

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

RSA No.1304 of 2017 (O&M)

Date of decision:16.5.2019

Roop Singh (since deceased) through LRs ... Appellant

Vs.

Paramjit Kaur and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjeev Kumar Bawa, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.3101-C of 2017

Allowed as prayed for.

C.M.No.3102-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 43 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.1304 of 2017 (O&M)

The appellant-plaintiff, brother of Pritam Singh instituted the suit claiming declaration of ownership by restraining the defendants from alienating the suit land being Class II heirs on the premise that defendants no.1 and 2 were neither married nor related to Pritam Singh. He was owner of land measuring 121 kanals 3 marlas and 28 kanals 2 marlas. At the time

of death, he was all alone in his house. The plaintiff alongwith his son Jagsir Singh performed his last rites. Some gold ornaments and cash were found from the house of Pritam Singh which were taken into custody. The defendants had no right to claim property. The defendants attempted to take the custody of the articles of the deceased Pritam Singh, therefore, cause of action accrued to file the suit.

The defendants opposed the suit and raised the objection qua maintainability and stated that defendant no.1 was married with Pritam Singh and defendant no.2 was their son and mutation in respect of the aforementioned property was sanctioned in their favour. Defendants no.3 to 5 filed the joint written statement and admitted the plaintiff to be real brother of deceased Pritam Singh.

The appellant-plaintiff examined six witnesses and brought on record various documents. On the other hand, defendants examined seven witnesses and brought on record Ex.D1 to Ex.D8 and Ex.DX.

Mr. Sanjeev Kumar Bawa, learned counsel appearing on behalf of the appellant-plaintiff submitted that defendants have miserably failed to prove the alleged marriage with the deceased Pritam Singh. There was no compliance of the provisions of Section 50 of the Indian Evidence Act. The witnesses did not know the place of marriage. In view of Schedule 2 of Section 8 of Hindu Succession Act, brother had preferential right for succeeding the estate of his brother. The school record has not been proved on record and therefore, mere exhibition of the document does not dispense with its proof.

I have heard the learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Bawa.

DW1- Hakam Singh, categorically stated that his mother-in-law was mediator in the marriage ceremony of Pritam Singh and Paramjit Kaur, defendant no.1 and DW3-Balwant Singh in examination-in-chief stated that he attended the marriage ceremony. DW2-Hakam Singh son of Basant Singh and DW4-Hakam Singh son of Gajjan Singh have categorically deposed that Pritam Singh got married with Paramjit Kaur during his stay at village Jawaharke and two children were born out of their wedlock. DW5-Ranjit Singh deposed on the similar lines but in cross examination gave the different date. Gurcharan Singh himself appeared as DW6 and Paramjit Kaur as DW7. Defendants have produced the copy of the judgment dated 5.8.2000, Ex.D5 passed in a suit for maintenance under Section 18 of Hindu Adoption and Maintenance Act in civil suit no.61 of 1999. In my view, the defendants have fully complied with the provisions of Section 50 of Indian Evidence Act in proving the relationship and marriage which had gone unshattered.

The arguments of Mr. Bawa, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2019

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No