

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5606 of 2014 (O&M)

Date of Decision: 06.05.2019

Gursangat Singh and others

.....Petitioners

Vs.

General Public and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sheery K. Singla, Advocate,
for the petitioners.

Mr. Anil Kumar Garg, Advocate,
for respondent no. 2.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioners challenge the order passed by the learned Civil Judge (Junior Division), Malerkotla, (Annexure P-6), vide which the application filed by respondent no. 2 under Order 1 Rule 10 CPC has been allowed and she has been consequently impleaded as defendant no. 2 in the suit instituted by the late mother of the present petitioners, Gurdan Kaur (during the pendency of which she died).

The suit was instituted by Gurdan Kaur seeking a declaration that her son, Malkit Singh, be declared to have suffered a “civil death”, he not having been heard of for a period of 18 to 19 years.

In the said suit, the only person “impleaded” originally by the late plaintiff was the General Public.

In that suit, the application filed by respondent no. 2 herein, seeking impleadment as a defendant, was on the ground that she in fact is the wife of

Malkit Singh and was therefore a proper and necessary party for the decision of the suit.

A perusal of her application (Annexure P-2 with this petition), shows that she is claiming the status of being Malkit Singhs' wife on the basis of a '*Karewa Nama*' dated 14.08.1989, contended to have been executed between her and Malkit Singh. It has further been stated in the application that the applicant (respondent no. 2 herein) had appointed one Sadhu Singh son of Kundan Singh as her attorney to pursue the application, who, it was further contended therein, is conversant with the facts of the case and therefore was competent to in fact even file the application.

The application was resisted by the plaintiffs (the grand-mother and predecessor-in-interest of the present petitioners, i.e. Gurdan Kaur, mother of Malkit Singh), vide a reply dated 07.10.2013 (copy Annexure P-5 herewith), in which the factum of the marriage has been completely denied, it having been further stated that even the entry in the register qua the '*Karewa Nama*' set up, is not authentic, the original '*Karewa Nama*' in any case not having been produced, with respondent no. 2 having admitted (as contended in the application) that she had lost it.

Having considered the stand of both sides, the learned trial Court, vide the impugned order, has held that with respondent no. 2 herein having also relied upon a ration card and a copy of a voters' list and a voter identity card issued by the Election Commission of India, (to prove her marriage with Malkit Singh), she was a necessary party in the suit and an opportunity to present her case should be granted to her.

Consequently, the application was allowed, with respondent no. 2 herein impleaded as defendant no. 2 in the suit.

Before this Court, learned counsel for the petitioners first points to a communication seen to be addressed by the Food and Supplies Officer, Malerkotla, to the Sub-Divisional Magistrate, Malerkotla, on 29.02.2012, stating therein that upon an enquiry conducted, it was found that respondent no. 2 in fact was not residing at village Bhumsi and also has no house in the village, with the '*Lumberdar*' of the village having wrongly attested her form applying for a ration card, on the basis of which such card was issued to her on 18.09.2011.

It has been further stated in that communication that in view of the instructions received by the Director, Food and Supplies, Punjab, upon orders passed by the Supreme Court of India, ration cards issued to such persons are to be cancelled, and it was therefore being cancelled.

Learned counsel similarly points to a communication addressed by the Election Registration Officer-cum-District Revenue Officer, Amargarh, to one Surjit Singh, who is stated to be the brother of the aforesaid Malkit Singh (the said letter being dated 08.11.2011), stating therein that on the basis of the report of the BLO (stated to be the Booth Level Officer), "the form of Indra wife of Malkit Singh has not been sent for the preparation of vote."

He therefore submits that the ration card as also any voter identity card issued to her having been obtained on the basis of a fraud, the learned trial Court has wholly erred in allowing the application filed under Order 1 Rule 10 CPC.

He further submits that respondent no. 2 herself not having approached the Court directly and in fact having appointed an attorney in her place, the entire exercise seems to be a fraudulent one.

In response thereto, learned counsel for respondent no. 2 submits that firstly, even to prove any marriage between respondent no. 2 and Malkit Singh, the

entire evidence led by both sides has to be considered by the trial Court before adjudicating upon the status of respondent no. 2 (as to being or not being the wife of Malkit Singh).

He next submits that as regards the '*Karewa Nama*' relied upon by her, the factum of such a '*Karewa*' marriage having been entered into, has been duly entered in the register of the deed writer at Malerkotla, on 14.08.1989, at serial no. 2255 thereof.

He consequently submits that the impugned order having been correctly passed, it is not required to be interfered with.

Having considered the matter, I agree with learned counsel for the respondents to the extent that as regards whether or not respondent no. 2 was the wife of Malkit Singh, that is an issue to be proved by her before the trial Court on the basis of evidence led, with naturally the petitioners herein (plaintiffs) having a complete opportunity to refute the authenticity of any such evidence, as also to otherwise disprove the existence of any such marriage, including by relying upon the documents as have been pointed to before this Court (amongst any other documents).

With regard to the 2nd contention of learned counsel for respondent no. 2, that an entry in the deed writers' register was made with regard to a *karewa* marriage between Malkit Singh and respondent no. 2, no comment whatsoever is made by this Court, with that aspect of the correctness of the entries made (or otherwise) and as to the authenticity of the '*Karewa Nama*' itself, yet to be adjudicated upon by the trial Court, on the basis of the evidence led before it.

Hence, as regards impleadment of respondent no. 2 as defendant no. 2 in the present *lis*, I see no error in the order of the learned trial Court, with that Court specifically having observed that respondent no. 2, in view of the documents

relied upon by her, needed to be given a chance to prove her case.

Hence, while dismissing this petition, it is simply observed that the trial Court would naturally go into all aspect of the evidence led by both sides, before coming to a final conclusion on as to whether respondent no. 2 has factually proved herself to be the wife of Malkit Singh or not.

Nothing observed in this petition would be taken to be an observation on the merits of the case of respondent no. 2, or of the petitioners, in any situation.

May 06, 2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes