

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

**RSA NO. 2253 OF 2014 (O&M)
DATE OF DECISION : 26.02.2020**

Amandeep

...Appellant

versus

General Public and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. P. P. S. Duggal, Advocate,
for the appellant.

None for respondents No.2 and 3.

ARUN MONGA, J. (ORAL)

Having suffered concurrent adverse findings by the two Courts below, the plaintiff/appellant is before this Court in Regular Second Appeal assailing the judgment and decree dated 17.12.2009 passed by the trial Court as upheld by the First Appellate Court vide its judgment and decree dated 18.09.2013.

2. Succinct factual matrix as noticed by the First Appellate Court first. Late Surinder Mohan Maggon was previously married to Asha Rani. Out of said wedlock, Amandeep plaintiff was born on 17.07.1982. After the death of Asha Rani, Surinder Mohan Maggon solemnized marriage with one Swaran Lata from whom Gagandeep was born. Swaran Lata also died on 13.08.1990. At that time, Gagandeep was three years old and was taken by his maternal grand parents. Later on Surinder

Mohan Maggon also died on 25.09.1993. Before his death, Surinder Mohan Maggon was undergoing sentence in Central Jail, Ferozepur. It was further pleaded that whereabouts of Gagandeep and his maternal grand parents are not known since 14.08.1990. Surinder Mohan Maggon left behind his son Amandeep (plaintiff No.1) and mother Mohinder Kaur (plaintiff No.2, transposed pro forma respondent) as his legal heirs. He (Surinder Mohan Maggon) was having a locker with defendant No.2 where he had kept his valuable articles. After the death of Surinder Mohan Maggon, his son- plaintiff Amandeep approached defendant No.2 to allow him to operate the said locker. Vide letter dated 28.02.2007, he came to know that said locker had been drill opened by the Bank (defendant No.2) and the articles lying therein were kept in sealed packet. Defendant No.2 demanded ₹2700/- vide letter dated 21.08.2007 which was paid by Amandeep vide receipt dated 29.08.2007 but defendant No.2 did not hand over that sealed packet to plaintiff No.1. It was further averred that since whereabouts of Gagandeep are not known since 14.08.1990, plaintiffs be declared as legal heirs of deceased Surinder Mohan Maggon. Hence, the suit.

3. Upon notice, none appeared on behalf of defendant No.1-General Public and it was proceeded ex parte.

4. Defendants No.2 appeared and file written statement taking preliminary objection that suit is not maintainable in present form. On merits the facts of case were denied for want of

knowledge. However, it was admitted that Surinder Mohan Maggon was having a locker bearing No.166 in the bank. He did not deposit the rent of locker regularly and therefore, after giving notice to Surinder Mohan Maggon, the locker was drill opened. The articles recovered from said locker are in his safe custody and the Bank will hand over the same to the legal heirs of Surinder Mohan Maggon, who will be declared entitled to receive the same by Court.

5. No replication was filed by the plaintiffs. Based on the rival pleadings, following issues were framed :-

- 1) Whether the plaintiffs are only legal heirs of Surinder Mohan Maggon ? OPP
- 2) Whether the plaintiffs are entitled for declaration, as prayed for ? OPP
- 3) Whether the plaintiffs are entitled to mandatory injunction as prayed for ? OPP
- 4) Whether the suit is not maintainable ? OPD
- 5) Relief.

6. In order to prove their case and to discharge their onus as per the issues framed *ibid*, the parties to suit adduced their respective evidence.

7. Based on the evidence adduced by both the parties and upon appreciation thereof, the trial Court dismissed the suit

of plaintiffs. The First Appellate Court concurred with the findings of fact recorded by the trial Court. Resultantly, the First Appellate Court upheld the judgment and decree passed pursuant thereto.

9. I have heard learned counsel for the appellant and have perused the judgments and decrees of both the Courts below. To my mind, these judgments have been passed after due appreciation of evidence adduced by the respective parties in support of their pleadings to discharge their onus to prove in terms of the issues *ibid*.

10. The relevant extract of the trial court judgment qua Issues No.1 and 3 is as under :

"15. Admittedly, Surinder Mohan Maggon has died in the CMC Complex, Ludhiana. Now after his death the legal heirs of him were the plaintiffs, Swaranlata and Gagandeep (sic Amandeep and Mohinder Kaur). Now the plaintiffs claim that Swaranlata (second wife of Surinder Mohan Maggon) has died on 13.08.1990 but no death certificate documentary evidence is on record that shows that Swaranlata died on 13.08.1990. The plaintiffs have examined PW-3 Rajan Bali who claims himself to be living adjacent to the house of the plaintiffs. This witness is neither related to the plaintiffs by blood nor is their relative the relationship merely on the deposition of the witness like PW-3 who is not related to the parties to the suit in any way orally cannot be held that the plaintiffs are the only legal heirs of Surinder Mohan Maggon. Similarly, without documentary or other convincing evidence regarding the death of Swaranlata, it cannot

be said that she died on 13.08.1990. Neither there is any cogent evidence on record that the plaintiffs are the only legal heirs of late Surinder Mohan nor blood (sic relation) has been examined to that effect that Gagandeep has not been heard since the last 7 years or that Swaranlata died on 13.08.1990. Hence, the plaintiffs have failed on both these facts nor mandatory injunction can be issued in their favour. Hence, all these issues are decided against the plaintiffs."

11. As noticed earlier, the First Appellate Court concurred this finding of fact rendered by the trial Court.

12. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No fresh ground warranting interference in this regular second appeal to disturb the concurrent findings of facts recorded by the Courts below, is made out.

13. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

14. In view of my discussion above and the reasons recorded therein, no interference is called for by this Court. The instant regular second appeal, being bereft of merit, is accordingly dismissed.

Pending application, if any, also stand disposed of.

16. No order as to costs.

(ARUN MONGA)
JUDGE

FEBRUARY 26, 2020
shalini

- | | | |
|----|-----------------------------|--------|
| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |