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

**RSA No.8 of 2015 (O&M)
Date of Decision: 22.04.2019**

Shanti

.....Appellant

Vs

Anguri Devi

....Respondent

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

Present: Mr. Nonish Kumar, Advocate
for the appellant.

Mr. Vinod Kumar Bhardwaj, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Defendant is in Regular Second Appeal against the judgment and decree dated 25.08.2014 passed by the Addl. District Judge, Sonapat vide which the appeal filed by the plaintiff/respondent against judgment and decree dated 17.07.2013 passed by the Addl. Civil Judge (Sr. Divn.) Ganaur was accepted and suit was decreed in appeal.

[2]. Brief facts are that the plaintiff/respondent filed a suit for declaration against the defendant/appellant to the effect that plaintiff is the legally wedded wife of late Kaul Singh son of Rishal Singh. Plaintiff set up her case that previously defendant

was married to Kaul Singh. She left the society of deceased Kaul Singh about 40 years ago and had performed marriage with late Gajna son of Gopi. From this wedlock, one son namely Rohtash and one daughter took birth. Deceased Kaul Singh had solemnized second marriage with the plaintiff about 38 years back and from this wedlock three children namely Satish, Sikander (sons) and Renu (daughter) took birth. Deceased Kaul Singh was serving in Army and had retired on 01.06.1988. Defendant had left the society of Kaul Singh about 40 years back, therefore, there was no surviving relationship between Kaul Singh and Shanti (defendant) and her name as legally wedded wife of Kaul Singh was wrongly mentioned. Plaintiff requested the defendant for getting her name removed from the service record of deceased Kaul Singh and to admit claim of the plaintiff, but in vain. With this background, the suit was filed.

[3]. Suit was contested by the defendant on numerous grounds. Marriage with Gajna was denied. Rohtash was claimed to be son of defendant and deceased Kaul Singh. Defendant denied that the plaintiff was legally wedded wife of deceased Kaul Singh and she had never left the society of deceased Kaul Singh.

[4]. Both the parties went to trial on definite issues.

[5]. The trial Court observed that admittedly defendant was

married with late Kaul Singh. As per case set up by the plaintiff, defendant had left the society of late Kaul Singh and performed marriage with one Gajna. Late Kaul Singh also performed marriage with the plaintiff. In the middle examination certificate of Renu and academic certificate of Sikander i.e. Ex.P-1 to Ex.P-3 it was shown that Kaul Singh had started residing with the plaintiff and Satish, Sikander and Renu were the children of Kaul Singh and the plaintiff. The documents viz. Ex.PW/5-A, Ex.PW-6/A and Ex.PW-7/A projected that the defendant was living with Gajna.

[6]. The trial Court dismissed the suit primarily on the ground that there was nothing on record to suggest that the marriage of the defendant with late Kaul Singh was ever annulled by any decree of divorce. After coming into force of Hindu Marriage Act, 1955, marriage between two Hindus during subsistence of first marriage is void. Admittedly, the defendant was married with late Kaul Singh and the said marriage was never terminated by any lawful means, therefore, the plaintiff cannot claim herself to be legally wedded wife of late Kaul Singh.

[7]. In the appeal before the lower Appellate Court, it was considered that in view of evidence brought on record viz. PW-4 Ram Kumar, younger brother of late Kaul Singh, the defendant

left the company of Kaul Singh about 40 years ago and then she got married with Gajna and one son namely Rohtash took birth out of wedlock of Shanti Devi and Gajna. Kaul Singh got married with the plaintiff and they lived together thereafter for 39 years. PW-7 Dharam Singh stated that defendant is aunt and she was married with his uncle Gajna about 30-35 years ago. Rohtash and one daughter took birth out of this wedlock. It was further observed by the appellate Court that the documents viz. academic certificates and voter list would show that Shanti was living with Gajna in village Birachpur and was drawing widow pension in village Birachpur. This fact was proved by the testimony of PW-7 Dharam Singh.

[8]. On the basis of material produced on record the lower Appellate Court held that due to long living under the same roof would give rise to presumption of matrimonial status between the parties and long cohabitation giving birth to the children would be sufficient to conclude that they were living as husband and wife and presumption can be drawn that the earlier marital status had diminished. The appeal was allowed by the lower Appellate Court. That is how the present Regular Second Appeal came to be filed before this Court.

[9]. Having considered the arguments made by learned counsel for the parties, I am of the view that in view of

testimonies of PW-4 and PW-7 defendant was proved to be living with Gajna. Ration card of Kaul Singh would show that he was living with the plaintiff. The academic certificates of Satish Sikander (sons) and Renu (daughter) would show that they are the children of Kaul Singh and Anguri Devi (plaintiff). The documents viz. Ex.PW-5/A, Ex.PW-6/A and Ex.PW-7/A would show that Shanti Devi was living with Gajna in the village namely Birachpur. This fact was established by Chanda Numberdar (PW-2), who had clearly stated that Shanti Devi left the company of Kaul Singh about 40 years ago and then got married with Gajna and out of this wedlock one son Rohtash took birth. Shanti Devi is taking old age pension from village Birachpur being wife of Gajna and she has no concern with the pension of Kaul Singh.

[10]. In view of aforesaid unimpeachable evidence on record, it can be appreciated that Shanti cohabited with Gajna over a long period and they lived under the same roof. Long living and cohabitation giving birth to the children would give rise to a presumption that they have lost their previous status of marriage to some other person. Continuous cohabitation of man and woman as husband and wife for number of years would give presumption of marriage. The aforesaid presumption has not been rebutted by the defendant by leading any cogent evidence.

[11]. For the reasons recorded above, no law point worth cognizance is involved in this appeal, nor the findings recorded by the lower Appellate Court can be said to be the result of any misreading of evidence or suffered with any perversity. This appeal is found to be devoid of merit and is dismissed as such.

April 22, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No