

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:22.11.2019

RSA- 3663 of 1999 (O&M)

Harpreet Kaur

---Appellant

vs.

Niranjan Kaur and others

---Respondents

CWP No.13757 of 2009 (O&M)

Harpreet Kaur

---Petitioner

vs.

Ld. Financial Commissioner Revenue Punjab and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Pawan Kumar, Senior
with Mr. Surya Kumar, Advocate
for the appellant
None for the petitioner
Mr. G.S.Bajwa, Advocate
and Mr. R.K.Vashishtha, Advocate
for the respondents in RSA No. 3663 of 1999
Ms. Rekha, Advocate
for Mr. G.P.S.Bal, Advocate
for the applicants in RSA-3663 of 1999

Rekha Mittal, J.

CM No. 17437-C of 2018

Prayer in this application is for impleading the applicants as respondents No. 5 and 6.

Heard.

In view of averments made in the application supported by an affidavit of applicant-Khushal Singh and arguments advanced by counsel

for the applicants, the application is allowed and the applicants namely Khushal Singh and Amar Singh are allowed to be impleaded as respondents No. 5 and 6, subject to just exceptions.

Amended Memo of Parties is taken on record.

Disposed of accordingly.

CM Nos. 9883 and 9886-C of 2019

Prayer in this application is for impleading the applicants as respondents No. 7 and 8.

Heard.

In view of averments made in the application supported by an affidavit of applicant-Harminder Kaur and arguments advanced by counsel for the applicants, the application is allowed and the applicants namely Harminder Kaur and Jaswant Kaur are allowed to be impleaded as respondents No. 7 and 8, subject to just exceptions.

Amended Memo of Parties is taken on record.

Disposed of accordingly.

Main case

This order will dispose of RSA No. 3663 of 1999 and CWP No. 13757 of 2009 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA-3663 of 1999.

The present litigation pertains to inheritance to estate of Sh. Harsaran Singh son of Hardit Singh who died on 20.12.1993 in England. The plaintiff claimed inheritance both on the basis of natural succession by claiming herself to be legally wedded wife of the deceased as well as

testamentary succession as she set up registered Will dated 14.12.1989. It is averred that she approached revenue authorities for sanction of mutation on the basis of Will but came to know that mutation had already been sanctioned in favour of defendants No. 1 to 3 on the basis of order dated 9.9.1992 passed by the Additional District Judge, Ropar. Civil Suit No. 563 of 1989 was filed by defendants No. 1 to 3 against Harsaran Singh and another and the same was dismissed by the trial court. Respondents filed appeal which was decided vide order dated 9.9.1992 passed by the Additional District Judge, Ropar. It is averred that judgment dated 9.9.1992 is not binding upon the appellant and the same is factually and legally not maintainable. Sh. R.K.Verma, Advocate, had no authority to make a statement before the Additional District Judge, Rupnagar. On 9.9.1992, Harsaran Singh was not available in India and he never instructed his counsel to make such a statement.

The appellant had pleaded that Niranjana Kaur @ Narinder Kaur filed divorce petition in the Mansfield County Court which was allowed on 26.3.1987 whereby marriage of Niranjana Kaur and Harsaran Singh was dissolved. Niranjana Kaur is not entitled to succeed to estate of deceased Harsaran Singh.

The respondents-defendants No. 1 to 3 contested the proceedings and controverted the allegations that appellant is the legally wedded wife of Harsaran Singh with the averments that she was already married and her previous marriage subsisted and she could not possibly remarry Harsaran Singh. They also denied that Harsaran Singh executed Will in favour of the appellant. It is averred that in the last days, Harsaran

Singh was not keeping good health and lost mental balance in 1988. The Will has been challenged on the premise that the same is fictitious, forged and is the result of misrepresentation, fraud and undue influence. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The appellant filed replication and reiterated her stand taken in the plaint and countered the allegations raised in the written statement.

The trial court framed following issues for determination:-

1. Whether the plaintiff is entitled to the suit for declaration that the order dated 9.9.1992 of Ld. Addl. District Judge, Rupnagar passed in civil appeal No. Rt-268 dated 28.3.1990 is illegal, in-operative? OPP
2. Whether the deceased Harsaran Singh executed a registered Will dated 14.12.1989 in favour of the plaintiff? OPP
3. Whether the mutation sanctioned on the basis of above referred order of the Ld. ADJ, Rupnagar is null and void? OPP
4. Whether there accrued no cause of action to file the present suit? OPD
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Whether the defendant is entitled to the special costs on the ground that the false and frivolous suit is filed against them? OPD
7. Relief.

The parties were permitted to adduce evidence in support of their respective contentions, noticed in paras 6 and 7 of the judgment of trial court. Having heard counsel for the parties in the light of materials on record, the trial court negated plea of the appellant that she is widow of deceased Harsaran Singh or entitle to inherit to Harsaran Singh on the basis of testamentary succession and even rejected decree of divorce of Niranjana Kaur and Harsaran Singh (Ex. P2). Eventually, suit filed by the appellant-plaintiff was dismissed.

The appeal preferred by unsuccessful appellant-plaintiff was dismissed by the Additional District Judge, Rupnagar vide judgment and decree dated 21.7.1999 whereby the First Appellate Court accepted plea of the appellant that there was a decree of divorce between Niranjana Kaur and Harsaran Singh but affirmed findings of the trial court with regard to status of the appellant as wife of deceased Harsaran Singh or entitle to succeed to his estate on the basis of natural or testamentary succession.

Counsel for the appellant has assailed findings of the courts rejecting plea of the appellant to be legally wedded wife of Sh. Harsaran Singh. It is argued that Niranjana Kaur filed a petition seeking divorce from a Court at England and a decree of divorce (Ex. P2) was passed whereby marriage of Niranjana Kaur and Harsaran Singh stood dissolved before Harsaran Singh contracted marriage with appellant Harpreet Kaur. It is further argued that the said decree was passed on 26.3.1987 by Mansfield County Court and has not been challenged by Niranjana Kaur till date. It is further argued that marriage of Harpreet Kaur and Harsaran Singh was performed by way of *Anand Karaj* ceremony at Rajpura and the same was

registered with the Registrar of Marriages, Rajpura on 22.4.1987 and certificate of registration was proved. It is further argued that after her marriage, the appellant got prepared her passport wherein her husband's name is mentioned as Harsaran Singh Mathauda. On the basis of visa allowed to the appellant, she left India in September 1987 and arrived at Landon, evidenced by the stamps/seals of immigration authorities of India and England. It is further argued that since 1987 till 1994, Harpreet Kaur had been residing in England and she came to India in March 1994. She has produced death certificate of Harsaran Singh and the same also makes reference to the appellant being the person who had given information with regard to death of Harsaran Singh as widow of the deceased and present at the time of death of Harsaran Singh. Counsel has also relied upon copy of judgment Ex. P5 passed by the trial court in Civil Suit No. 563 of 15.11.1989 wherein Harsaran Singh himself admitted that he had re-married with Harpreet Kaur and Niranjana Kaur @ Narinder Kaur plaintiff No. 1 in the said suit had already divorced him and plaintiffs No. 2 and 3 sons of Harsaran Singh had already been compensated by him (Harsaran Singh) and are residing in England as citizens of that country. It is vehemently argued that the courts have committed a serious error rather perversity by relying upon evidence adduced by the respondents-defendants in the shape of testimony of Jora Singh DW1 and other witnesses examined to prove alleged marriage of Harpreet Kaur with Jora Singh. It is argued that no such plea was raised by the respondents that Harpreet Kaur was also married with Jora Singh nor she was confronted with any such fact during her cross examination to which she was subject to. It is further argued that

Jora Singh and other witnesses examined to prove the factum of marriage of Harpreet Kaur with Jora Singh had stated that Jora Singh performed marriage with Harbans Kaur but no such plea was raised in the written statement that Harpreet Kaur was also known as Harbans Kaur nor any such fact was brought on record in her cross examination. According to counsel, the entire evidence led by the respondents to prove that Harpreet Kaur was earlier married to Jora Singh or she could not perform marriage with Harsaran Singh during subsistence of earlier marriage is beyond pleadings and cannot be relied upon.

Counsel would argue that Harsaran Singh executed registered Will dated 14.12.1989 in favour of the appellant. She examined Nanak Singh, Advocate Kharar PW2 scribe of the Will. The Will is attested by Gurdial Singh Lambardar and Harjeet Singh son of Hardial Singh. Harjeet Singh son of Hardial Singh has since passed away and as such was not available for examination.

The appellant has filed an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (in short “the Code”) for adducing additional evidence to examine Gurdial Singh Lambardar, attesting witness of the Will. It is argued that along with the application, affidavit of Gurdial Singh Lambardar has been appended wherein the circumstances under which said Gurdial Singh Lambardar could not be examined have been explained. It is argued that for rendering substantial justice, the appellant may be permitted to examine Gurdial Singh Lambardar to prove the Will, in accordance with law, that also contains recital that the appellant is wife of deceased Harsaran Singh. It is further argued that no

prejudice shall be caused to the respondents-defendants in case additional evidence is permitted to be adduced either before this court or to be recorded by the court below.

Counsel representing respondents No. 1 to 3-defendants, on the contrary, has supported concurrent findings recorded by the courts. It is argued that testimony of Harpreet Kaur is not sufficient to prove ceremonies of marriage, therefore, she cannot claim to be wife of Harsaran Singh either on the basis of registration of marriage or entry in the passport. It is further argued that in the registration certificate, Harsaran Singh is described as unmarried when admittedly he was married with Niranjana Kaur. It is argued that this wrong statement of fact qua marital status of Harsaran Singh creates a doubt with regard to correctness of registration of marriage. In the alternative, it is argued that even if it is accepted that Harpreet Kaur performed marriage with Harsaran Singh, the same is *void ab initio* as she had a subsisting marriage with Jora Singh at the time of alleged marriage with Harsaran Singh in 1987. Counsel would argue that the Appellate Court has rightly relied upon testimony of Jora Singh and other witnesses examined to prove marriage of Jora Singh with Harpreet Kaur in the year 1970. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Gullipilli Sowria Raj vs. Bandaru Pavani @ Gullipili Pavani 2009(1) RCR(Civil) 442, Surjit Kaur vs. Garja Singh and others 1993 (4) Scale 302 and Bhaurao Shankar Lokhande and another vs. State of Maharashtra and other AIR 1965 (SC) 1564.** Further reference has been made to judgment of this Court **Ashok Kumar Chopra vs. Krishna Kumari 1992(1) RCR (Criminal) 20** and that of the

Delhi High Court **Brij Lal Bishnoi vs. State and another 1996 (3) RCR (Criminal) 299.**

Another submission made by counsel is that even if decree of divorce Ex. P2 is accepted as correct, the same is not sufficient to deny right of inheritance to Smt. Niranjana Kaur. For this purpose, reference has been made to judgments of Hon'ble the Supreme Court **R.Viswanathan and others vs. Rukn-ul-Mulk Syed Abdul Wajid since deceased and others AIR 1963 (SC) 1** and **Smt. Satya vs. Teja Singh AIR 1975 (SC) 105.**

To refute contention of the appellant with regard to her entitlement to adduce additional evidence qua examination of Gurdial Singh Lambardar, it is argued that evidence of the appellant was closed by order of the trial court and the appellant filed revision petition in the High Court. The appellant was allowed one opportunity to adduce additional evidence but the trial court provided more opportunities to adduce further evidence. The appellant produced medical certificate of Gurdial Singh Lambardar and for that reason, another opportunity was allowed to examine him but the appellant failed to ensure his presence, therefore, application filed by her, by no stretch of imagination, can be covered within the purview and ambit of Order 41 Rule 27 (a) and (aa) of the Code. It is further argued that no such plea was raised before the trial court that Gurdial Singh Lambardar was receiving threats from respondents or he was staying away from the witness box due to situation created by the respondents. It is further argued that if such a plea of the appellant or Gurdial Singh Lambardar is accepted at this stage of the proceedings, any litigant can browbeat the proceedings and seek to unsettle the things already settled

about two decades ago.

Counsel representing respondents No. 7 and 8 has echoed the arguments advanced by counsel for respondents No. 1 to 3. To further strengthen arguments advanced by counsel for respondents No. 1 to 3 with regard to marital status of the appellant or validity of her marriage with Harsaran Singh, he has relied upon Division Bench judgment of this Court **Jaipal vs. Surbhi 2018(3) RCR (Civil) 80**, Single Bench judgments of this Court **Rupak Rathi vs. Anita Chaudhary 2014(2) RCR (Civil) 697**, **Urmila Sharma vs. General Public and others 2012 (17) RCR (Civil) 682**, judgment of the Gauhati High Court **Smti. Arat Marak vs. Smti, Balbila 2011 (40) RCR (Civil) 814** and that of the Madhya Pradesh High Court **Anguri Bai (Smt.) vs. Kishore Kumar Aasar 2014 (2) M.P.W.N.222**.

I have heard counsel for the parties, perused the paper book and records.

The issues that culminate for determination are:-

1. Whether Harpreet Kaur is widow of deceased Harsaran Singh and entitle to inherit him on the basis of natural succession.
2. Whether Niranjana Kaur can claim inheritance to Harsaran Singh in the face of decree of divorce Ex. P2.
3. Whether Harpreet Kaur can claim inheritance to Harsaran Singh to the exclusion of other class-I heirs of the deceased, on the basis of testamentary succession.

Before adverting to submissions made by counsel for the

parties on merits of the case, it is appropriate to deal with the application for additional evidence to examine Gurdial Singh Lambardar, an attesting witness of Will dated 14.12.1989.

Harpreet Kaur instituted the suit in February 1994. The issues were framed in July 1994. Interim stay was granted in favour of the appellant vide order dated 20.7.1994. The respondents filed an application for vacation of stay and the same was disposed of vide order dated 20.2.1995 with the stipulation that the appellant shall complete evidence within three months failing which it shall be deemed to be closed. The evidence was closed by order of the court on 3.4.1995. The appellant approached the High Court and she was given one opportunity to adduce evidence at her own responsibility, subject to payment of Rs. 1,000/-. Subsequent to passing of order by this court, the appellant examined one witness and produced medical certificate of PW Gurdial Singh on 12.6.1995. The trial court still allowed another opportunity to adduce remaining evidence subject to payment of costs of Rs. 500/- and the case was adjourned to 13.6.1995. As the appellant failed to examine any other witness or justify further adjournment of the case, her evidence was closed by order.

The appellant neither filed an application for additional evidence before the trial court during pendency of the suit till 28.2.1996 nor filed an application for additional evidence before the First Appellate Court for examination of Sh. Gurdial Singh Lambardar. Keeping in view that appellant herself produced medical certificate of Gurdial Singh Lambardar and did not raise a plea that Gurdial Singh is shying from the witness box on

account of threats given by the respondents, it is difficult to accept contention of the appellant that the present is a fit case wherein she is entitle to indulgence of this court to examine Sh. Gurdial Singh Lambardar by way of additional evidence and reopen the case which was decided by the First Appellate Court in the year 1999. In this view of the matter, application for additional evidence is dismissed. Since the appellant did not examine an attesting witness, thus, failed to prove the Will in consonance with the provisions of Section 68 of the Evidence Act, she can not assert her claim to inherit to estate of deceased Harsaran Singh on the basis of testamentary succession.

Indisputably, there was decree of divorce between Niranjana Kaur and Harsaran Singh passed by Mansfield County Court in a petition filed by Niranjana Kaur. Counsel for the respondents has not disputed the correctness, validity and existence of the said decree. However, he made a vain attempt to argue that Niranjana Kaur cannot be denied right of inheritance on the basis of decree of divorce by a foreign court by relying upon judgments of Hon'ble the Supreme Court in **R.Viswanathan and others' case (supra)** and **Smt. Satya's case (supra)**.

Counsel for the respondents has failed to refer to any particular observation much less ratio laid down by Hon'ble the Supreme Court which can be applied to advantage of respondents in the given facts and circumstances. The decree passed by the foreign court is not subject matter of controversy much less challenge before the civil court. That being so, the respondents can not derive any advantage to their contention from the cited judgments to assert right of inheritance of Niranjana Kaur despite dissolution

of marriage of Niranjana Kaur and Harsaran Singh. In this view of the matter, contention raised by the respondents with regard to right of inheritance of Niranjana Kaur is not meritorious and accordingly rejected.

This brings the court to the question of marital status of Harpreet Kaur. Harpreet Kaur raised a plea that she is the legally wedded wife of Harsaran Singh son of Hardit Singh son of Inder Singh and Harsaran Singh was also known by the name of Harsaran Mathauda or Harsaran Singh Mathauda. The defendants, in reply to para 1 of the plaint, had denied the averments with the plea that plaintiff is already a married woman and her previous marriage subsists and she could not possibly marry Harsaran Singh. Harpreet Kaur appeared in the witness box and stated on oath that her marriage with Harsaran Singh was performed by way of *Anand Karj*. She also produced registration of her marriage vide certificate Ex. P4. In cross examination, she was confronted with photographs marked 'X' and 'Y'. With regard to photograph marked 'Y', she had stated that the person who was doing ardas is gianiji of village Sarai Banjara and in photograph marked 'X', her aunt Harbans Kaur with folded hands of Tripuri Wale is shown and she did the ceremony of handing over palla (palla pharon wali). She had categorically stated that before this marriage, she never performed marriage. She was subject to lengthy cross examination but there is no challenge to her testimony that her marriage with Harsaran Singh was performed by way of *Anand Karj*. The appellant had produced certificate of registration of marriage (Ex. P4). This document was never challenged by the respondents. The mere fact that in the registration certificate, Harsaran Singh has been recorded to be unmarried ipso facto is not a ground to

discard or disbelieve correctness of registration of marriage of Harsaran Singh and Harpreet Kaur. In the passport of Harpreet Kaur, she is stated to be wife of Harsaran Mathauda. The seals and stamps affixed by the immigration authorities substantiate contention of the appellant that she left India for England in the year 1987 and stayed there till the year 1994. In the previous litigation between the respondents and Harsaran Singh, the deceased admitted that after divorce between Niranjana Kaur and Harsaran Singh, he performed marriage with Harpreet Kaur. There is no evidence adduced by the respondents that no such *Anand Karj* ceremony was performed at the time of marriage of Harpreet Kaur and Harsaran Singh. Taking into consideration testimony of Harpreet Kaur and documentary evidence on record, it can safely be held that Harpreet Kaur performed marriage with Harsaran Singh and she had been residing with Harsaran Singh as his wife.

The question for consideration is, whether Harpreet Kaur can not claim to be legally wedded wife of Harsaran Singh because of her alleged previous marriage with Jora Singh. As has been rightly argued by counsel for the appellant, no such plea was raised by the respondents that Harpreet Kaur was earlier married with Jora Singh. Even no such fact was put to Harpreet Kaur that she was earlier married to Jora Singh and the said marriage was subsisting at the time of alleged marriage with Harsaran Singh. Jora Singh DW1 had stated that he performed marriage with Harbans Kaur in the year 1970 and *barat* had gone to Tripuri. He further stated that Harpreet Kaur was of loose character and she was punished for two months and thereafter he left her. He further stated that it is being said

that she is now named as Harpreet Kaur. Jora Singh has not produced any documentary evidence with regard to his marriage with Harpreet Kaur.

The respondents examined Hardev Singh Sarpanch DW5. He stated about marriage of Harsaran Singh and Niranjana Kaur and six children being born out of their wedlock. He further stated that Harsaran Singh never obtained divorce from his wife Niranjana Kaur. Testimony of Hardev Singh with regard to number of children of Harsaran Singh and Niranjana Kaur is incorrect as they had five children including two sons and three daughters. Respondents have not disputed passing of decree of divorce by a foreign court that also contradicts statement of Hardev Singh that there was no divorce of Niranjana Kaur and Harsaran Singh. In this view of the matter, testimony of Hardev Singh Sarpanch is not worthy of credence and reliance.

The respondents also examined Naib Singh DW6 from Central Jail, Patiala to prove involvement of Harbans Kaur in criminal proceedings. The witness brought a register containing entry at Sr. No. 9786/127 of Harbans Kaur daughter of Gurdev Singh son of Gurdit Singh resident of Kothi No. 132, Bahera Raod, Sadar Patiala. He further stated that for getting released Harbans Kaur, her father Jeet Singh came and entry in this regard is Ex. DW6/A. Two entries proved by the witness are self-contradictory. In first entry, there is reference to Harbans Kaur daughter of Gurdev Singh son of Gurdit Singh and the second entry makes reference to her father's name as Jeet Singh. Harbans Kaur is the daughter of Gurdev Singh also demolishes evidentiary value of testimony of Jora Singh that Harpreet Kaur was involved in a criminal case and for that reason, he had

left her. The witness did not have any personal knowledge about signatures of Harbans Kaur or Jeet Singh against entry DW6/A. Harpreet Kaur was neither confronted with the factum of her involvement in a criminal case much less an entry made in the register maintained by Central Jail Patiala. There is also no material on record that Harpreet Kaur ever resided in Kothi No. 132, Bahera Road, Sadar Patiala. On the contrary, statement of Jora Singh is that barat had gone to Tripuri when he performed marriage with Harbans Kaur. Taking a cumulative view of the aforesaid discussion, it can safely be held that findings of the First Appellate Court that Harpreet Kaur had earlier married with Jora Singh or she could not perform marriage with Harsaran Singh during subsistence of her earlier marriage are the result of misreading of evidence, therefore, suffer from perversity and liable to be set aside.

Harpreet Kaur appellant has successfully proved that she performed marriage with Harsaran Singh and had stayed with him as a wife till his death in 1993 when they were living in England. The respondents failed to plead or prove that Harpreet Kaur was earlier married with Jora Singh or her marriage with Jora Singh was subsisting, therefore, could not perform marriage with Harsaran Singh. Harpreet Kaur being widow of deceased Harsaran Singh is entitle to inherit him on the basis of natural succession.

Counsel for the parties, in response to a query, would fairly concede that Harsaran Singh had three daughters and two sons from his previous wedlock with Niranjana Kaur. As has been noticed hereinbefore, Niranjana Kaur is not entitle to succeed to Sh. Harsaran Singh. Harpreet

Kaur appellant can not assert her right of succession to the exclusion of other class-I heirs of deceased Harsaran Singh. Harpreet Kaur being widow, two sons and three daughters would be entitled to inherit to the deceased on the basis of natural succession under the Hindu Succession Act, 1956 and mutation sanctioned by the revenue authorities is liable to be modified accordingly.

Niranjan Kaur and others initiated litigation by filing Civil Suit No. 563 of 1989 claiming right to the suit property, detailed in document Ex. P5 on the pretext that the same was joint Hindu family coparcenary property in the hands of Sh. Harsaran Singh. The suit was dismissed by the trial court vide judgment dated 22.2.1990. The appeal preferred by the respondents was disposed of vide order dated 9.9.1992 whereby respondents No. 1 to 3 (plaintiffs therein) withdrew the suit as well as the appeal meaning thereby that there was no adjudication by the civil court that property subject matter of that litigation was the joint Hindu family coparcenary property in the hands of Sh. Harsaran Singh. The revenue authorities without examining that there is no adjudication by the civil court with regard to nature of the suit property still proceeded to decide mutation on the basis of order dated 9.9.1992. No such plea has been raised by the respondents in the present lis that suit property is joint Hindu family coparcenary property of Sh. Harsaran Singh. As per the settled position in law, nature of suit property being coparcenary can not be decided on the basis of admission made by the parties. In the given circumstances, the respondents can not derive any advantage of order dated 9.9.1992 or purported statement made by Sh. R.K.Verma, Advocate on behalf of

Harsaran Singh, to sustain their plea that mutation was rightly sanctioned by the revenue authorities. In view of the above, the aforesaid questions are answered accordingly.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The appellant-plaintiff shall be entitle to 1/6th share in the suit property being one of the class-I heirs of deceased Harsaran Singh. No order as to costs.

Civil Writ Petition also stands disposed of in the same terms.

(Rekha Mittal)
Judge

22.11.2019

paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes