

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

RSA No.1269 of 2016(O&M)

Date of decision: 11.3.2019

Mukesh

.....Appellant

VERSUS

Board of School Education Haryana through its Secretary and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Sangwan, Advocate for the appellant.

Mr. Lajpat Sharma, Advocate for respondent No.2.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby prayer of the appellant/plaintiff that name of his father recorded as Gaje Singh in certificates issued by the Board of School Education Haryana, Bhiwani, Maharishi Dayanand University, Rohtak and Kurukshetra University, Kurukshetra may be corrected to that of Bani Singh and accordingly amended certificates by the respondents, may be issued, has been rejected.

The case set up by the appellant is that she is permanent resident of village Badesra, Tehsil and District Bhiwani. She has three sisters and is the youngest child of her parents. She got her education from school at village Badesra, Tehsil and District Bhiwani. Her name was got written by her grandfather Giani Ram who was an illiterate person. When she got admission in first class, name of her father was wrongly written as

Gaje Singh in place of Bani Singh. Father of the plaintiff died on 07.06.2004 in a motor vehicular accident. The name of her mother is Smt. Indrawati.

Defendants No.1 and 3 were proceeded against ex parte. However, suit was resisted by defendant No.2 by filing written statement. It is averred that the suit has been filed with ulterior motive for wrongful gains and in a clandestine manner. No prudent person can believe that a person having Bachelor Degree and Master of Business Administration Degree was not aware of her father's name. The suit is bad for non-joinder of necessary parties i.e concerned school and college/institute. The appellant is stopped by her act and conduct to file the suit at this highly belated stage. The appellant always incorporated name of Gaje Singh as her father in admission forms, examination forms and other documents submitted to the University. The suit is time barred. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial Court framed issues reproduced in para 4 of the judgment. Later, defendant No.2 was also proceeded against ex parte on 18.02.2014.

In her ex parte evidence, the appellant appeared in the witness box and examined Indrawati, her mother and Mohinder Singh Nambardar and tendered into evidence documents Ex.P1 to P18, noticed in para 5 of the judgment of trial Court.

The trial Court answered issues No.1 to 3 against the plaintiff/appellant and as a consequence, the suit was dismissed. While deciding issue No.1, the Court has held that in the documents relied upon for seeking necessary relief, the plaintiff is recorded as daughter of Bani

Singh but from the documents relied upon by the plaintiff, it is not proved that these documents are related to the plaintiff. There may be other person namely Mukesh daughter of Bani Singh. Moreover, the plaintiff is now about 26 years and after becoming major, she has come to the Court after 7 years. Hence, law of estoppel is applicable against her. She cannot challenge authenticity of the documents on the ground that name of her father is not Gaje Singh but Bani Singh. The trial Court also held that the plaintiff has no cause of action to file the suit and the suit is time barred as the plaintiff has come to the Court at a very belated stage. Similarly, issues No.4 and 5 with regard to estoppel and maintainability of the suit were answered against the plaintiff in view of findings on issue No.1.

As has been noticed hereinbefore, appeal preferred by the appellant/plaintiff was dismissed by the District Judge, Bhiwani and the reasons that weighed in the mind of Appellate Court are that the plaintiff passed her matriculation examination in the year 2003 but she filed the present suit in the year 2013. It is not case of the plaintiff that she had no knowledge about wrong mentioning of her father's name in her educational certificates and hence it is not believable that a person would keep mum for such a long period and would not make effort for rectification of a mistake. It does not stand to reason that grandfather of the plaintiff was not aware about correct name of his son and why he would give wrong name of her (plaintiff's) father while admitting her in the school. After completing her matriculation examination, she herself had filled up admission forms and examination forms while she was in higher classes. It is improbable that she would give wrong name of her father while appearing in examination of B.A. and M.B.A. Further held that perusal of

the documents, copies of claim petition Ex.P1, judgment Ex.P2, mutation Ex.P13, ration card Ex.P14, mutation Ex.P15 and release deed Ex.P16 reveals that one Mukesh has been recorded as daughter of Bani Singh but in the opinion of the Court, the documents are not sufficient to hold that plaintiff was the daughter of Bani Singh and not of Gaje Singh because it is not proved that the documents relate to the plaintiff. The Court affirmed findings of the trial Court that there may be some other girl by the name of Mukesh daughter of Bani Singh. The mere fact that evidence of the plaintiff remains un rebutted is no ground to allow her claim. The suit is held to be bad on account of delay and laches.

Counsel for the appellant/plaintiff would argue that the respondents/defendants did not contest the suit particularly the factual controversy that father's name of the plaintiff is Bani Singh and not Gaje Singh as recorded in her educational certificates starting from matriculation issued by the Board of School Education Haryana, Bhiwani and the same continued to be as such in her degree of B.A. issued by Maharishi Dayanand University, Rohtak and certificate of Master of Business Administration for semesters 1 to 4 issued by Kurukshetra University Kurukshetra.

Defendant No.2 filed the written statement but thereafter absented from the proceedings, therefore, there is no challenge to authenticity and correctness of testimonies of Mukesh duly corroborated by her mother Indrawati and Lambardar of the village. The appellant also produced on record certain documents to prove that in all the documents, she is recorded to be daughter of Bani Singh and not of Gaje Singh. It is surprising that both the Courts have held that the documents marked as

exhibits wherein Mukesh has been recorded to be daughter of Bani Singh may relate to some other person Mukesh daughter of Bani Singh. This finding of Court is the result of imagination, presumption and conjectures without there being any material to substantiate that finding. In the educational certificates sought to be corrected only in respect of father's name of the appellant, her mother's name has been correctly recorded as Indrawati. Indrawati appeared in the witness box and deposed that the plaintiff was born out of her wedlock with Bani Singh. The statement of Indrawati, in my considered opinion, is the best evidence to prove that Mukesh was born out of matrimony/conjugal relations of Indrawati and Bani Singh. In this view of the matter, it can safely be held that findings of the Courts to doubt stand of the appellant that she is daughter of Bani Singh or to say that documents produced on record do not relate to her are nothing short of suffering from perversity, thus, cannot be allowed to sustain.

The Courts have non-suited the appellant on the premise of estoppel and suit being barred by limitation. So far as findings of the Courts with regard to estoppel, her father's name was recorded as Gaje Singh in the school records on the basis of information purported to be given by her grandfather. There cannot be denial that she was a child of 4-5 years old when she was admitted in the school for her primary education. Meaning thereby that even if a statement was made by her grandfather with regard to her father's name incorrectly, it cannot be said that the said fact was incorrectly recorded on the basis of representation made by the plaintiff/appellant. Though, the appellant has taken a plea that her grandfather got her father's name incorrectly recorded in the school record,

possibility cannot be ruled out that there was some mistake on the part of school authorities while recording her father's name at the time of initial admission.

Section 115 of the Indian Evidence Act, 1872 defines estoppel. A relevant extract therefrom reads thus:-

"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

There is no evidence on record that grandfather of the appellant made any such declaration intentionally or permitted another person to believe that may be true and to act upon such belief. In this view of the matter, the provisions of Section 115 of the Indian Evidence Act, 1872 are not attracted to say that the appellant is estopped by her act and conduct to raise the plea that her father's name has been wrongly recorded in her educational certificates. This Court is not oblivious of the fact that even after attaining majority, the appellant must have submitted her admission forms and examination forms recording her father's name as Gaje Singh in place of Bani Singh. The appellant could not afford to change her father's name to Bani Singh until she had got it corrected either by approaching the Board of School Education Haryana that issued matriculation and senior secondary certificates or through process of the Court, in accordance with law.

The question that now falls for consideration is whether the claim of the appellant can be rejected on the premise that she did not approach the authorities or the Court for seeking necessary correction immediately on attaining the age of majority i.e. in the year 2006 as she was born on 14.01.1988. The plaintiff, in para 8 of the plaint, has alleged that she had no knowledge of effect of this wrong entry and came to know of the same when she tried to apply for government and other services and felt aggrieved. It is averred that there was no person for proper advice to the plaintiff as her father had died and her mother is an illiterate lady.

Mukesh appeared in the witness box and tendered into evidence her duly sworn affidavit and her testimony finds corroboration from the statement of Indrawati, her mother and Mohinder Singh Nambardar. If Mukesh did not perceive the adverse effect of wrong entry of name of her father in her educational certificates and came to know only when she completed her education by doing M.B.A. and applied for government and other services, it is difficult to uphold findings of the Courts that suit filed by the appellant is either barred by limitation or on account of delay and laches. There is nothing on record suggestive of the fact that due to failure of Mukesh to approach the Court for necessary correction immediately on her attaining age of majority in the year 2006, third party interests have accrued and the same would be prejudiced in case plea of the plaintiff is accepted. This apart, counsel for respondent No.2 has failed to point out any rules/instructions issued by the Haryana School Education Board or Maharishi Dayanand University, Rohtak that lays down that any such error qua name of parents or address etc. can be got corrected within a prescribed period. In this view of the matter, findings of

the Court non-suiting the plaintiff either on the ground of estoppel or question of limitation are erroneous and set aside. As a consequence, findings of the Courts on issue Nos.1 to 5 being erroneous and perverse cannot be allowed to sustain and accordingly set aside. As a natural corollary, issues No.1 to 5 are answered in favour of the plaintiff/appellant and against the respondents/defendants.

In view of what has been discussed hereinbefore, the appeal is allowed. The suit filed by the appellant/plaintiff is decreed to the effect that father's name of the plaintiff recorded as Gaje Singh in the matriculation and senior secondary certificates issued by defendant No.1 and Bachelor of Arts part I to III issued by defendant No.2 and Master of Business Administration for the semesters 1 to 4 issued by defendant No.3 is wrong and correct name of father of the plaintiff is Bani Singh and plaintiff is entitle to get recorded the correct name of her father in the above certificates. Respondents/defendants are directed to make necessary correction qua father's name of plaintiff as Bani Singh in the aforementioned certificates of given classes and issue amended certificates to the plaintiff subject to the plaintiff completing necessary formalities and deposit of requisite fees, if any, with the concerned authorities. No order as to costs.

MARCH 11, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no