

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

CR No.2134 of 2020

Date of Decision: September 16, 2020

Satbir Kaur

...Petitioner

VERSUS

Tarsem Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Anshul Gupta, Advocate,
for the petitioner.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the light of the COVID-19 pandemic.

The present petition has been filed by the petitioner challenging the order dated 05.11.2016 passed by learned Addl. Civil Judge (Sr. Divn.) Sultanpur Lodhi vide which application under Order 39 Rule 1 and 2 read with Section 151 CPC has been dismissed and judgment dated 04.02.2020 passed by learned Addl. District Judge, Kapurthala, vide which, appeal challenging the order dated 05.11.2016 has also been dismissed.

Background facts of the case in nutshell are as follows:

That, initially, petitioner-plaintiff filed a suit against respondents-defendants for seeking declaration as well as possession and permanent injunction, with a prayer for alternative relief for creating charge

over the property as detailed in the headnote of the plaint and sought

maintenance under Chapter 3 of The Hindu Adoptions and Maintenance Act, 1956 to the amount of Rs.5 lakh per annum. Along with the civil suit, the petitioner-plaintiff had also filed an application under Order 39 Rule 1 and 2 read with Section 151 CPC for grant of ad interim injunction for restraining the respondents-defendants from alienating the suit property by whatsoever means.

It is the claim of the petitioner-plaintiff that marriage was performed between her and respondent-defendant No.1 according to Sikh rites and rituals on 18.09.2013. The petitioner-plaintiff was having two children from her previous marriage and respondent-defendant No.1 was also having two children from his previous marriage. The petitioner-plaintiff did not bring her children to her new matrimonial home. Both the petitioner-plaintiff and respondent-defendant No.1 lived in matrimonial home. Soon after the marriage, the petitioner-plaintiff came to know that family members of respondent-defendant No.1 did not approve second marriage of respondent-defendant No.1 and as such, they started claiming more dowry from the petitioner-plaintiff. However, she refused to fulfill their demands. Even, family members of respondent-defendant No.1 compelled the petitioner-plaintiff to bring her share from the property of her father, which was refused by her. To get their demands fulfilled, respondents-defendants also used to beat the petitioner-plaintiff mercilessly and also tried to kill her. Even, pregnancy of the petitioner-plaintiff was terminated by respondent-defendant No.1 for three times. Also, it is the version of the petitioner-plaintiff that she was turned out from the house by respondents-defendants in the third week of June 2015.

It is also the case of the petitioner-plaintiff that in order to

defeat her rights, respondent-defendant No.1 has transferred the suit property vide Transfer Deed Wasika No.440 dated 06.08.2015 in favour of respondent-defendant No.2. Thereupon, the petitioner-plaintiff has filed the civil suit.

However, the respondents-defendants have refuted the claim of the petitioner-plaintiff. It is specific version of respondent-defendant No.1 that petitioner-plaintiff has not come to the Court with clean hands and has concealed and suppressed the true and real facts from the Court. In fact, respondent-defendant No.1 stated that his marriage was solemnized about 29 years ago with Narinder Kaur and two children were born namely Gurwinder Singh (who has been impleaded as defendant No.2) and Mandeep Kaur (who has been impleaded as defendant No.3) from the said wedlock. However, his wife Narinder Kaur had passed away in the month of April 2012. It is also specific version of respondent-defendant No.1 that he never solemnized his second marriage as his children had already attained the age of majority. It is further the version of respondent-defendant No.1 that in January 2016, he has solemnized marriage of his son Gurwinder Singh and he is now residing with his daughter, son, daughter-in-law and old mother and they are living together. He has stated about petitioner-plaintiff to be earlier known as Amrit Kaur and she was married to Shamsher Singh @ Sher Singh r/o Laba Khera, Uttarakhand and from the said wedlock, two children were born. However, due to quarrelsome nature of the petitioner-plaintiff, her husband had committed suicide. After death of Shamsher Singh @ Sher Singh, even custody of the children was handed over to parents of Shamsher Singh @ Sher Singh. Thereafter, petitioner-plaintiff performed second marriage with one Kawaljit Singh s/o Surender

Singh r/o Village Dhariwal, District Gurdaspur and their marriage was duly registered vide certificate dated 30.04.2012. Neither the petitioner-plaintiff has divorced second husband nor their marriage has been dissolved yet. The petitioner-plaintiff was only allowed to stay in the house of respondent-defendant No.1 in October 2013 for taking care of the house, without any marriage with respondent-defendant No.1. However, the petitioner-plaintiff could not adjust with children of respondent-defendant No.2 and she used to abuse them and then falsely alleged that she was living as wife of respondent-defendant No.1. Even, it is asserted that name has been changed by the petitioner-plaintiff from Amrit Kaur to Satbir Kaur and false documents have been got prepared in the name of Satbir Kaur. Even, respondent-defendant No.1 has given detail of the litigation having initiated at the instance of the petitioner-plaintiff. Also, it is stated that second husband of petitioner-plaintiff namely Kawaljit Singh is alive but has not divorced her. Respondent-defendant No.1 has every right and authority under law to sell, alienate or transfer his property to anybody and the petitioner-plaintiff has not got right in any of the properties of respondent-defendant No.1.

From the pleadings brought on record, it is evident that petitioner-plaintiff asserts herself to be legally wedded wife of respondent-defendant No.1 and on the basis of this relationship, she claims her right in the properties, detailed whereof, has been given in the headnote of the plaint. It is asserted about the said property to have been transferred by respondent-defendant No.1 in favour of respondent-defendant No.2 vide Transfer Deed Wasika No.440 dated 06.08.2015 with the sole purpose to defeat the rights of the petitioner-plaintiff. Besides the same, the petitioner-

plaintiff has placed reliance upon the Voter card, Aadhaar Card, Voter list, where the name of respondent-defendant No.1 has been mentioned as husband of the petitioner-plaintiff.

It is pertinent to mention that specific plea of respondent-defendant No.1 is that the petitioner-plaintiff was married with one Kawaljit Singh s/o Surender Singh r/o Village Dhariwal, District Gurdaspur and he has placed reliance upon the copy of marriage certificate dated 30.04.2012. The copy of the replication filed by the petitioner-plaintiff is there on the record. The perusal of the preliminary objection No.1 clearly reveals that petitioner-plaintiff, as such, has not disputed about her first marriage and death of her husband, though, she states that he died natural death. Even fact of second marriage, as such, is not disputed, though she states that a fraud has been played upon her and she never consummated that marriage. It is also stated in these objections that both the parties consented with mutual agreement to cancel that marriage and the marriage was cancelled. But however, there is no document on record about the manner of cancellation of that marriage. No decree of divorce, as such, has been obtained from any Court. Rather, the petitioner-plaintiff in the plaint has suppressed the very fact of her second marriage with Kawaljit Singh and it was only so admitted in the replication. Thus, in these circumstances, when no document relating to the dissolution of marriage of the petitioner-plaintiff with Kawaljit Singh is coming on record, it cannot be concluded about the petitioner-plaintiff to have solemnized marriage with respondent-defendant No.1 during the subsistence of her earlier marriage. In these circumstances, it is also pertinent to mention that respondent-defendant No.1 is shown to be owner in possession of the property in the revenue record and precisely, on this

account, he was within his right to deal with the same in the manner he likes. He has transferred the said property in the name of his son, qua which, the petitioner-plaintiff during the subsistence of her second marriage, as such, cannot assert her claim qua this property of respondent-defendant No.1.

Otherwise also, there is nothing as such, coming on record about the petitioner-plaintiff to have been deprived of from the amount of maintenance, if so granted. It is also stated by learned counsel for the petitioner-plaintiff that no execution, as such, has been filed for seeking maintenance.

In the light of the same, no prima facie case exist in favour of the petitioner. As such, learned Courts below have rightly dismissed the application under Order 39 Rule 1 and 2 read with Section 151 CPC and the appeal. The impugned order and judgment, as such, merits no interference.

Resultantly, the present petition stands dismissed.

However, these observations are circumscribed only for the purposes of disposal of the present petition and shall not be construed as expression on merits vis-a-vis rights of the parties concerned in the civil suit.

(ARCHANA PURI)
JUDGE

September 16, 2020

Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No