residing permanently in Punjab, sometimes at village Ganguwal and sometimes with defendant No.2. But, defendant No.1 was having no relation with Dilbag Singh. After the death of Dillbagh Singh, plaintiff and defendant No.2 were his only legal heirs under the Hindu Succession Act.

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However, defendant No.1 had got mutation No.903 sanctioned in his favour in respect of the estate of Dilbagh Singh by stating himself to be the son of Dilbagh Singh. This mutation was challenged by the plaintiff by filing the aforesaid suit.

Upon notice, defendant-respondents filed written statement by taking preliminary objections with regard to maintainability of suit, locus standi, limitation, estoppel, valuation, mis-joinder and on-joinder of necessary parties etc. On merits, it was admitted that Dilbagh Singh was a truck driver. But, it was denied that defendant No.1 was working as cleaner with Dilbagh Singh or that Dilbagh Singh was wifeless or issueless. It was stated that Asha Rani was the wife of Dilbagh Singh, who pre-deceased him. Defendant No.1 was the son of Dilbagh Singh, who resided with him at village Ganguwal as his son. He was brought up and looked after by Dilbagh Singh. Neither the plaintiff and defendant No.2 were legal heirs of Dilbagh Singh nor they had any right, title or interest in the suit property after his death. Mutation No.903 had been rightly entered and sanctioned in favour of defendant No.1 being sole legal heir of Dilbagh Singh. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Replication to the written statement was filed controverting the allegations made in the written statement and reiterating those of the plaint.

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

1. Whether the plaintiff is entitled for declaration as prayed for? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP

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3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
7. 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.

Santokh Singh-defendant No.1 appeared in the witness box as DW-3 and deposed that he was son of Dilbagh Singh and was not a cleaner on his truck. He had proved on record photocopy of admission register as Ex.DW2/A, admission form Ex.DW2/B, school certificate Ex.DW2/C, passbook Ex.D5, jamanatnama Ex.D6, certificate of lease Ex.D7, voter list Ex.DW5/A to Ex.DW5/C, photocopy of ration card Ex.D6/A, Form D-4 Ex.D6/B, Form D1 Ex.D6/C, Form D-4 Ex.D6/D, video film cassette Ex.D7/A, photographs Ex.DW6/1 to Ex.DW6/30, DVD Ex.D7/B and receipt Ex.DW7/C to establish that he was the son of Dilbag Singh and born out from the wedlock of Dilbagh Singh and Asha Rani. He further examined Amarjit Kaur (DW-1), who deposed that Dilbag Singh and Asha Rani were residing as husband and wife. Asha Rani had pre-deceased Dilbagh Singh. Santokh Singh was about 7/8 months old when she had seen him for the first time in the year 1979-80. His father had married Asha Rani at Bombay. Amarjit Singh, Primary Teacher (DW-2) deposed that Swaran Kaur real aunt of defendant No.1 (wife of plaintiff) got him admitted in the school and the admission form were bearing her thumb impression. Copy of

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the same was proved as Ex.DW2/A. Defendants also examined Dinesh Kumar from Co-operative Agricultural Society Ltd., village Lalwan as DW-4 to prove that at the time of opening the account, Kewal Singh son of Jaggu resident of village Fatehpur and Sarwan Singh son of Jawala Singh had put surety on the pronote Ex.D6. Plaintiff being the uncle had put surety on the same. Rajan Suri, Election Clerk (DW-5) proved the voter list, in which name of defendant No.1 was mentioned with the name of plaintiff as he was his nephew and the son of Dilbagh Singh. Sukhwinder Singh (DW-6) proved the ration card. In the application form Ex.D6, defendant No.1 has been shown as nephew of Sarwan Singh. Surinder Kaur, real sister of plaintiff, had supported the averments of defendant No.1-Santokh Singh that he was the real son of Dilbag Singh. On the basis of this evidence, both the Courts below have returned findings on issue Nos.1 and 2 in favour of defendant No.1 that he was the son of Dilbagh Singh and was entitled to inherit the property of his father.

In the present case, defendant No.1-Santokh Singh (respondent No.1 herein) has led sufficient evidence to show that he was the real son of Dilbagh Singh and was residing with him. Ashwa Rani and Dilbagh Singh were residing as husband and wife. Argument of learned counsel for the appellant(s) that there was no evidence of the marriage of Dilbagh Singh with Asha Rani has been rightly rejected by the Courts below as in such cases, the factum of marriage in terms of essential ceremonies of the marriage was not required to be proved. Moreover, it was admitted by the plaintiff himself that Dilbagh Singh was working as driver in Bombay and even during cross-examination of Amarjit Kaur (DW-1), she had stated that Dilbagh Singh had brought a lady from Bombay and she was called by the

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name of Asha Rani. Hence, in the absence of any direct proof of marriage, factum of living together openly in the village would lead to a presumption that Dilbagh Singh and Asha Rani were living together as husband and wife. Moreover, in the ration card, voter list, school certificates etc., name of father of defendant No.1 has been mentioned as Dilbagh Singh.

Hon'ble the Supreme Court in ***Madan Mohan Singh and others Vs. Rajni Kant and others,*** 2010 AIR (SC) 2933, has held that if man and woman are living under the same roof and cohabiting for a number of years, then there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate.

Applying the ration of the aforesaid judgment to the facts of the present case, status of defendant No.1 being son of Dilbagh Singh has been proved by leading cogent and convincing evidence. Since defendant No.1 has been proved to be the son of Dilbagh Singh, he has a right to inherit the property left by his father. After going through the impugned judgments, this Court is of the view that suit of the plaintiff has been rightly dismissed by both the Courts below. No illegallity, 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.

(RITU BAHRI)
JUDGE

09.01.2018
ajp

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

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