

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

**RSA No.1858 of 2018 (O&M)
Date of Decision:26.02.2019**

Amarjit Singh @ Natha Singh and anotherAppellants

Versus

Kashmir Kaur @ Jasvir Kaur and others Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Ranjan Lakhanpal, Advocate
for the applicants-appellants.

LISA GILL, J.

Appellants-plaintiffs are aggrieved of judgment and decree dated 25.10.2012, passed by the learned Civil Judge (Jr. Division), Bathinda, as well as judgment and decree dated 11.07.2014, passed by the learned Additional District Judge, Bathinda, whereby suit for declaration as well as for mandatory injunction filed by the plaintiffs-appellants has been dismissed.

Brief facts necessary for the adjudication of the case are that appellants-plaintiffs filed a suit for declaration to the effect that they are the only legal heirs of the deceased Constable Bhupinder Singh on the basis of a suicide note recovered from his person as well as a declaration to the effect that they are entitled to receive all the service benefits etc., on the death of their son Constable Bhupinder Singh and that respondent-defendant no.1 (wife of Bhupinder Singh) was not entitled to receive any of the said service benefits and that the order vide which service benefits of deceased-Bhupinder Singh had been afforded to defendant no.1 be declared illegal,

null, void and ineffective qua the rights of the plaintiffs. It was pleaded that plaintiff-appellant no.1 was the father and plaintiff-appellant no.2, the step mother of Constable-Bhupinder Singh. Appellant no.1 after the death of his first wife, solemnized second marriage with appellant no.2, who treated the deceased with all love and affection. Bhupinder Singh was serving the Punjab Police as a Constable posted at Police Station Thermal Plant at Bathinda. Bhupinder Singh was married to defendant no.1-Kashmir Kaur in the year 1989. Two sons i.e. defendants no.2 and 3 were born out of this wedlock. Relations between Bhupinder Singh and his wife were strained on account of immoral activities of Kashmir Kaur and her sister-Charanjit Kaur. He was harassed and humiliated by defendant no.1 and her sister and ultimately Bhupinder Singh committed suicide on 22.04.2000 leaving behind a suicide note whereby it was mentioned that all the service benefits on his death should accrue to his father and mother. FIR No. 22 dated 22.04.2000 was registered at Police Station GRPS, Bathinda under Sections 306/34 IPC against Kashmir Kaur and her sister Charanjit Kaur. Charanjit Kaur was convicted for the offence punishable under Section 306 IPC and sentenced to undergo rigorous imprisonment for a period of four years. It was pleaded that defendant-Kashmir Kaur was not entitled to service or pensionary benefits of Bhupinder Singh as she harassed her husband and had driven him to commit suicide. Despite requests to the authorities, the service benefits were released to defendant no.1. Hence the suit was filed.

Defendants-respondents no.1 to 3 (widow and children of deceased-Bhupinder Singh) resisted the suit. Joint written statement was filed. Various preliminary objections were taken in the written statement.

Averments on merits were controverted. It was stated that relationship of defendant no.1 was very cordial with her husband and he had named her as a nominee in his LIC Policy dated 11.03.1999 and 15.02.2000. It was the plaintiffs, who never treated deceased-Bhupinder Singh with love and affection. They misbehaved with him and humiliated him. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is only legal heir of deceased Constable Bhupinder Singh on the basis of suicide note dated 22.04.2000?OPP
2. Whether the plaintiff is entitled to declaration as prayed for?OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court while noting that appellant no.1 being the father and appellant no.2 being the step mother, are not Class-I legal heirs of the deceased-Bhupinder Singh and suicide note cannot be treated to be a will as urged, dismissed the suit vide impugned judgement and decree dated 25.10.2012.

Appeal filed by the appellants-plaintiffs was also dismissed by the learned Additional District Judge, Bathinda, vide impugned judgement and decree dated 11.07.2014.

Aggrieved therefrom, present appeal has been filed by the appellants-plaintiffs.

Learned counsel for the appellant vehemently argues that it is a

matter of record that Bhupinder Singh committed suicide due to harassment meted out by defendant no.1 and her sister-Charanjit Kaur. Charanjit Kaur was convicted and sentenced in the said criminal proceedings. Moreover, the suicide note left by Bhupinder Singh clearly reveals that he wished for all his service benefits etc., to accrue to the present appellants. In the facts and circumstances of the case, the suicide note dated 22.04.2000 should be treated to be a will. Both the learned Courts below have erred in dismissing the suit filed by the appellants. It is thus prayed that this appeal be allowed and both the impugned judgments and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiffs-appellants be decreed throughout.

I have heard learned counsel for the appellants and have gone through the file with his assistance.

Relationship between the parties as mentioned above is not in dispute. Lerner counsel for the appellants is unable to deny that both the appellants are not Class-I legal heirs of Bhupinder Singh. Appellant no.1 is the father and appellant no.2, is the step mother of Bhupinder Singh. It is further not in dispute that Bhupinder Singh had appointed defendant no.1-Kashmir Kaur as his nominee in the LIC Policy dated 11.03.1999 and 15.02.2000. It is specifically stated by DW-1-Kashmir Kaur, in her testimony that she was not named in the FIR dated 22.04.2000 at the outset and her name was wrongly included at a later stage under the influence and pressure of plaintiff no.1 and in any case she stood acquitted in the said criminal proceedings. As far as the conviction of her sister-Charanjit Kaur is concerned, an appeal/revision was pending before this Court. DW-1 further

stated that custody of the minor children i.e. defendants no.2 and 3 was very much with her. Children were being looked after and taken care of by defendant no.1. In the facts and circumstances of the case, learned Courts below have rightly observed that a suicide note cannot be termed to be a will and no benefit can accrue to the appellants on account of the said suicide note.

Learned counsel for the appellants is unable to deny that the children of deceased-Bhupinder Singh and defendant no.1-Kashmir Kaur, are in the care and custody of defendant no.1 and she is looking after them. In such a situation, it is rightly held by both the learned Courts below that the appellants-plaintiffs have failed to prove their case.

Learned counsel for the appellants-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

There is an application for permission to make good the deficiency in Court fee. Deficient court fees stands deposited, though after the stipulated time.

In view of the facts and circumstances of the case, time to affix the same is extended till then.

Application is disposed of.

There is a delay of 45 days in re-filing and 1197 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated

on merits, question of delay in filing or re-filing this appeal has been rendered academic. Applications are accordingly disposed of.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 25.10.2012 and 11.07.2014 passed by the learned Civil Judge (Jr. Division) Bathinda and learned Additional District Judge, Bathinda, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

26.02.2019

s.khan

**[LISA GILL]
Judge**

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.