

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

Date of Decision: 9.4.2019

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CR No.6738 of 2011 (O&M)

SAROJ RANI

.....Petitioner

Versus

RULIA RAM AND ORS

.....Respondents

CR No.7508 of 2013 (O&M)

SAROJ RANI

.....Petitioner

Versus

RULIA RAM AND ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sushil Bhardwaj, Advocate
for the petitioner (in CR-6738-2011).

Mr. R.K.Gupta, Advocate
for the petitioner (in CR-7508-2013).

Mr.Rahul Deswal,Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

Vide this common order, CR No. 6738 of 2011 and
CR No. 7508 of 2013 titled Saroj Rani vs. Rulia Ram and others
are being disposed of.

The common facts are being noticed.

SI Om Parkash was serving in Haryana police. He

died on 1.5.1991 in a vehicular accident. First wife (Om Pati) of Om Parkash had pre deceased him as she had died on 31.10.1988. Thereafter, marriage of Om Parkash was solemnized with Saroj on 5.12.1989. Plaintiffs-decree holders, namely, Rulia Ram, Ajay Bir Singh and Amit @ Amit Singh filed a petition under Section 372 of the Indian Succession Act, wherein, Saroj was impleaded as respondent No.4. A specific issue was framed whether Saroj was legally wedded wife of Om Parkash or not? The issue was decided in affirmative, thereby holding that Saroj was legally wedded wife of Om Parkash. Petition was decided on 6.10.1997 and the same had already attained finality. Father and son of Om Parkash also filed claim petition before the Motor Accidents Claims Tribunal on 25.7.1991 in which Saroj was also impleaded as respondent No.4. The same issue was framed i.e. Whether Saroj was legally wedded wife of Om Parkash or not ? Tribunal also held in affirmative on 19.9.1995 and awarded compensation in favour of claimants and Saroj.

In the civil suit filed by the plaintiffs, declaration was sought that Saroj was not legally wedded wife of Om Parkash. Saroj was proceeded against ex parte and ex parte judgment and decree was passed against her. The application under Order 9 Rule 13 CPC was dismissed by both the Courts below.

CR No.7508 of 2013 has arisen from the orders passed by the

Courts below under Order 9 Rule 13 CPC. In the execution of the ex parte judgment and decree, Saroj filed objections. Those objections were dismissed by the Executing Court and CR No. 6738 of 2011 has arisen from the said order dated 5.10.2011. While rejecting the objections filed by Saroj, the Executing Court has held that the decision rendered in the proceedings under Section 372 of the Indian Succession Act and the award passed by the Tribunal would not operate as res judicata as both the orders have been passed by the authority/ Court/ Tribunal having limited jurisdiction.

During the course of arguments, learned counsel for the plaintiffs-respondents has submitted that the execution itself has been dismissed by the Executing Court in the year 2011 as the son had already attained majority and the father is not entitled to any service benefits of deceased Om Parkash. Dismissal of execution has not been assailed by the plaintiffs in any manner and the said order has attained finality. As on date, the plaintiffs have no subsisting rights in the service benefits of deceased Om Parkash. At one point of time, Saroj was granted family pension, but after the ex parte judgment and decree, the same has been stopped. The issue before this Court for consideration is whether the order/ judgment passed by the Court/ authority/ Tribunal of limited jurisdiction would operate as res judicata or not ?

Learned counsel for the petitioner relied upon **Sulochana Amma vs. Narayanan Nair 1993 (3) RRR 682;** **Mohan Lal vs. Kartar Singh and others 1995 (3) RRR 676** and **Smt. Sawarni vs. Smt. Inder Kaur 1997 (1) RCR (Civil) 41,** and contended that once the issue was deliberated directly or substantially between the parties before the Court, Tribunal or Authority having limited jurisdiction, then the decision rendered by the said Court/ Tribunal or Authority would operate as res judicata in a subsequent suit as a whole. Explanation to Section 11 CPC has to be read harmoniously with its substantive provisions. The Explanation has to be read to remove any ambiguity in the main provision and, therefore, harmonious construction is bound to be given and the substantive provision and the explanation have to be read harmoniously.

Since the order passed under Section 372 of the Indian Succession Act and the award passed by the Tribunal have already attained finality and even though the authorities were having limited jurisdiction, the same would operate as res judicata in a subsequent suit i.e. the present suit filed by the plaintiffs. Even otherwise after attaining majority by the son and the father being ousted out of consideration as a claimant in the service benefits of Om Parkash, it would be just and appropriate to consider the claim of the second wife Saroj towards family pension and other service benefits admissible to her on account

of death of Om Parkash.

In S.P. Changalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs., 1994 AIR (SC) 853; Hamza Haji vs. State of Kerala and another, 2006(7) SCC 416; A.V. Papayya Sastry and ors. vs. Government of A.P. and ors, 2007(2) RCR (Civil) 431; Balwant Rai Tayal vs. M/s Subhash Oil Company, Hisar through Sh. Raghunath Sahi, 2003(2) RCR (Rent) 148; Badami (deceased) by her LR vs. Bhali, (2012) 11 SCC 574; and Ramesh Kumar and another vs. Furu Ram and another, (2011) 8 SCC 613, it was held that the person committing fraud can be thrown out at any stage of litigation. The aforesaid proposition is subject to the evidence available on record. No consideration can be made on this aspect at this stage.

For the reasons recorded herein above, I deem it appropriate to allow both the revision petitions.

Accordingly, both the revision petitions are allowed. The impugned orders are hereby set aside. Normal consequences to follow.

April 09, 2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No