

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 594 of 2013 (O&M)

Date of Decision: 21 .05.2020

Mohinder Kaur

... Appellant(s)

Versus

Mohinder Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Gurdev Singh Khosla, Advocate
for the petitioner(s).

Mr. G.S.Punia, Senior Advocate
with Ms. Harveen Kaur, Advocate
for the respondent.

Anil Kshetarpal, J.

The plaintiff/appellant has filed the present regular second appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed by her for grant of decree of declaration to the effect that she is the owner of the land measuring 24 bighas and 6 biswas which is equal to 1/3rd share out of joint property measuring 73 bighas. She also challenged the correctness of two judgements & decrees passed by the Civil Courts, first dated 18.07.1972 passed in Civil Suit No. 116 dated 10.07.1972 and second dated 13.03.1984 passed in Civil Suit No. 54 dated 06.02.1984.

The plaintiff filed the suit claiming that she is the daughter of late Sh. Niranjana Singh who died in February 1991. Two defendants were impleaded in the suit, one is Mahinder Singh, son and other is Tej Kaur,

widow of Niranjana Singh. Both of them contested the suit claiming that the plaintiff is not the daughter of late Sh. Niranjana Singh. In fact, it was pleaded that the plaintiff is daughter of Jag Narayan who was the first husband of Smt. Tej Kaur, the second defendant. Defendant No.1 set up a Will dated 03.10.1978 allegedly executed by late Sh. Niranjana Singh bequeathing his entire property in his favour.

Both the Courts below, on appreciation of evidence, have concurrently found that the plaintiff has failed to prove her case. She failed to prove that she is daughter of late Sh. Niranjana Singh and Tej Kaur. Both the Courts below further found that execution of the Will dated 03.10.1978 stands proved.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgements passed by both the Courts below and the requisitioned record.

Learned counsel for the appellant has submitted that the judgements passed by both the Courts below are erroneous. He has further submitted that as per school record of Mohinder Kaur- the plaintiff/appellant is proved to be daughter of late Sh. Niranjana Singh. He, hence, contended that both the Courts below have erred while deciding the case.

On the other hand, learned counsel for the respondents, while drawing attention of findings of fact arrived at by both the Courts below, has contended that Mohinder Kaur failed to prove that she is the daughter of late Sh. Niranjana Singh.

On critical analysis of the arguments of learned counsel for the parties and perusal of the judgements passed by both the Courts below as

also the requisitioned record, it is apparent that there is no substance in the present regular second appeal. As per school record produced by the plaintiff, she was allegedly born on 04.06.1955, whereas it has come in evidence that Tej Kaur married to Niranjana Singh in the year 1957. It has also come in evidence that before marrying Niranjana Singh, Smt. Tej Kaur used to reside in Uttar Pradesh. Smt. Tej Kaur has also filed a written statement claiming that Mohinder Kaur- the plaintiff, is not her daughter from the loins of Niranjana Singh. It will be noted here that the plaintiff failed to produce the record of her birth, although when she appeared in evidence has admitted that Chowkidar of the village used to make an entry of birth. She has also failed to examine any person having special means of knowledge to prove her relationship with Niranjana Singh. Section 50 of the Evidence Act, 1872 requires that if a party wishes to prove a relationship, he or she is required to prove the same in accordance with the provisions of the Evidence Act. In the present case, the plaintiff has failed to discharge the onus.

The learned first Appellate Court was correct in recording that merely because Niranjana Singh has signed the school admission form of Mohinder Kaur would not be sufficient to prove that she is daughter of late Sh. Niranjana Singh, particularly when it has not been proved that Smt. Tej Kaur had married Niranjana Singh before the year 1955. Rather it has been proved that Tej Kaur married to Niranjana Singh in the year 1957. Hence, Mohinder Kaur could not have been born from the wedlock of Niranjana Singh and Smt. Tej Kaur.

Keeping in view the aforesaid facts, there is no ground to

interfere. Hence, the present appeal is dismissed.

The miscellaneous application(s), if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 21, 2020
“DK”

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