

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

CR no.7176 of 2016 (O&M)

Date of Decision: 29.03.2019

Attar Kaur

...Petitioner

Vs.

Usha Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. R.P. Daria, Advocate, for the petitioner.
Ms. Jigyasa Tanwar, Advocate, for respondents no.1 to 3.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the judgment dated 14.09.2016 (Annexure P-2) passed by the learned Additional District Judge, Panchkula, by which the judgment passed by the learned trial court (Additional Civil Judge, Sr. Divn., Kalka), dated 14.10.2014, on a petition instituted by the petitioner herein under Section 372 of the Indian Succession Act, 1925, has been reversed.

The learned trial court, vide that judgment, held that the petitioner, Attar Kaur, was entitled to be issued a succession certificate qua half the share of the amount of Rs.4,33,269/-, as was “lying with the employer of Sh. Kewal Krishan” (deceased), the employer being the Northern Railway.

Respondents no.1 to 3 herein (respondents no.2 to 4 before the trial court) were held entitled to the other half share of the aforesaid amount.

The learned appellate court on the other hand, vide the impugned judgment, held that there being no valid marriage between the

petitioner and the late Kewal Krishan, she cannot claim any part of the aforesaid amount which was due to him by way of service benefits.

2. The background to the matter is that the petitioner claims to have been married to the late Kewal Krishan in the year 1981 (with no specific date given), admittedly during the subsistence of her marriage to one Jasbir Singh, to whom she had been married in the year 1968.

That marriage was dissolved by a decree of divorce on 07.04.1981, but prior to which Kewal Krishan is stated to have married respondent no.1, Usha Rani, on 17.04.1983.

Consequently, the learned appellate court held the marriage between the petitioner Attar Kaur and Kewal Krishan to be not valid, (obviously in terms of Section 5(i) of the Hindu Marriage Act, 1955 though the said provision is not specified in the impugned judgment), such marriage having taken place admittedly prior to the decree of divorce issued as regards the first marriage between the petitioner and Jasbir Singh.

3. Before this Court, learned counsel for the petitioner submits that, firstly, Kewal Krishan had executed an affidavit on 03.02.1995 (stated to be a document shown as Mark 'A' before the trial court), by which he stated that as regards service benefits as became due to him, they would be divided equally between the petitioner and respondent no.1 Usha Rani, and in case the petitioner pre-deceased him, her share would still devolve upon her son from her first husband, i.e. from Jasbir Singh.

He therefore submits that the intention of the deceased having

been very clear to the aforesaid effect, the money should be divided between the parties equally.

Upon a specific query as to whether, even if the aforesaid document, though not an exhibited document, is shown to be attested by two witnesses and therefore may be taken to be the will of the late Kewal Krishan, he very fairly admits that it is only attested by an Oath Commissioner, who was an Advocate.

Ms. Jigyasa Tanwar, learned counsel for the respondents, on the other hand, submits that even as regards the nomination made by Kewal Krishan in his department for the purpose of disbursement of his service benefits, the petitioner had admitted in her cross-examination that such nomination was in favour of respondent no.1 and her children, though no specific evidence in the form of any document to that effect was led.

4. Having considered the matter, the factum of the alleged marriage between the petitioner and Kewal Krishan having taken place in the year 1981 and her divorce from Jasbir Singh in the year 1984, not having been denied even before this Court, and 'common law partnership' not being a recognized concept in India, the marriage ceremony (if any even is to be proved) between the petitioner and Kewal Krishan in the year 1981, when she admittedly was the wife of Jasbir Singh, cannot be held to be a legally valid marriage in terms of clause (i) of Section 5 of the Hindu Marriage Act, 1955, which reads as under:-

“Section 5 -**Conditions for a Hindu Marriage.**- A

marriage may be solemnized between any two Hindus, if the following

conditions are fulfilled, namely;-

(i) neither party has a spouse living at the time of the marriage;

xxx

xxx

xxx”

Consequently, even though in my opinion the petitioner in equity would be entitled to her claim, especially with an affidavit stated to have been executed by Kewal Krishan in her favour, but with that also not having been proved to be a will in terms of Section 63 of the Indian Succession Act, 1925, read with Section 68 of the Indian Evidence Act, 1897, I find no ground to interfere with the impugned judgment.

Accordingly, the petition is dismissed.

29.03.2019

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(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes