

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

RSA No.5103 of 2010 (O&M)

Date of Decision: 02-05-2022

Jagir Singh and another

.....Appellants.

Versus

Rajwinder Kaur

.....Respondent.

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mohd. Yousaf, Advocate
for the appellants.

Ms. Rupinder Kaur Thind, Advocate
for the respondent.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree dated 19.03.2008 passed by learned Additional Civil Judge (Senior Division), Phagwara (for short 'the trial Court') whereby the Civil Suit filed by the respondent-plaintiff (for short 'the plaintiff') against the appellants-defendants (for short 'the defendants') for seeking the recovery of Rs.4,26,445/- has been decreed as well as the judgment and decree dated 23.02.2010 handed down by learned District Judge, Kapurthala (for short 'the lower Appellate Court') dismissing the appeal preferred by them (defendants) against the said judgment and decree dated 19.03.2008, the defendants have preferred the instant appeal.

The plaintiff filed the above-said suit while averring that on 05.10.1997, her marriage was solemnized with the son of the defendants

named Santokh Singh who was an Army personnel. On 27.11.1997, her husband expired due to the cardiac arrest. Thereafter, the defendants turned her out of their house while retaining her dowry articles. They also submitted a false affidavit before the Army Authorities deposing therein that their above-named son was unmarried and thereby, they managed to get the amount of Rs.4,26,445/- on account of all the post-death benefits qua her husband whereas she, being the wife of the said deceased, was entitled for the same. She made representation to the Army Authorities and then, 3/4th amount of the pension was released in her favour and a criminal case was also got registered against the defendants. In their written statement, the defendants contested the claim of the plaintiff, *inter-alia*, on the grounds that she was, in fact, married to their younger son named Jaswant Singh but due to her ill-temper, the said marriage was dissolved and then, she left their house. The plaintiff filed the replication and thereafter, the trial Court put the parties to the trial by framing the issues.

After appreciating and evaluating the evidence as led by both the parties on record to prove their respective contentions and hearing their learned counsel, the trial Court decreed the suit for the recovery of the above-said amount along-with interest @ 8% per annum. The appeal filed by the defendants to challenge the above-said judgment and decree, has also been dismissed by the lower Appellate Court as discussed in the opening para of this judgment.

I have heard learned counsel for both the parties in the present appeal and have also perused the record carefully.

Learned counsel for the defendants-appellants has contended that the plaintiff stepped into the witness-box as PW-8 and tendered her affidavit and was also partly cross-examined but thereafter, she did not appear in the Court for the conclusion of her cross-examination and rather, she examined Baljinder Kaur, her sister and also stated to be her Attorney, as PW-9 and therefore, her testimony as PW-8 cannot be read in her evidence and the depositions, as made by her above-named sister as PW-9, also cannot be given any evidentiary weightage because she cannot be presumed to be well-versed with the facts of the case but despite these circumstances, the trial Court has wrongly decreed the suit and the appeal filed by the defendants, has also been erroneously dismissed.

Per contra, learned counsel for the plaintiff has argued that the plaintiff was the legally wedded wife of the said deceased and was, thus, entitled to get all the monetary benefits becoming due on account of his death but the defendants received the same by furnishing a false affidavit before the Army Authorities deposing therein that their deceased son was a bachelor and later-on, a criminal case was also got registered against them in this regard.

Explicitly, the entire controversy between the parties revolves around the factum of the marriage of the plaintiff with the deceased son of the defendants. Though, the plaintiff appeared in the witness-box as PW-8 and tendered her affidavit and was partly cross-examined but thereafter, she examined the above-named PW-9 as her Attorney who has categorically stated during her cross-examination that the plaintiff was

residing in England at that time. Even if the above-said testimony of the plaintiff as PW-8 is not taken into consideration, even then the fact remains that her afore-said Attorney, i.e PW-9, is none other than her sister who is supposed to be well aware of the factum of her (plaintiff's) marriage with the above-named deceased son of the defendants and therefore, her testimony qua the said fact cannot be painted with black colour or brushed aside.

To add to it, the defendants have claimed that the plaintiff was married to their younger son Jaswant Singh but the said marriage stood dissolved. However, it is pertinent to mention here that they (defendants) did not examine their afore-named son as their witness despite the facts that his testimony qua the said fact would have clinched the entire dispute between the parties and the same could be easily available to them. Thus, they have withheld the best possible evidence from being produced on the file for the reasons best known to them because they have not advanced any cogent and plausible explanation for the said omission on their part.

As a sequel to the fore-going discussion, it follows that the impugned judgments and decrees passed by both the Courts below do not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the present appeal, being *sans* any merit, stands dismissed.

02nd May, 2022.
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No