

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 104+245)

(1)

CM-1425-C-2023 in/and
RSA-2192-2017(O&M)
Date of Decision : 08.05.2023

Sudesh Saini

...Appellant

Versus

Gian Kaur and others

...Respondents

(2)

RSA-2221-2017 (O&M)
Date of Decision : 08.05.2023

Sudesh Saini

...Appellant

Versus

Daljit Kaur and others

...Respondents

(3)

RSA-2222-2017(O&M)
Date of Decision : 08.05.2023

Sudesh Saini

...Appellant

Versus

Gian Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Singh, Advocate and
Mr. Roshan Lal Sharma, Advocate for the appellants.

Mr. Sunil Kumar Pandey, Advocate
for respondent No. 1 in RSA-2192-2017 & RSA-2222-2017.

Mr. Shakti Singh Saini, Advocate
for respondent No. 1 in RSA-2221-2017 and
for respondent No. 5 in RSA-2222-2017.

Mr. Sanjeev Roy, Advocate for
Mr. I.P.S. Doabia, Advocate for respondent No. 2
in RSA-2192-2017.

Mr. Arvind Rajotia, Advocate for respondent No. 3
in RSA-2192-2017.

Mr. Pranav Chadha, Advocate
for respondent No. 4 in RSA-2192-2017 and
for respondent No. 3 and 4 in RSA-2221-2017 and
RSA-2222-2017.

Mr. Gurpreet Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. By this common order, three regular second appeals, the details of which have been given in heading, are being decided as the same arise out of the same judgment passed by the lower appellate court by which, the suit filed by the appellant herein i.e. Sudesh Saini has been dismissed, whereas the suit filed by the respondent-Daljit Kaur has been allowed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. Gurdeep Singh son of Piara Singh, who was working as a Junior Engineer with BBMB, was initially married to Daljit Kaur. Keeping in view certain differences between them and on the allegation that Daljit Kaur had falsely implicated Gurdeep Singh by making allegation that he had murdered his own daughter, which amounted to cruelty, a divorce petition was filed by Gurdeep Singh for the dissolution of marriage with Daljit Kaur. The said divorce petition, which was filed by Gurdeep Singh, was allowed by the District Judge, Hoshiarpur vide judgment and decree dated 07.12.2001. Against the said judgment and decree, FAO No. 185-M

of 2002 was filed but before the decision of the said first appeal, Gurdeep Singh is stated to have married the appellant-Sudesh Saini. The FAO No. 185-M of 2002 came to be decided by this Court vide judgment dated 13.12.2006 and the same was allowed and the decree of divorce granted in favour of Gurdeep Singh so as to annul his marriage with Daljit Kaur, was set-aside. Feeling aggrieved against the decision in FAO No. 185-M of 2002, Gurdeep Singh preferred a Special Leave Petition being SLP No. 11336(S) of 2007.

4. During the pendency of the said appeal before the Hon'ble Supreme Court of India, unfortunately, Gurdeep Singh died while in service. After the decision, the SLP filed challenging the order passed by this Court in FAO No. 185-M of 2002 was rendered infructuous and was disposed of as such by the Hon'ble Supreme Court of India vide order dated 12.01.2009.

5. Thereafter, question arose as to who is entitled for the grant of service benefit in respect of the service rendered by Gurdeep Singh, Daljit Kaur filed civil suit claiming the service benefits including the family pension and a suit with a same prayer was also filed by appellant-Sudesh Saini claiming to be the legally wedded wife of Gurdeep Singh. Both Sudesh Saini as well as Daljit Kaur impleaded the mother of Gurdeep Singh as a respondent, who was also raising claim upon the service benefits in respect of service rendered by Gurdeep Singh.

6. The civil suits filed by Daljit Kaur as well as Sudesh Saini were clubbed together for decision as in these suits, both the plaintiffs were claiming the same relief, claiming themselves to be the legally wedded wife of deceased Gurdeep Singh.

7. The trial court vide judgment and decree dated 15.01.2014, dismissed the suit filed by Daljit Kaur, whereas allowed the suit filed by the present appellant-Sudesh Saini.

8. Against the judgment and decree dated 15.01.2014 passed by the trial court, Daljit Kaur filed two appeals, one against the dismissal of her claim qua the grant of service benefits in respect of service rendered by her late husband Gurdeep Singh and the second appeal was filed qua the benefit granted to Sudesh Saini by the trial court qua the grant of same service benefits. Even Gian Kaur, the mother of deceased Gurdeep Singh also filed appeal, as she was also not given any benefit out of the service benefit qua the service rendered by her late son Gurdeep Singh.

9. The lower appellate court decided three appeals by a judgment and decree dated 27.02.2017. Keeping in view the evidence and facts, which had come on record, held that as the marriage of Gurdeep Singh with Daljit Kaur was subsisting on the day he died on 12.04.2008, she is the one, who is entitled for the benefits in respect of service rendered by Gurdeep Singh and the marriage, which was performed by Gurdeep Singh with Sudesh Saini before the decision in FAO No. 185-M of 2002, cannot be treated as a valid marriage as the decree of divorce granted by the District Judge, Hoshiarpur vide his judgment and decree dated 07.12.2001 has already been set-aside by this Court, while passing order in FAO-185-M-2002 meaning thereby that the marriage of Gurdeep Singh with Daljit Kaur is to be treated as subsisting even during the pendency of the appeal.

10. Further, the claim of Sudesh Saini upon the service benefits in respect of the service rendered by Gurdeep Singh on the basis of the Will of the said Gurdeep Singh was decided to mean that the said Will purported to

have been executed by Gurdeep Singh will be applicable in case proved and that too only for the properties other than the service benefits. With regard to the pensionary benefits and other service benefits, keeping in view the rules governing the issue as envisaged under the Punjab Civil Services Rules, Daljit Kaur being the legally wedded wife at the time of the death of Gurdeep Singh was held entitled for the same including the grant of family pension. Even Gian Kaur being the Class-I legal heir was held entitled for the service benefit equivalent to her share. The said judgment and decree of the lower appellate court dated 27.02.2017 is under challenge in these three appeals.

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

12. It may be noticed here that even when the appeal was filed, the appeal was not addressed on merits by the appellant, rather the notice of motion was only issued to explore the possibility of sharing the benefit equally between the appellant-Sudesh Saini and Daljit Kaur. During the hearing, learned counsel appearing on behalf of Daljit Kaur states that the appellant has already sold the property belonging to Gurdeep Singh on the basis of a purported Will and has already got an amount of more than one crore, which fact is being disputed by the learned counsel for the appellant that the amount being cited is not correct and is much less as being pointed out. This shows that there is no possibility of any amicable settlement between the parties much less than sharing of the service benefits equally.

13. Learned counsel appearing on behalf of the appellant-Sudesh Saini submits that marriage of appellant with Gurdeep Singh after the dissolution of marriage of Gurdeep Singh with Daljit Kaur by the civil court

vide judgment and decree dated 07.12.2001 cannot be treated as void marriage even if the same was performed in contravention of Section 15 of the Hindu Marriage Act. Learned counsel submits that once the said marriage is not void, ousting the claim of the appellant with regard to the service benefits by the lower appellate court is totally arbitrary and illegal and is liable to be set-aside and the judgment and decree of the trial court is liable to be restored.

14. Learned counsel appearing on behalf of the respondent Daljit Kaur submits that Daljit Kaur will remain legally wedded wife of Gurdeep Singh on the day when he died on 12.08.2008, even if it is assumed for the sake of argument that Gurdeep Singh had contracted second marriage with the appellant after the annulment of their marriage by the trial court but the said marriage with the appellant becomes void after the judgment and decree of the civil court was set-aside by this Court while passing order in FAO No. 185-M of 2002, hence the finding recorded by the lower appellate court is perfectly valid and legal.

15. The question which arise is whether or not the second marriage contracted by Gurdeep Singh will give right to the appellant to claim the service benefits in respect of the service rendered by Gurdeep Singh in the facts and circumstances of this case. It may be noticed that at no given point of time, the appellant challenged the judgment of this Court passed in FAO No. 185-M of 2002 by which the annulment marriage of Gurdeep Singh and Daljit Kaur was set-aside. Even the appeal filed against the said judgment of this Court was at the hands of Gurdeep Singh only, which appeal was also dismissed having been rendered infructuous. The appellant-Sudesh Saini could have very well transpose herself so as to

contest the said judgment or to claim her to be the legally wedded wife of Gurdeep Singh. But fact which exists is that till the death of Gurdeep Singh, the marriage with Daljit Kaur was subsisting so as to recognize her as the then legally wedded wife of Gurdeep Singh.

16. Under Hindu Marriage Act, which is applicable in the facts and circumstances of the present case, no male can have two living wives. Even under the rules governing the service i.e. Punjab Civil Services, no employee can have two living spouses unless and until the same is permitted by the customs.

17. In the present case, when Gurdeep Singh died, the first marriage of Gurdeep Singh with Daljit Kaur was subsisting keeping in view the judgment of this Court in FAO No. 185-M of 2002. That being so, Daljit Kaur has rightly been treated as the legally wedded wife of Gurdeep Singh by the lower appellate court while passing the judgment and decree dated 27.02.2017 was to be entitled for the service benefit in respect of service rendered by Gurdeep Singh.

18. As far as the argument of learned counsel for the appellant that the second marriage of Gurdeep Singh with Sudesh Saini cannot be treated as void and the reliance, which is being placed upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos. 2585-2590 of 1969 titled as *Smt. Lila Gupta Vs. Laxmi Narain and others*, decided on 04.05.1978, is misplaced. The said judgment proceeds only on the assumption that the divorce decree between two parties has already attained finality and law is settled where the proviso to Section 15 of the Hindu Marriage Act, wherein a restraint is being put for contracting the second marriage within a period of one year of grant of divorce, by interpreting the

said provisions of law.

19. In the present case, the divorce proceedings qua the marriage of Gurdeep Singh and Daljit Kaur had not attained finality as the divorce granted by the Trial Court at Hoshiarpur vide judgment and decree dated 07.12.2001 was challenged by Daljit Kaur, which appeal came to be allowed by this Court and annulment of marriage of Gurdeep Singh and Daljit Kaur by the trial court was set-aside by this Court. Hence, once the divorce granted by the Court vide judgment and decree dated 07.12.2001 has already been set-aside, the presumption is that the marriage between Daljit Kaur and Gurdeep Singh subsisted throughout which fact is to be considered while considering the claim for the grant of service benefits in respect of the service rendered by Gurdeep Singh. The judgment in *Smt. Lila Gupta's case (supra)*, only interprets whether the second marriage contracted within a period of one year of the grant of divorce can be claimed as a nullity by one or the other beneficiary of the second marriage, which has been contracted. In *Smt. Lila Gupta's case (supra)* annulment of first marriage had attained finality, whereas in the present case, on the date of the death of Gurdeep Singh, his first marriage with Daljit Kaur subsisted, hence, in the facts and circumstances of the present case, the reliance being placed upon the judgment of the Hon'ble Supreme Court of India in *Smt. Lila Gupta's case (supra)* is totally misplaced and the said judgment is not applicable in the present case.

20. Learned counsel for the appellant has also placed reliance upon another judgment of the Hon'ble Supreme Court of India passed in Criminal Appeal No. 321 of 2020 titled as *Krishnaveni Rai Vs. Pankaj Rai and another*, decided on 19.02.2020 to support the contention that the second

marriage even if contracted within a period of one year of grant of divorce, will not be treated as void. Again, only a portion of the judgment is being taken into account to support the said claim without actually appreciating the facts and circumstances and the complete judgment rendered by the Hon'ble Supreme Court of India. In the said case, one of the beneficiary of a second marriage claimed that the said second marriage is nullity by applying proviso to Section 15 of the Hindu Marriage Act, which was rejected whereas, in the present case, the alleged marriage solemnized by Sudesh Saini with Gurdeep Singh automatically comes to an end after the decree of divorce granted by the trial court dated 17.12.2001 was set-aside by this Court while passing order in FAO No. 185-M of 2002. Therefore, the judgments being relied upon by learned counsel for the appellant are not applicable in the facts and circumstances of the present case so as to grant her any relief.

21. Further, in somewhat similar circumstances, Hon'ble Supreme Court of India in ***Chander Mohini Srivastava Vs. Avinash Prasad Srivastava***, 1967 Vol. I SCR 864 held that wherever a person contracts second marriage during the pendency of an appeal qua the dissolution of first marriage, takes a risk meaning thereby that in case the appeal is allowed, the second marriage solemnized cannot be treated as a valid one so as to claim benefits or to confer any benefit on the basis of the said second marriage.

22. Keeping in view the above, the judgment and decree of the court below dated 27.02.2017 is in accordance with law keeping in view the facts and circumstances of the present case and require no interference by this Court.

23. Learned counsel for the appellant submits that once there is already executed a Will by Gurdeep Singh in favour of the appellant, even on the basis of the said Will, the appellant will be entitled for the grant of service benefits. On being asked to show the service rule, according to which, a beneficiary of a Will is entitled for service benefit in preference of the widow of the deceased, learned counsel for the appellant has not been able to point out any such rule, which give a beneficiary of a Will any service benefit and that too in preference to the widow or the children of the deceased. In the absence of any such rule cited, the benefit of Will being sought qua the service benefits, cannot be entertained and has rightly been rejected by the lower appellate court, especially keeping in view the rules governing the service i.e. Punjab Civil Services Rules, which are to be made applicable for disbursement of service benefit to the family of the deceased employee.

24. It may be noticed that this Court is not recording any finding qua the validity of the Will as the said question is already challenged at the hands of Daljit Kaur and the Court will decide the said issue keeping in view the evidence, which will come on record.

25. Keeping in view the facts and circumstances stated here-in-before, no interference is called for by this Court in all the present regular second appeals and these are accordingly dismissed. Decree sheet be prepared accordingly.

26. The State of Punjab is directed to release the service benefits in favour of the widow of the deceased employee and his children including the mother in case, mother is able to prove that she was also dependent upon the deceased employee at the time of his death. Release of the service

benefits should be decided in accordance with the rules governing the service. In case, the benefits have not been released so far, the State of Punjab is directed to release the service benefits to the actual beneficiary of those benefits and that too by strict application of rules governing the said aspect.

CM-1425-C-2023, CM-5329-C-2017 and CM-15166-C-2017 in RSA-2192-2017, CM-5426-C-2017 in RSA-2221-2017 and CM-5428-C-2017, CM-369-C-2020 in RSA-2222-2017

As all the main appeals are dismissed, the present application also stand disposed of.

May 08, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No