

In the High Court of Punjab and Haryana at Chandigarh

RSA- 974 of 2018(O&M)
Date of Decision: 14.2.2018

Poonam and another

---Appellants

versus

Maya

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vikram Punia, Advocate
for the appellants**

Rekha Mittal, J.

Challenge in the present appeal has been directed against consistent findings recorded by the courts below whereby suit filed by the respondent/plaintiff for possession qua the house in dispute was decreed by the trial court and the judgment and decree passed by the trial court were affirmed in appeal by the Additional District Judge, Sonipat.

Smt. Maya, widow of Ram Kishan filed a suit for possession on the premise that Sh. Ram Kishan was owner of suit house which was purchased from Sarita vide sale deed No. 5419 dated 15.9.2008 for a sale consideration of Rs. 1,12,000/-. Ram Kishan constructed double storey building on the plot purchased from Sarita. He died on 22.2.2009 and mutation No. 5265 was entered and sanctioned in the name of respondent and her minor son and daughter. After death of Ram Kishan, the respondent filed a petition under Section 8 of the Hindu Minority and Guardianship Act, 1956 for permission to sell share of the minors which was allowed.

Appellants, brother and sister have encroached upon the house in dispute by stating that appellant No. 1 is the wife of deceased Ram Kishan.

The sole submission made by counsel is that Poonam is the second wife of late Ram Kishan and Ram Kishan performed marriage with Poonam by concealing the factum of his earlier marriage with the respondent/plaintiff. It is argued that the trial court did not frame issue if appellant Poonam was duped by Ram Kishan by performing marriage with her during subsistence of earlier marriage with Smt. Maya and by concealing the factum of earlier marriage and children out of the said wedlock. According to counsel, had the trial court framed an issue in this regard, the appellants would have adduced evidence to establish that Poonam was cheated by Ram Kishan.

Counsel for the appellants, in response to a query that even if it is assumed that Ram Kishan performed marriage with Poonam by concealing the factum of his earlier marriage with Smt. Maya, would it be of any consequence to find fault in findings of the courts below that alleged marriage of Poonam with Ram Kishan is null and void since its inception and does not entitle appellant No. 1 to claim any right in the property left behind by deceased Ram Kishan, is not in a position to advance any argument much less convincing that Poonam can claim succession to Sh. Ram Kishan in case she is able to establish that her marriage with Ram Kishan is the result of cheating/fraud practised by the deceased. Under the circumstances, contention raised by counsel with regard to non-framing of specific issue in this regard is of no consequence. Counsel for the appellants has failed to make out a substantial question of law that needs determination in the second appeal.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only. No order as to costs.

(Rekha Mittal)
Judge

14.2.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No