

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

RSA-2338-1990(O&M)

Reserved on:-17.4.2023

Date of Pronouncement:-21.4.2023

Mrs.Surjit Kaur

...Appellant

Versus

Mrs.Barbara L Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Dhirinder Chopra, Advocate
for the appellant.

H.S. MADAAN, J.

1. The dispute in this case is with regard to estate of Baljit Singh son of Babu Singh of village Mehilpur, Tehsil Garhshankar, District Hoshiarpur.

2. Briefly stated, facts of the case are that Baljit Singh was married with Smt.Surjit Kaur; they resided together for some time; thereafter Baljit Singh migrated to USA, where he contracted a second marriage with Mrs. Barbara L Singh and from that wedlock, the couple was blessed with two sons, namely, Balram Nothonial Singh and Bal Krishna Julliue Singh; Baljit Singh died in USA on 27.7.1980; the landed property qua estate of Baljit Singh was mutated in the name of Mrs.Surjit Kaur vide mutation No.6993; Mrs. Barbara L Singh for herself and a natural guardian of her minor sons Balram Nothonial Singh and Bal Krishna Julliue Singh had brought a suit for declaration against Mrs.Surjit Kaur and others, seeking a declaration that plaintiffs are owners in

possession of the agricultural land and residential house to the extent of share of Baljit Singh and in the alternative suing for joint possession of that property. The said suit was contested by the defendants.

3. On the pleadings of the parties, following issues were framed:

1. Whether plaintiff No.1 is the legally wedded wife of Baljit Singh and the plaintiffs No.2 and 3 are his sons? If so its effect? OPP.
2. Whether the suit has been filed through duly authorised person? If so its effect? OPP.
3. Whether the suit is maintainable in the present form? OPP.
4. Whether the suit is within time? OPP.
5. Whether the suit is properly valued for the purpose of Court fee and jurisdiction? OPP.
6. Whether defendant No.1 executed the sale deeds dated 25.7.84 and 2.3.84 in favour of the defendants No.2 to 4? OPD.
7. If issue No.6 is proved, whether the above sale deeds are for valuable consideration and defendants No.2 to 4 are bonafide purchasers? OPD.
8. Relief.

4. The parties were afforded opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the trial Court of Sub Judge Ist Class, Garhshankar vide judgment and decree dated 7.8.1987 gave issue-wise findings deciding issue No.1 in favour of the plaintiffs against defendants; issue No.2 was decided in favour of the plaintiffs against the

defendants; issue No.3 was decided in favour of the plaintiffs against defendants; issues No.4 and 5 were decided against the defendants in favour of the plaintiffs; issues No.6 and 7 were decided in favour of defendants No.2 to 4 and against the plaintiffs; resultantly suit of the plaintiffs for declaration that they are owners in possession of the suit land and house was decreed with costs. While decreeing the suit, the trial Court had given a finding that after Baljit Singh went to USA, he had contracted a marriage with Barbara L Singh on 11.8.1962 and from that wedlock he was having two sons, namely, Balram Nothonial Singh and Bal Krishna Julliue Singh. It was also observed that undisputedly marriage of Baljit Singh was earlier performed with Surjit Kaur in the year 1946 but Surjit Kaur had left the house of Baljit Singh in 1951; Baljit Singh had sent letter Ex.P2 to Surjit Kaur mentioning therein that during five years of her stay, ways and means of living were objectionable and Baljit had given customary divorce to Surjit Kaur, which was prevalent in their community and recognized under the Hindu Marriage Act and as per acknowledgement Ex.P3 such letter had been received by Surjit Kaur; Surjit Kaur had also written letter Ex.P4 to Baljit Singh. It had been observed that vide letter Ex.P2 by Baljit Singh, he had repudiated the marriage with Surjit Kaur, therefore, she had no right to inherit estate of Baljit Singh.

6. Feeling aggrieved by the said judgment and decree, the defendant No.1 Surjit Kaur had filed an appeal in the Court of District Judge, Hoshiarpur, which was assigned to Additional District Judge, Hoshiarpur, which was disposed of vide judgment and decree dated

24.7.1990. The appeal was partly allowed holding that Surjit Kaur being widow of Baljit Singh has succeeded to the estate of her deceased husband to the extent of 1/3 share and Mrs.Barbara L Singh plaintiff was not entitled to any share to the properties of Baljit Singh since her marriage during life time of Surjit Kaur first wife of Baljit Singh was null and void. However, plaintiffs Balram Nothonial Singh and Bal Krishna Julliu Singh were found entitled to get share in the estate of Baljit Singh to the extent of 1/12 share each. Learned Additional District Judge, Hoshiarpur had further observed that plaintiffs had failed to plead and prove that any custom was prevalent amongst the Jats of District Hoshiarpur vide which the marriages could be dissolved in such a manner and even as per *Riwaj-I-am* of Hoshiarpur District with regard to answer to question No.19, it is clearly mentioned that there is no custom of divorce among Hindus but persons belonging to Jats and Sainis may abandon their wives by executing a deed to that effect and in such cases there must have been a cause such as immorality on the part of the woman. The custom does not give any absolute right to a Jat husband to divorce his wife without any cause, therefore, mere abandonment of Surjit Kaur by Baljit Singh could not have amounted to a valid divorce. The conclusion drawn by the trial Court otherwise was found to be faulty and erroneous. Surjit Kaur was taken to be widow of Baljit Singh with dissolution of marriage between the two having not been established. Therefore, under the circumstances Baljit Singh could not have contracted a second marriage with plaintiff No.1 and her such marriage is certainly null and void.

7. Still feeling dissatisfied with the judgment and decree passed by the Additional District Judge, Hoshiarpur, the defendant Surjit Kaur filed the present regular second appeal before this Court, notice of which was issued to the respondents. But the respondents had not appeared to offer a contest.

8. I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

9. Though the judgment and decree passed by the trial Court did suffer from certain infirmities inasmuch as the trial Court had concluded that marriage of Baljit Singh and Surjit Kaur stood dissolved as a result of abandonment by Baljit Singh and Surjit Kaur by sending letter/notice as per custom but that infirmity was removed by learned Additional District Judge, Hoshiarpur in appeal concluding that no such custom could be established by the plaintiffs, therefore, the relationship of the husband and wife between Baljit Singh and Surjit Kaur had continued till death of Baljit Singh and Baljit Singh could not have legally contracted a marriage with plaintiff No.1 during the life time of Surjit Kaur, therefore his such marriage is null and void. However, the children born from the second marriage i.e. plaintiffs No.2 and 3 have got a right to inherit the estate of their father, in that way, 1/12 share each was awarded to plaintiffs No.2 and 3.

10. Learned counsel for the appellant has contended that plaintiffs No.2 and 3 being illegitimate sons born to a Christian woman are not entitled to inherit estate of their father Baljit Singh in terms of

Section 16 of the Hindu Succession Act. In support of his that contention, he has referred to judgment **S. Ranjit Priya and others Versus Suseela and others, 2018(6) CTC 831** by Madras High Court.

11. However, I do not find any merit in these submissions made by learned counsel for the appellant. Learned counsel for the appellant could not draw my attention to any document or oral evidence, which might have gone to show that plaintiff No.1 has been a practising Christian or that plaintiffs No.2 and 3 were raised as Christians. Therefore, Section 16 of the Hindu Succession Act does not come in way of plaintiffs No.2 and 3 in getting share in the property of their father.

12. Learned counsel for the appellant could not condemn the judgment and decree passed by the First Appellate Court on any other ground.

13. I find that the judgment passed by learned Additional District Judge, Hoshiarpur is based on proper appraisal of evidence and correct interpretation of law and there is no ground to interfere with such judgment and decree passed by Additional District Judge, Hoshiarpur.

14. No substantial question of law arises in this appeal.

15. Finding no merit in the appeal, the same stands dismissed.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

21.4.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No