

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

RSA-1222-1989(O&M)

Date of decision:-14.2.2023

Gurlal Singh and others

...Appellants

Versus

Dhan Kaur through LR's and others

...Respondents

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

Present: Mr.R.L. Gupta, Advocate
for the appellants.

None for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Dhan Kaur and her husband Sarban Singh, residents of village Jheriawali, Tehsil Mansa, had brought a suit for recovery of Rs.55,775/- against defendants Gurlal Singh, Mohinder Singh, Surjit Kaur, Gurtej Singh, Ghela Singh and Gurmail Singh, residents of Bajewala as indigent persons. They were allowed to sue as such by the Trial Court of Sub Judge Ist Class, Mansa.

2. As per the case of the plaintiffs, their daughter Smt.Gamdur Kaur was married with defendant No.1 Gurlal Singh about 1 ¾ years prior to the filing of the suit (suit filed on 7.2.1986) at village Jheriwali and thereafter both the spouses resided together as husband and wife; the plaintiffs had given dowry to their daughter Smt.Gamdur Kaur as per

details below:

1.	Golden ornaments weighing 11 tolas 6 massa 4 ½ ratti	Rs.22,500/-
2.	Two big iron boxes	Rs.1,400/-
3.	1 Bed, Two chairs, one table	Rs.450/-
4.	Brass utencils	Rs.1,250/-
5.	Table Fan	Rs.425/-
6.	7 beds 14 duries	Rs.5,110/-
7.	9 bags and 9 hand fans	Rs.315/-
8.	31 khes	Rs.1,550/-
9.	Cloth vide bill No.1516 to 1519 of 4.1.82	Rs.7,041/-
10.	Cloth vide bill No.1710 of 5.2.82	Rs.233/-
11.	Cash	Rs.16,000/-
	Total	Rs.55,775/- 25 P

Smt.Gamdur Kaur had taken such articles to her matrimonial home and was absolute owner thereof; unfortunately soon after the marriage Smt.Gamdur Kaur was harassed and maltreated by family of her in-laws as they were not satisfied with the dowry brought by her and pressurised her to bring cash amount of Rs.10,000/- besides 6 tolas of gold from her parents; when Smt.Gamdur Kaur could not get such unreasonable demand conceded from her parents, she was turned out of the matrimonial home, warning her that she could return to the matrimonial home after getting the demand for more dowry met with, otherwise, she would be killed; after 15 days of the arrival of Smt.Gamdur Kaur to her parents house, her father, plaintiff No.2 Sarban Singh convened a Panchayat of respectables and got the matter compromised; as a result the defendant No.1 Gurlal Singh along with his brother Ghela Singh came to parental house of Smt.Gamdur Kaur and took her back

along with them, however, they killed her by setting her on fire after about 15 days; the matter was reported at Police Station Jaurkian on 2.7.1983.

According to the plaintiffs since the defendants have killed daughter of plaintiffs with common intention, as such they have no right to keep her dowry articles. The plaintiffs asked them to return such articles to them or in the alternative pay price thereof to the tune of Rs.55,775.25 but the defendants failed to do so, as such the plaintiffs brought the suit in question.

3. On notice, the defendants appeared and filed written statement contesting the suit raising various legal objections, to wit that plaintiffs had no right under Section 15 of the Hindu Succession Act to claim inheritance of Smt.Smt.Gamdur Kaur, rather defendants are legal heirs of Smt.Gamdur Kaur, therefore, the plaintiffs have no locus standi to file the suit; otherwise also defendants Mohinder Singh etc. had given 12 tolas of gold to Smt.Gamdur Kaur at the time of her marriage with Gurlal Singh; various other gifts in the form of clothes and ornaments etc. had been given. On merits, the defendants conceded that Smt.Gamdur Kaur was married with Gurlal Singh and both of them resided together as husband and wife in the matrimonial home, however after some time articles given by parents of Smt.Gamdur Kaur as well as some other items were taken by Smt.Gamdur Kaur to her parental house and handed over to her parents; Smt.Gamdur Kaur had left the matrimonial home and resided with her parents for a period of about one year.

According to the defendants, plaintiffs are economically weak persons and could not afford to give so much dowry articles as

claimed by them in the suit; as a matter of fact no dowry articles had been given to Smt.Gamdur Kaur at the time of her marriage because defendant Gurlal Singh was not mentally active and was stammering. The defendants denied the allegations levelled by the plaintiffs with regard to Smt.Gamdur Kaur being harassed by them or demanding any dowry articles by them from Smt.Gamdur Kaur or for that matter Smt.Gamdur Kaur having been turned out of the matrimonial home with a warning to bring more dowry articles if she wanted her rehabilitation in the matrimonial home otherwise threat of being killed given to her. According to the defendants Smt.Gamdur Kaur did not like Gurlal Singh and she set herself on fire for that reason; Gurlal Singh was separate from the parental family before his marriage and defendants Ghola Singh and Gurmail Singh were of the age of 18/19 years and 16/17 years, respectively, therefore question of setting Smt.Gamdur Kaur on fire by the defendants did not arise. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

4. The plaintiffs had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the dowry articles mentioned through para No.3 of the plaint were given by the plaintiffs at the time of marriage of their daughter, Gamdur Kaur? OPP.
2. Whether the plaintiffs are entitled to receive and recover back the

said articles of the dowry from the defendants or value thereof, if so to what amount? OPP.

3. Whether the plaintiffs have no locus standi to file the present suit?OPD.

4. Relief.

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

7. After hearing the learned counsel for the parties, the trial Court of Sub Judge Ist Class, Mansa decided issue Nos.1 and 2 in favour of the plaintiffs and against the defendants observing that the plaintiffs have proved their case with regard to gold ornaments amounting to Rs.22,000/-, 2 big iron peties amounting to Rs.1,400/-, brass utensils worth Rs.1,250/-, 7 beds and 14 duries worth Rs.3,500/-, clothes of the value of Rs.7,041/- and Rs.233/- and Rs.1,550/- for 31 khes. Therefore, vide judgment and decree dated 12.6.1987 the suit of the plaintiffs was decreed for a sum of Rs.36,974/- with proportionate costs with future interest @ 6% per annum from the date of decree till its realisation.

8. Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Bathinda, which were assigned to Additional District Judge, Bathinda, who vide judgment and decree dated 20.12.1988 dismissed the appeal upholding the judgment and decree passed by the trial Court.

9. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants filed the present regular second appeal before this Court, notice of which was issued to the respondents.

10. Initially respondents were being represented through counsel but subsequently there was no representation on their behalf.

11. Since the appeal relates to the year 1989, in that way 33 years old, I do not find it proper and appropriate to adjourn it further. Therefore, I proceed to decide the same after hearing learned counsel for the appellants and going through the record.

12. In this case both the Courts on proper and appropriate analysis of the evidence brought on record by the parties in light of their pleadings and legal position have come to the conclusion that dowry articles had been given by the plaintiffs to their daughter Smt.Gamdur Kaur at the time of her marriage with Gurlal Singh, which she had taken to her matrimonial home. Although the plaintiffs had alleged that they had given articles detailed above of the value of Rs.55,775/- but they could not establish giving of all those articles and the evidence brought on record by them proved giving of gold ornaments amounting to Rs.22,000/-, 2 big iron peties amounting to Rs.1,400/-, brass utensils worth Rs.1,250/-, 7 beds and 14 duries worth Rs.3,500/-, clothes of the value of Rs.7,041/- and Rs.233/- and Rs.1,550/- for 31 khes. As such, the plaintiffs were able to prove their claim towards dowry articles amounting to Rs.36,974/- and they were found entitled to receive and recover back those articles from the defendants. In terms of Section 15(1)(b) of Hindu Succession Act since she had died intestate not leaving any child behind and defendants were found disentitled to claim her inheritance in terms of Section 25 and 27 of the Hindu Succession Act for the reason that they had been booked for committing murder of Smt.Gamdur Kaur.

13. Although learned counsel for the appellants has contended that no eye-witness was examined in the civil case and the Courts below had relied upon the judgment passed in the Criminal case. The criminal Court had convicted Surjit Kaur and Gurlal Singh, whereas acquitted accused Gurtej Singh, Mohinder Singh, Ghela Singh, Gurmail Singh and that judgment was affirmed by the High Court also. Thus, according to learned counsel for the appellants, the judgments passed by the Courts below are not sustainable.

14. However, I am not impressed with this contention. From the evidence available on record, it became crystal clear that defendants had been booked for causing murder of Smt.Gamdur Kaur. They were tried, two of them were convicted, though the remaining were acquitted. However, the fact remains that FIR for committing the murder of Smt.Gamdur Kaur has been registered against all the six defendants. Although after trial only two of them were convicted, whereas four were acquitted. However, that does not affect the civil liability of the defendants, who were acquitted in the criminal case because yardstick for deciding case of criminal nature and that of civil type are different. In a criminal case, the prosecution is to prove its case beyond a shadow of reasonable doubt and benefit of doubt goes to the accused. The accused may keep mum throughout the trial even then he may be acquitted, if the prosecution is unable to prove its charge against the accused conclusively and affirmatively. However, a case of civil nature is decided by preponderance of probabilities.

15. Although learned counsel for the appellants referred to

judgments i.e. *Mst. Biro and another Versus Banta Singh, AIR 1980 Punjab and Haryana 164* and *Anil Behari Ghosh Versus Smt.Latika Bala Dassi and others, AIR 1955 Supreme Court 566(1)*, however those judgments do not help the appellants in any way in advancing their case due to different facts and circumstances of the case and the context in which such observations had been made. Rather with concurrent findings having been recorded by the Courts below against the appellants/defendants with which I do not see any reason to disagree and with no substantial question of law being involved, the present regular second appeal is found to be without merit and the same is dismissed accordingly.

16. The order staying the execution of remaining amount passed on 2.2.1990, as such comes to an end.

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

14.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No