

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

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Regular Second Appeal No.5442 of 2017 (O&M)
Date of Decision: May 13th, 2019

Smt. Shakuntla Devi (now deceased) through LR Karam Singh

...Appellant

Versus

Smt. Jaswinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. C.L. Sharma, Advocate
for the appellant.

Respondent No.1 in person.

Mr. Pawan Kumar Longia, Senior Penel Counsel-UIO
respondents No.2 to 6 and 9 to 12.

Ms. Gunjan Gera, Advocate
for Mr. Arvind Rajotia, Advocate
for respondents No.7 and 8.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 12.08.2015 passed by the Civil Judge (Junior Division), Chandigarh, whereby the suit preferred by respondent No.1-plaintiff Smt. Jaswinder Kaur widow of late Shri Kailash Singh, praying for declaration that she is entitled to full family pension and arrears of Kailash Singh and suit for permanent injunction restraining respondents-defendants 8 and 9 from making any payment to appellant-defendant No.11 Smt. Shakuntala Devi (now deceased) widow of Kartar Singh and mother of deceased Kailash Singh, was decreed, appeal against which preferred by appellant-defendant No.11 has been dismissed by the learned Additional District Judge, Chandigarh, on 07.04.2017.

2. It is the contention of learned counsel for the appellant that Kailash Singh son of Kartar Singh and son of appellant-defendant No.11 deceased Shakuntla Devi, retired as an Assistant Director, Intelligence Bureau, Chandigarh, in December 1994. Marriage took place between deceased Kailash Singh and respondent No.1-plaintiff Jaswinder Kaur on 08.12.1991. Disputes arose between deceased Kailash Singh and respondent No.1 Jaswinder Kaur leading to a compromise in the High Court, wherein divorce by mutual consent was granted to Jaswinder Kaur and Shri Kailash Singh in the year 1998. Kailash Singh died on 01.06.2004. It is thereafter that respondent No.1-plaintiff proceeded to claim family pension and arrears thereof. This claim was filed in the year 2007. When the said benefit was not granted to her in the light of the fact that the appellant had also put forth her claim by asserting that there was a Will in her favour, the official respondents proceeded to refer the parties to get a decision from the Civil Court.

3. A suit was preferred by respondent No.1-Jaswinder Kaur, wherein she claimed that there was a remarriage between her and Shri Kailash Singh on 30.01.2001 at Patiala in Tikana Bhai Ram Krishan Ji Sewa Panthi, Sheranwala Gate according to Sikh Rites by performing Anand Karaj ceremony. Assertion was also made that she was the nominee for the pension and other retiral benefits including the family pension. Appellant has put forth her claim on the basis of the Will and that respondent No.1-plaintiff has forged and fabricated the second marriage certificates and other document. As a matter of fact, there was no second marriage at all between deceased Kailash Singh and Jaswinder Kaur. On the basis of the pleadings and the evidence, the Courts below have gone against

appellant-defendant No.11 leaving her with no option but to file a second appeal.

4. Counsel contends that the evidence which has been led by respondent No.1-plaintiff is not reliable and cannot be made the basis for decreeing the suit filed by her, rather as a matter of fact, apart from there being a Will in favour of appellant-defendant No.11, in all the bank accounts and other places, nominee has been changed, which shows that there was never a cordial relationship between the parties. He asserts that there was no photograph of remarriage nor is there any evidence to show that they have ever resided together after second marriage. Assertion has also been made that Kailash Singh even at the time of his death was not being looked after by respondent No.1, rather she was not even aware of factum of death of Kailash Singh. He, thus, contends that on the basis of the above, the judgments and decree as passed by the Courts below cannot sustain and deserve to be set aside.

5. On the other hand, respondent No.1, who appears in person, states that there was indeed a remarriage between her and Kailash Singh on 30.01.2001. She has not only produced the documentary evidence but has also produced Manager of the Gurdwara Sahib, who is also the signatory of the marriage certificate apart from Granthi and two Sewadars, in whose presence the marriage was performed, rather the Granthi has deposed categorically that he had performed the Anand Karaj of respondent No.1 with that of deceased Kailash Singh. That apart, she contends that she continues to be the nominee in the papers of Shri Kailash Singh and, therefore, has rightly been granted the benefit of decree of the suit.

6. Counsel for the official respondents assert that they have to abide by the judgment and decree passed by the Court as they are not really interested in the matter except for production of the documents which were in their possession.

7. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

8. The controversy in the present case surrounds around the remarriage of respondent No.1-Jaswinder Kaur with that of deceased Kailash Singh, which would lead to the conclusion as to whether respondent No.1 would be entitled to family pension or the appellant. In case the remarriage is proved, then respondent No.1-plaintiff would be entitled to the decree as has been prayed for by her for the grant of family pension along with arrears thereof from the date of death of Kailash Singh.

9. Facts to the extent of there being an earlier marriage between the parties on 08.12.1991 followed by disputes between them to the dissolution of the marriage by mutual consent by a decree of divorce on 12.01.1998 which has been produced on record as Exhibit D-2 are admitted, however, it is subsequent thereto that the remarriage as claimed by respondent No.1-plaintiff with Kailash Singh on 30.01.2001 which has been performed is disputed.

10. Exhibit P-2/1 is the marriage certificate which has been produced by respondent No.1-plaintiff and to establish the factum of remarriage, she has not only stepped herself into the witness box but has also produced Paramjit Singh as PW-1, who was the Manager of Gurdwara Sahib, Tikana Bhai Ram Krishan Ji Sewa Panthi, Patiala, where the remarriage had taken place and who had signed the certificate. He has

categorically said so and has also owned his signatures on the certificate. Apart from him, Granthi of the Gurdwara Sahib Satnam Singh has also been produced as PW-7, who had deposed that he had performed the customary ceremonies of Anand Karaj at the marriage of respondent No.1-plaintiff with Kailash Singh on 30.01.2001 at Tikana Bhai Ram Krishan Ji. Apart from him, two Sewadars have also appeared namely Mahant Sunder Singh and Makhan Singh as PW-5 and PW-6, who have also deposed that they had attended the marriage of respondent No.1-plaintiff with Kailash Singh on 30.01.2001 and they were associated with Tikana Bhai Ram Krishan Ji since long. This evidence on record leaves no manner of doubt with regard to the second marriage which was performed between respondent No.1-plaintiff Jaswinder Kaur and Kailash Singh.

11. If that be so, the second marriage having been proved, she would be the rightful entitled person for the grant of family pension and arrears thereof.

12. The claim on the basis of the Will by appellant-defendant No.11 would not sustain as family pension cannot be claimed as a bounty and it is dependent upon the statutory rules, which unfortunately for appellant-defendant No.11, are in favour of respondent No.1-plaintiff Jaswinder Kaur.

13. In view of the above, finding no merit in the present appeal, the same stands dismissed.

14. It may be added here that the counsel for the official respondents have pointed out that the execution application filed by the respondent No.1-plaintiff Jaswinder Kaur has also been allowed.

15. In the light of the dismissal of the appeal, application for stay
i.e. CM No.14475-C of 2017 stands disposed of as infructuous.

May 13th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No