

CM-4302-C-2023 in/&  
RSA-6388-2016 (O&M)

2023:PHHC:065422

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CM-4302-C-2023 in/&  
RSA-6388-2016 (O&M)  
Date of Decision :04.05.2023

Sunila Devi

....Appellant

Versus

Sunita Devi

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Rajesh Lamba, Advocate for appellant.

Mr. Shailendra Jain, Senior Advocate with  
Mr. Munish Sharma, Advocate for respondent.

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**Harsimran Singh Sethi, J. (Oral)**

**CM-4302-C-2023**

Present application has been filed for recalling the order dated 17.04.2023 passed by this Court by which, the main appeal was dismissed for non-prosecution.

Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed. Order dated 17.04.2023 passed by this Court is recalled and the main appeal is ordered to be restored to its original number and status and is taken up for hearing today itself.

**RSA-6388-2016**

Present regular second appeal has been filed against the judgment and decree of the trial Court dated 09.08.2016 as well as judgment

and decree of the Lower Appellate Court dated 17.11.2016 by which, suit filed by the respondent-plaintiff seeking declaration that she is entitled for the service benefits in respect of the services rendered by her late husband namely, Amit Kumar Verma in preference to the appellant-defendant i.e. mother of the deceased-Amit Kumar Verma, has been allowed.

Certain facts need to be mentioned for the correct appreciation of the controversy in question.

Amit Kumar Verma was married to one Kiran, who unfortunately died on 06.10.2012. Thereafter, it is alleged that said Amit Kumar verma married Sunita Devi i.e respondent-defendant. Unfortunately, within a period of six months of the said marriage, Amit Kumar Verma died on 30.11.2012. On 03.04.2013, appellant-plaintiff i.e. mother of the deceased filed an application before the authorities concerned as Amit Kumar Verma worked in Indian Army, for the release of benefits in respect of the services rendered by Amit Kumar Verma by stating that said Amit Kumar Verma was not married at the time of his death and she being the mother of Amit Kumar Verma is entitled for the said service benefits. It is a matter of fact that certain benefits were released on the basis of the said claim in favour of the appellant. Respondent-defendant on coming to know that appellant-mother of Amit Kumar Verma is claiming service benefits in respect of the services rendered by Amit Kumar Verma, she filed a civil suit claiming herself to be the legally wedded wife of Amit Kumar Verma and appellant was impleaded as defendant in the said suit.

Respondent-defendant Sunita Devi also filed claim with the department for the release of service benefits in respect of the services

rendered by late husband-Amit Kumar Verma and upon filing of the said application with the department, as there was dispute with regard to the claim of service benefits of Amit Kumar Verma, the authorities concerned stopped the payment of service benefits to either of the party.

Appellant-Sunila Devi filed a civil suit claiming the said service benefits. The said suit was allowed by the trial Court vide judgment and decree dated 30.10.2015 and directed that appellant-plaintiff will be entitled for service benefits in respect of the service rendered by Amit Kumar Verma and the claim of the respondent-defendant that she was a legally wedded wife of Amit Kumar Verma was rejected.

Feeling aggrieved against the said judgment and decree of the trial Court, an appeal was preferred by the respondent-defendant, which came to be decided on 27.01.2016 and the judgment and decree of the trial Court dated 30.10.2015 was set aside and matter was remanded back for fresh decision keeping in view the facts/evidence, which had come on record.

The trial Court again decided the said civil suit by judgment and decree dated 09.09.2016 and the suit filed by the appellant-plaintiff was dismissed holding that keeping in view the facts and evidence which have come on record, respondent-defendant has proved her marriage with Amit Kumar Verma hence, being a legally wedded wife of the deceased-Amit Kumar Verma, she will be entitled for the service benefits keeping in view the rules governing the service.

Feeling aggrieved against the judgment and decree dated 09.08.2016 of the trial Court, appellant filed an appeal which appeal was

also dismissed by the lower Appellate Court vide judgment and decree dated 17.11.2016. Hence, the present regular second appeal.

Learned counsel for the appellant argues that in the present case, there was no sufficient evidence on record that her son Amit Kumar Verma had married respondent-defendant so as to make her entitled for the grant of service benefits in respect of the services rendered by Amit Kumar Verma. Learned counsel for the appellant submits that photographs as well as compact disc brought on record to prove the factum of marriage between Amit Kumar Verma and respondent-Sunita Devi could not have been relied upon and hence, there was no evidence on record to prove that there was a valid marriage between Amit Kumar Verma and respondent-Sunita Devi prior to the death of Amit Kumar Verma .

Learned Senior counsel appearing for the respondent on the other hand submits that the Courts below have already analyzed the facts and evidence on record and have recorded a finding that there was a valid marriage between the respondent-defendant and Amit Kumar Verma hence, as there is no perversity in the findings recorded by the Courts below, the present regular appeal may kindly be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, the concurrent findings have been recorded by the Courts below with regard to the establishment of factum of marriage between Amit Kumar Verma and respondent-defendant-Sunita Devi. Learned counsel for the appellant has not been able to rebut the fact that after the death of Amit Kumar Verma, a complaint was made by the

appellant along with her husband raising a finger of suspicion towards respondent-defendant and it was mentioned by them in their own complaint that at the time of death of Amit Kumar Verma he was married and that too with the respondent-defendant but it was asserted that respondent-defendant had a role to play in the death of Amit Kumar Verma. It has also come on record that police enquired into the allegations alleged in the complaint by the appellant and found that Amit Kumar Verma had married respondent-defendant and the said report is already on record, which has gone unrebutted at the hands of the appellant-plaintiff.

Further, appellant-plaintiff has not been able to rebut the photographs of the marriage, which have been duly proved on record and in those pictures, appellant-plaintiff has recognized her son-Amit Kumar Verma, who was standing next to respondent-defendant during the marriage ceremony. Further even the priest, who solemnized the marriage was examined and he confirmed the marriage between the respondent and Amit Kumar Verma. That being so, it cannot be said that there was no sufficient evidence with the Courts below to record a finding that there was a valid marriage between Amit Kumar Verma and respondent-defendant.

Even otherwise, respondent-defendant has already obtained succession certificate through the competent Court of law that she was a legally wedded wife of Amit Kumar Verma . It may be noticed that in those proceedings, appellant-plaintiff was made a party and she chose not to rebut the assertion that respondent-defendant was a legally wedded wife of Amit Kumar Verma and was claiming inheritance on the basis of the marriage solemnized between them.

Keeping in view the facts, which have been relied by the Courts below and the fact that learned counsel for the appellant has not been able to rebut the same, it cannot be said that the findings recorded by the Courts below that there was a valid marriage between Amit Kumar Verma and respondent-defendant is incorrect.

In the regular second appeal, the Court is only to see the perversity being pointed out in the findings recorded and to ensure that no evidence has been overlooked by the Courts below.

In the present case, no such perversity has been pointed out by the learned counsel for the appellant in the findings recorded by the Court below so as to call interference by this Court. Hence, the present regular second appeal is dismissed.

**CM-16774-C-2016**

Application is also disposed of .

**May 04, 2023**  
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**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

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