

CM-3001-C-2023 &
CM-3004-C-2023 in/&
RSA-679-2019

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. 2023:PHHC:043183

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-3001-C-2023 &
CM-3004-C-2023 in/&
RSA-679-2019
Date of Decision :23.03.2023

Vedu

...Appellant

Versus

Saluchna and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Yesh Paul Malik, Advocate and
Ms. Divya Jyoti, Advocate for the appellant

* * *

Harsimran Singh Sethi, J. (Oral)

CM-3001-C-2023

As prayed for, application is allowed.

List of dates and events is taken on record.

CM-3004-C-2023

Present application has been filed for staying the execution proceedings, which have been initiated for execution of the judgments and decrees, which are under challenge in the main regular second appeal.

Learned counsel for the appellant submits that he is ready to address the arguments on main appeal.

Said request is accepted. Main regular second appeal is taken up for hearing today itself.

RSA-679-2019

In the present regular second appeal, the challenge is to judgments and decree passed by the Courts below by which, prayer of the respondent/plaintiff namely, Saluchna wife of late Ishwar for the grant of benefits in respect of the services rendered her late husband, has been allowed.

It may be noticed that Ishwar, son of Mai Ram was working as Gardener in the Government High School Ahar, District Panipat. Out of the first marriage of the said Ishwar with Seto, appellant-Vedu and one another son Rohtash and a daughter Pooja were born and after the death of his first wife Seto in the year 2003, Ishwar got married to the respondent/plaintiff-Saluchna on 02.12.2003 according to the Hindu rites and ceremonies. While in service, Ishwar unfortunately died on 17.06.2013 and after his death, benefits in respect of the services rendered by him were released by the department in favour of his children including the appellant-Vedu. No service benefit was released in favour of the respondent-plaintiff namely, Saluchna and aggrieved against the said action of the department, Saluchna filed a civil suit by impleading the department as well as present appellant as respondents so as to claim her share in the service benefits after the death of her husband-Ishwar.

Keeping in view the evidence, which had come on record marriage of the respondent-plaintiff-Saluchna with Ishwar was proved and being a legally wedded wife of Ishwar, her claim was allowed for entitlement of service benefits in respect of the service rendered by her husband Ishwar in accordance with the rules governing the service. The suit was decreed by the trial Court vide judgment and decree dated 28.01.2016.

Feeling aggrieved against the judgment and decree dated 28.01.2016 passed by the trial Court, children of Ishwar from his first wife Seto, namely Rohtash, Vedu (appellant herein) and Pooja filed an appeal before the Lower Appellate Court, which came to be dismissed on 12.09.2018 by upholding the judgment and decree dated 28.01.2016 of the trial Court. Hence, the present regular second appeal.

Learned counsel for the appellant argues that in present case though, the marriage of the respondent-plaintiff with Ishwar was proved but it has also come on record that she had left the company of his deceased father-Ishwar in the year 2005 after receiving certain amount for parting ways, which is to be treated as permanent alimony keeping in view the compromise effected between respondent/plaintiff and Ishwar on 01.08.2005.

Learned counsel for the appellant further argues that keeping in view the agreement dated 01.08.2005 between the parties i.e. respondent-plaintiff Saluchna and Ishwar, the said compromise is to be treated as divorce for all intent and purposes hence, at the time when Ishwar died in the year 2013, no claim could have been raised by the respondent-plaintiff Saluchna in respect of the service benefits.

The said argument has been considered by the Courts below while recording the finding that a compromise with mutual consent between the parties without there being any sanction by the competent Court of law, cannot be treated as valid divorce. It is a conceded position that no petition for divorce under Section 13-B of the Hindu Marriage Act, 1955 was filed for divorce by mutual consent. In the absence of any divorce granted by the

competent Court of law, an agreement between the parties before the Panchayat cannot be treated as binding upon the parties concerned. The findings which have been recorded by the Courts below on the said issue are in consonance with the settled principle of law that the parties who solemnized marriage in accordance with law are bound by the said marriage till the same is annulled after following due process of law as envisaged.

In the present case, nothing has come on record that the competent Court of law had annulled the marriage between the respondent/plaintiff Saluchna and Ishwar. In the absence of any such evidence, which has come on record, the findings recorded by the Courts below qua the validity of the marriage between the respondent/plaintiff Saluchna and Ishwar to be subsisting on the date of the death of Ishwar needs no interference by this Court in the present regular second appeal and the present regular appeal is accordingly dismissed.

It may be noticed here that the entitlement of the respondent/plaintiff will be as per the rules governing the service keeping in view the fact that deceased-Ishwar had children from his first marriage, who are also entitled for the service benefits hence, the service benefits, for which, the respondent-plaintiff-Saluchna will be entitled for, will be in accordance with the rules governing the said aspect as framed by the department concerned which are applicable upon the government employees.

March 23, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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