

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

RSA No.1631 of 1989

Date of decision: 5th March, 2020

Udmi Ram (deceased) through LRs

... Appellants

Versus

Rewati Devi & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sukesh Jindal and Mr. C.B. Goel, Advocates
for the appellants.

Mr. Umesh Aggarwal, Advocate for respondents.

FATEH DEEP SINGH, J.

One Rewati Devi claiming to be the widow of Ram Autar filed against the contesting defendants Udmi Ram (since deceased and his LRs having been brought on record) (impleaded by virtue of order dated 02.06.1986 passed in application under Order I Rule 10 CPC) and Munshi Ram, a suit for declaration that she is the widow of late Ram Autar son of Udmi Ram defendant (now appellant). The claim is based on the grounds that she was married to Ram Autar 20 years prior to the institution of the suit which is on 30.09.1985 and that she has been receiving pension of her deceased husband as well. The plaintiff has alleged that due to deception and fraud, certain vested interest has shown her to be wife of Munshi Ram to deprive her of the benefits of succession

to the estate of Ram Autar. It is pleaded that after the death of Ram Autar she has not remarried and continues to be the widow. The defendants, in their stand after usual preliminary objections, took the plea that the plaintiff was married to Ram Autar who has since died and thereafter she has remarried by way of *Karewa* ceremony with Munshi Ram, one of the defendants around 21st of December, 1984 and thus, is living with Munshi Ram as his legally wedded wife. The trial Court on 14.10.1986 framed the following issues:-

1. Whether the plaintiff entered into Kareva Marriage with Sh. Munshi Ram, as alleged? OPD
2. Whether the plaintiff has no locus-standi to file the present suit? OPD
3. Whether the plaintiff is estopped from filing the present suit by act and conduct? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Relief.

The following additional issue was re-framed on 11.05.1987:-

- 1A. Whether the plaintiff still continues to be the widow of Sh.Ram Autar s/o Udmi Ram as alleged? OPP

The plaintiff examined Rewati Devi PW1, Ganga Sahai PW2, Rajender Singh PW3, Nirbama PW4 and Gursa Ram PW5. On behalf of

the defendants, Udmi Ram stepped into the witness box as DW1 and examined DW2 Fateh Singh, DW3 Chander and in rebuttal examined DW4 Rewati widow of Ram Autar. In the process, the defendants proved photograph and its negative Ex.DW3/1, applications Ex.D1 and complaint made by Rewati Devi wife of Munshi Ram Ex.D2.

The Court of learned Sub Judge First Class, Gurgaon vide judgment and decree dated 10.09.1988 dismissed the suit of the plaintiff. On appeal by unsuccessful plaintiff Rewati Devi, the Court of learned Additional District Judge, Gurgaon through impugned findings dated 07.06.1989 allowed the appeal with costs setting aside the judgment and decree of the trial Court. It is in this situation, the unsuccessful defendant Udmi Ram has come up in this regular second appeal before this Court.

In view of the recent pronouncement in **‘Kirodi (since deceased) through his LR vs. Ram Parkash & others’ Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019**, the Hon’ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Upon hearing Mr. Sukesh Jindal, Advocate and Mr. C.B. Goel, Advocate for the appellants; Mr. Umesh Aggarwal, Advocate for respondents and perusal of the records.

It is worthwhile to refer here that during the pendency of appeal, an application for additional evidence was allowed by the learned first appellate Court and documents Ex.C1 and Ex.C2 which are copies of the proceedings to a complaint, were taken on record.

The plaintiff Rewati Devi as per the pleadings on the record, has simplicitor filed a suit seeking declaration that she happens to be widow of deceased Ram Autar son of Udmi Ram and which is opposed by none other than Udmi Ram, the father of Ram Autar. As has come to this Court in the light of the fact that the plaintiff has simplicitor filed a suit for declaration and failed to claim entitlement to pension of the deceased which as such in terms of provisions of Specific Relief Act is not maintainable and regarding which issue No.4 has been framed and the Court below lost sight of this basic and essential requirement of law for which reliance is placed on **‘Kidara vs. Mange’ decided on 07.12.2000 by Punjab & Haryana High Court** and another view in **‘Ram Saran & another vs. Ganga Devi’ AIR 1972 SC 2685**. Since the present suit, out of which the appeal has arisen, is clearly barred under the provisions of Section 42 of the Specific Relief Act which prescribes that where a more efficacious remedy is available to a party and fails to chose it, cannot seek indulgence of the Court. In the light of what has come across from the pleadings of the parties and without feeling necessity to further advert on to the merits of the impugned findings as

well as that of the trial Court, it would suffice to hold that the suit filed by Rewati Devi simplicitor for declaration was not maintainable and returning the findings on issue No.4 in favour of the defendant (now appellant) finding on other issues becomes superfluous. As such, the suit of the plaintiff Rewati Devi stands dismissed and the present appeal stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

March 5, 2020

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No