

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

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**RSA-400-2021 (O&M)
Decided on : 15.07.2021**

Rai Sahab

... Appellant

Versus

Kamlesh & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.C.S.Jattana, Advocate, for the appellant.
(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral):-

The present appeal, filed by appellant-defendant No.2, is directed against the judgment and decree dated 25.02.2021, passed by the District Judge, Sirsa. Vide the said judgment and decree, the Civil Suit filed by the plaintiff-respondent No.1 for declaration, was decreed that she is owner in possession of land measuring 18 Kanals 2 Marlas situated within the revenue estate of Village Nehrana, Tehsil & District Sirsa, as described in the plaint, being legal heir of Bhola Ram son of Kehar Singh. The same was on the ground that Bhola Ram was not known for the last 22 years and thus, he was presumed to have died a civil death and the plaintiff being the wife and legal heir has a right to get the mutation entered and sanctioned in her favour regarding the suit property.

Counsel for the appellant has vehemently submitted that there was no proof of the marriage of the plaintiff with Bhola Ram. Rather the evidence on record shows that she was blessed with children from Vinod Kumar who is the other brother of the present appellant and also of Bhola Ram and therefore, the judgment and decree dated 05.08.2019, dismissing the suit, has wrongly been reversed.

A perusal of the paperbook would go on to show that there was a specific averment in the suit that Bhola Ram and his brother-Vinod Kumar were married on the same date with two real sisters, the plaintiff-Kamlesh and Santosh. Bhola Ram had left his village in 1993 and had not returned and on that account, a report had also been lodged on 21.04.2015 with the Police Station and thus, he was presumed to have died before the filing of the suit.

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The defence of the present appellant was that the plaintiff was never married to Bhola Ram but was wife of Vinod Kumar and that Bhola Ram was a mentally retarded person who is still alive and often comes and goes and was lastly seen in August, 2014. It was further the plea that the plaintiff had given birth to three children from the loins of Vinod Kumar, the other brother and therefore, she was not the wife of Bhola Ram.

The plaintiff examined as many as 8 witnesses whereas the defendant examined 3 witnesses in support of their case.

The Trial Court had dismissed the suit on the ground that the witnesses were not sure enough that Kamlesh was the wife of Bhola Ram and that some of the witnesses did not know the number of children of the plaintiff. The Trial Court had wrongly placed reliance upon the statement of the plaintiff wherein in cross-examination, she admitted that the father's name of her children had been mentioned as Vinod Kumar and therefore, the Court came to the conclusion that the plaintiff was the legally wedded wife of Vinod Kumar and not Bhola Ram. Thus, the relief under Section 34 of the Specific Relief Act, 1963 had been denied on account of the fact that entry had been made in the Police Station only in the year 2015.

The District Judge rightly took into consideration the statement of Parmeshwari-PW6, the mother of the plaintiff and her brother, Rameshwar, PW5 and also the principles of the Karewa marriage, a custom whereby the wife starts living with her brother-in-law which is in practice in Agrarian society to give shelter to a widow in her in-laws' house and has been recognized in the Customary Law and finds mention in the Rattigan's Digest.

Once the mother and the brother of the plaintiff herself deposed that there was a Karewa marriage inter se the plaintiff-Kamlesh and Vinod Kumar and it was a specific case that 2 sisters were living together who were married to 2 brothers and the other sister Santosh was the legally wedded wife of Vinod Kumar. Thus, sufficient proof was brought on record that plaintiff-Kamlesh had also sired 3 children from her brother-in-law/husband, Vinod Kumar which fact was proved from the mention made in the ration card. These facts could have only been denied by the appellant-defendant No.2

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if he would have faced the cross-examination and disproved the case by presenting himself. He chose not to appear in the witness-box and avoided the cross-examination where these relevant questions could have been put to him. The observations of the Apex Court in **Man Kaur (Dead) through L.Rs Vs. Hartar Singh Sangha (2010) 10 SCC 512** can be adverted to, in the facts and circumstances, where inference is to be drawn against a party who does not appear in the witness-box and fails to offer himself for cross-examination. It is, in such circumstances, the District Judge has rightly allowed the appeal and granted the declaration to the plaintiff.

Resultantly, in view of the above discussion, the present appeal, filed by the dissatisfied brother, seeking the share of his deceased brother in the property of the family, is dismissed in limine, as no question of law arises for consideration.

July 15, 2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No