

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

**RSA No.1786 of 2019 (O&M)
Date of Decision.05.04.2019**

Amarjit Kaur

...Appellant

Vs

Sukhwinder Kaur and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ramesh Sharma, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.4795-C of 2019

For the reasons stated in the application, delay of 146 days in filing of the appeal is condoned.

Application is allowed.

RSA No.1786 of 2019

The appellant-defendant No.1 is in regular second appeal against the partial decretal of the suit in appeal preferred by the plaintiff and dismissal of the appeal preferred by her against the judgment and decree of the trial Court before the lower Appellate Court.

Respondents No.1 and 2/plaintiffs filed the suit claiming to be sisters of Sukhdev Singh and daughters of Gajjan Singh and asserted their right in the property referred to in the suit mentioned in A(i) and A(ii) i.e. immovable property and pensionary benefits mentioned in Para B & D of the plaint with permanent injunction and mandatory injunction. It was alleged that Sukhdev Singh was

married with Rajwant Kaur and there was customary divorce between the parties. He died issueless. Plaintiffs being Class II heirs as per the provisions of Hindu Succession Act were entitled to succeed his share and defendant No.1 was not lawfully wedded wife as she was married with Satwinder Singh and without obtaining divorce allegedly resided with Sukhdev Singh.

Defendant No.1 opposed the suit and alleged that Sukhdev Singh was sole owner of the property being only son of his parents and admitted that he was earlier married to Rajwant Kaur, which was dissolved but not by legal decree. Sukhdev Singh acknowledged the aforementioned fact into writing by way of affidavit, which was duly attested before the Executive Magistrate, Ludhiana. She did not deny her first marriage with Satwinder Singh but had died. Even village Panchayat also declared her to be legal heir of Sukhdev Singh, thus, entitled to the pensionary benefits.

Defendants No.2 and 3 opposed the suit and denied that Sukhdev Singh died issueless and wife less or Sukhdev Singh married after obtaining divorce from his earlier wife. It was explained that Sukhdev Singh married Amarjit Kaur at Ludhiana. This fact was divulged on the basis of certificate dated 29.04.1999 issued by the Gram Panchayat. Rajwant Kaur i.e. first wife was impleaded but despite service did not appear and proceeded ex parte.

Since the parties were at variance, the trial court framed following issues:-

“1. Whether the defendant No.1 is legally wedded wife of deceased Sukhdev Singh? OPD

2. *If issue No.1 is proved, whether the defendant No.1 is entitled for pensionary benefits of deceased Sukhdev Singh? OPD1*
3. *Whether plaintiffs are heirs of deceased Sukhdev Singh and as such are liable for pensionary benefits of deceased Sukhdev Singh? OPP*
4. *Whether the plaintiffs are entitled to decree of declaration as they are owners in possession of property as detailed in the plaint after the death of deceased Sukhdev Singh? OPP*
5. *Whether the plaintiffs are entitled to permanent injunction restrained the defendants No.2 and 3 from paying or disbursing any amount by way of pensionary benefits to the defendant No.1? OPP*
6. *Whether the plaintiffs are entitled to mandatory injunction as prayed for? OPP*
7. *Relief.”*

Plaintiff examined two witnesses whereas defendants examined six witnesses and brought on record various documents.

The trial Court dismissed the suit but also rendered finding that Amarjit Kaur, appellant, was not lawfully wedded wife of Sukhdev Singh. Marriage in the Panchyat was not recognized unless and until parties to the *lis* established that they were governed by custom which was recognized in law. Her own evidence revealed that no rites or ceremonies were performed in Gurdwara Sahib. She belongs to Majhabi Singh whereas Sukhdev Singh was a Jat Sikh.

The lower Appellate Court partly decreed the suit by holding plaintiffs to be class II heirs of Sukhdev Singh, thus, entitled to share in the immovable property but other reliefs were declined.

Mr. Ramesh Sharma, learned counsel appearing on behalf of the appellant in support of memorandum of appeal submitted that there is categorical evidence on record that Sukhdev Singh had put *chadar* upon the appellant, which is recognized marriage in Jat community. There was no need of obtaining divorce from the first husband Satwinder Singh, who had admittedly died, thus, non performance of ceremonies is inconsequential. Plaintiffs are Class-II heirs, as it has been established that Sukhdev Singh was separated from Rajwant Kaur. The affidavit of Sukhdev Singh is testimony of recognition of the marriage.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit, as provisions of sub-section 2 of Section 29 of the Hindu Marriage Act is an exception providing dissolution of marriage by custom. The respondents-plaintiffs have not been able to prove on record same through the testimony of witnesses or any certificate. But as regards the applicability of the customary performance of marriage by putting *chadar*, it has to be amongst the Jat community. Concededly the appellant belongs to Majhabi Sikh whereas Sukhdev Singh to Jat Community. The certificate of the Gram Panchayat and testimony of witnesses also testified that no such ceremony or *phera* was performed. There was no legally valid marriage as per Hindu Marriage Act.

In such circumstances, judgment and decree of the lower Appellate Court partly allowing the suit regarding estate of Sukhdev Singh and rejecting pensionary benefits cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 05, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No