

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3345 of 2017(O&M)

Date of Decision: 13.8.2018

Kulwinder Singh

---Appellant

versus

Gurcharan Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Upender Prasher, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for recovery filed by Gurcharan Singh and Dilpreet Kaur minor through Sh. Gurcharan Singh (maternal grand father of Dilpreet Kaur) was decreed by the trial court vide judgment and decree dated 5.5.2015 to the effect that the appellant-defendant is liable to pay a sum of Rs. 1,54,970/- alongwith pendente lite and future interest @ 6% per annum from the date of filing of suit till realization of the decretal amount. The appeal preferred by unsuccessful defendant did not find favour with the Additional District Judge, Amritsar whereby findings recorded by the trial court were affirmed without variance.

The respondents-plaintiffs filed the suit for recovery on the

basis of agreement Ex. P1 whereby the appellant-defendant agreed to return jewellery, domestic articles, FDR of Rs. 1,34,000/- in the name of small child and Rs. 50,000/- towards expenses of the hospital.

Indisputably, Dilpreet Kaur, the minor child was born out of wedlock of Manpreet Kaur and Kuldeep Singh but Kuldeep Singh passed away. After death of Kuldeep Singh, Manpreet Kaur performed marriage with Kulwinder Singh and Kulwinder Singh had previous marriage with two children born out of his earlier marriage. Manpreet Kaur sustained burn injuries on 10.2.2010 and passed away on 21.2.2010 when she was lying admitted in the hospital. With regard to death of Manpreet Kaur, proceedings under Section 174 of the Criminal Procedure Code (in short "Cr.P.C.") were conducted as Manpreet Kaur did not attribute any role to Kulwinder Singh qua unfortunate occurrence of burns. Later, agreement Ex. P1 was admittedly executed with the intervention of panchayats of two villages whereby the appellant-defendant agreed to return jewellery, domestic articles and payment of Rs. 1,84,000/- towards amount of FDR and hospital expenses. A sum of Rs. 33,000/- was paid by the appellant and an endorsement to this effect was made on the back of agreement Ex. P1.

The sole submission made by counsel is that as the appellant had an apprehension that father of Manpreet Kaur may initiate criminal proceedings against him in respect of injuries sustained by Manpreet Kaur that proved fatal, he executed the agreement and the same is not enforceable being the result of undue influence and against public policy. In addition, it is argued that the agreement makes reference that no proceedings have been

conducted with regard to death of Manpreet Kaur by her family.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned.

Manpreet Kaur sustained burn injuries on 10.2.2010 and succumbed to injuries on 21.2.2010. Admittedly, the police conducted proceedings under Section 174 Cr.P.C. as Manpreet Kaur did not attribute any role to the appellant or his parents in the occurrence. Even parents of Manpreet Kaur did not raise any issue that they suspect any foul play qua the unfortunate occurrence wherein Manpreet Kaur sustained burn injuries, therefore, no proceedings were conducted by the police. The agreement Ex. P1 records that parents of Manpreet Kaur have not initiated any proceedings.

On due consideration of recitals in agreement (copy whereof was produced before the Court for perusal and appreciation) does not give an inkling that the agreement is the result of undue influence or the same was executed as a consideration for promise by parents of deceased Manpreet Kaur not to initiate action against the appellant. Not only this, this agreement was actually acted upon and the appellant paid a sum of Rs. 33,000/- out of agreed amount in regard whereof an endorsement was made on the back of the agreement. In this view of the matter, I find myself unable to accept contention of the appellant that the agreement Ex. P1 is not enforceable when examined in the light of relevant provisions of the Contract Act. This apart, consistent findings recorded by the courts do not warrant intervention in second appeal unless the same suffer from perversity or raise a question of law.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. However, an amount of Rs. 1,34,000/- in respect of FDR of the minor child shall be deposited in the name of minor, on its recovery from the appellant-defendant.

(Rekha Mittal)
Judge

13.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No