

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

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**RSA No.1550 of 1991 (O&M)
AND XOBJC-20-C-1992
Reserved on 12.01.2023
Date of Decision : 20.01.2023**

Avinash Chander Khatura

....Appellant

VERSUS

Vishwa Kumari

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajinder Goel, Advocate for the appellant.

Mr. Naresh Prabhakar, Advocate for the respondent.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellant against the judgment and decree dated 06.10.1988 passed by the Trial Court and the judgment and decree dated 05.01.1991 passed by the lower Appellate Court. The plaintiff-respondent has preferred cross-objections against the decision by the lower Appellate Court.

The brief facts relevant to the present *lis* are that one Sham Dass was the owner of 1/5th share in agricultural land measuring 409K - 8M. The plaintiff-respondent filed a suit for declaration with consequential relief of joint possession averring that she was the widow of Sham Dass and that the defendant-appellant had obtained a decree dated 12.02.1981 against Sham Dass qua the suit land which decree was illegal, null and void and fraudulent and not binding on the plaintiff-respondent. The suit was contested by the defendant-appellant who took the plea that on 02.11.1976 Sham Dass had executed a Will in his favour and thereafter a family settlement had taken place on the basis on which the judgment and decree

dated 12.02.1981 had been passed in his favour. The defendant-appellant took the stand that the plaintiff-respondent was not the legally wedded wife of Sham Dass and that she had not challenged the Will dated 02.11.1976. Replication was filed by the plaintiff-respondent.

On the basis of pleadings of the parties the Trial Court framed as many as thirteen issues. The Trial Court vide judgment and decree dated 06.10.1988 partly decreed the suit of the plaintiff-respondent. The judgement and decree dated 12.02.1981 was held not to be a valid decree, the Will dated 02.11.1976 was upheld and the plaintiff-respondent was held entitled to get maintenance allowance from the defendant-appellant @ Rs.1,000/- per month till her lifetime. Though while deciding issue no.1 the Trial Court held that the plaintiff-respondent was not the owner of 1/5th share of the suit land, in the relief paragraph it was held that she was owner of 1/5th share of the suit land.

Aggrieved by the said judgment and decree dated 06.10.1988 both the defendant-appellant as well as the plaintiff-respondent filed two separate appeals. Vide judgement and decree dated 05.01.1991 the lower Appellate Court partly accepted the appeal of the defendant-appellant and held that the plaintiff-respondent was not the owner of 1/5th share of the suit land and that the judgement and decree dated 12.02.1981 was binding on the plaintiff-respondent. The finding of the Trial Court regarding the plaintiff-respondent being entitled to get maintenance allowance from the defendant-appellant @ Rs.1,000/- per month till her lifetime was upheld. The appeal filed by the plaintiff-respondent was dismissed. Aggrieved by the judgment and decree passed by the Courts below holding the plaintiff-respondent entitled to get maintenance allowance from the defendant-appellant @ Rs.1,000/- per month, the present regular second appeal has been preferred

by the defendant-appellant. The plaintiff-respondent has filed cross-objections challenging the upholding of the Will dated 02.11.1976 and the quantification of maintenance at only Rs.1,000/- per month.

Learned counsel for the defendant-appellant has contended that there being no prayer in the plaint for grant of maintenance the Courts below have erred in holding the plaintiff-respondent being entitled to it @ Rs.1,000/- per month. He also argued that the plaintiff-respondent was not the legally wedded wife of Sham Dass and thus was not entitled to the grant of any maintenance.

The counsel for the plaintiff-respondent in support of his cross-objections argued that the Will dated 02.11.1976 was a result of fraud and was a forged document. It was also submitted that the maintenance ought to have been awarded @ Rs.2,000/- per month.

Heard learned counsel for the parties.

The defendant-appellant had set-up the Will dated 02.11.1976 in his written statement. Both the Courts below have upheld the said Will. The lower Appellate Court has found that the Will contains a recital that the defendant-appellant would be legally bound to maintain the plaintiff-respondent. Once the Will dated 02.11.1976 has been upheld in favour of the defendant-appellant he cannot wriggle out of the obligations put on him in the same Will about maintaining the plaintiff-respondent. The counsel for the defendant-appellant has not been able to dislodge the findings recorded by the Courts below that the plaintiff-respondent was the legally wedded wife of Sham Dass. The arguments raised on behalf of the defendant-appellant are against the concurrent findings of fact recorded by both the Courts below and are not supported by the evidence available on the record.

The present regular second appeal is without merit and is dismissed.

Coming to the cross-objections filed by the plaintiff-respondent, the same are also without any merit. The plaintiff-respondent did not make any prayer in her suit for declaring the Will dated 02.11.1976 as being null and void. The said Will has been held to have been duly proved and has been accepted by both the Courts below. Counsel for the plaintiff-respondent has been unable to convince this Court to hold that the said Will was fraudulent or forged. Further, the plaintiff-respondent has not brought any evidence to the notice of the Court from which it could be discerned that the maintenance awarded to her is less and ought to have been Rs.2,000/- per month. The judgement of the lower Appellate Court is silent about any challenge by the plaintiff-respondent to the amount of maintenance fixed by the Trial Court. As such, she cannot now challenge the same in second appeal. The present cross-objections are without merit and are dismissed.

In view of the discussion above, both the regular second appeal as well as the cross-objections are dismissed. Pending applications, if any, also stand disposed off.

20.01.2023
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO