

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

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RSA-5665-2018(O&M)
Date of Decision: 12.09.2023

Paramjit Kaur and another

....Appellants

Versus

General Public and another

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Rishu Mahajan, Advocate for the appellants.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the appellants/plaintiffs-Paramjit Kaur and Kashmir Kumar, claiming themselves to be widow and son of Shri Ram Lubhaya (deceased), against the concurrent findings of dismissal of civil suit.
2. Appellants/plaintiffs filed civil suit bearing No. 443 of 2006, for seeking a decree of declaration, claiming themselves to be legal heirs/legal representatives of the deceased-Shri Ram Lubhaya s/o Shri Parkash Chand and thus, claimed entire service benefits of late Shri Ram Lubhaya including G.P. Fund, Gratuity, Ex-Gratia grant, leave encashment, Insurance, last unpaid salary and other benefits payable to him, by the department of defendant No.2-BSNL. Consequential relief of mandatory injunction and permanent injunction was also prayed.

3. Defendant No.1 i.e. General Public was proceeded against ex parte. However, subsequently one Parkash Chand, father of deceased-Ram Lubhaya appeared through his counsel by moving an application under Order IX Rule 7 CPC, for setting aside ex parte proceedings, which was allowed. On 18.05.2007, he was again proceeded against ex parte, on account of his absence.

4. On the other hand, defendant No.2-BSNL put in appearance and filed written statement contesting the claim of plaintiffs by taking preliminary objections that the present suit is hit by the law of *resjudicata*. Plaintiffs have not approached the Court with clean hands and suppressed the material facts from the knowledge of the Court.

5. On merits, it was admitted that late Ram Lubhaya was serving with defendant No.2-BSNL and was a resident of Amritsar. However, there was a specific denial to the fact that plaintiff No.1 is legally wedded wife and plaintiff No.2 is the son of deceased-Ram Lubhaya. Another important fact put forth by the defendants is that in the service record of Ram Lubhaya, neither any details of his family members were furnished; nor he appointed any nominee for his service benefits. Vide judgment and decree dated 20.07.2004 passed by the Court of Mrs. Preeti Sahni, learned Additional Civil Judge (Senior Division), Amritsar, Parkash Chand-father of deceased- Ram Lubhaya was granted succession certificate pertaining to the service benefits of Ram Lubhaya and on that basis defendant No.2-BSNL had

released the entire service benefits to Parkash Chand.

6. On the basis of the pleadings of the parties, the following issues were framed by learned trial Court:

- '1. Whether the plaintiffs are entitled to the relief of declaration as prayed for in the head note of the plaint?OPP*
- 2. Whether the plaintiffs are entitled to the relief of mandatory injunction, as prayed for in the head note of the plaint ?OPP*
- 3. Whether the plaintiffs are entitled to the relief of Permanent Injunction, as prayed for in the head note of the plaint? OPP*
- 4. Whether the suit is hit by law of resjudicata?OPD*
- 5. Whether Plaintiffs have not come to the Court with clean hands?OPD*
- 6. Whether the suit is bad for non-joinder of necessary parties?OPD*
- 7. Whether the suit is not properly Valued for the purpose of Court fee and jurisdiction? OPD*
- 8. Whether the suit is time-barred?OPD*
- 9. Relief.'*

7. Learned trial Court as well as First Appellate Court concluded that there is no evidence available on record led by the plaintiffs either in the shape of marriage photographs with Ram Lubhaya, Ration Card, Voter Card or any other documentary evidence proving any relation with Ram Lubhaya. It has also been concluded that in the service record of Ram Lubhaya, no clue of any family members or nominee was found to have been disclosed by him. Thus, by no stretch of imagination or connectivity with any document, it could be opined by the Courts that plaintiffs are even related to said Ram Lubhaya in any manner.

8. For the sake of convenience, findings recorded by learned Trial Court in paragraph No.14 reads as under:

'14. From the perusal of the pleadings,

evidence and documents brought on record by the defendant no.2, the facts are admitted to the extent that deceased Ram Lubhaya was serving with defendant no.2. The dispute between the parties is that the plaintiffs are alleging that they are the legal-heirs of deceased Ram Lubhaya, and as such, they are entitled to the service benefits of deceased Ram Lubhaya being the only legal-heirs, whereas on the other hand, the defendant no.2 averred that they had released the benefits in favour of one Parkash Chand, who has produced the order of the Competent Court holding him the only surviving heir of Ram Lubhaya. Perusal of the statements of witnesses plaintiff that Paramjit Kaur herself and Kashmir Kumar reveals that they claim to be wife and son of deceased Ram Lubhaya, but no proof regarding the same is placed on record to establish their claim. Paramjit Kaur has admitted in her cross-examination that she does possess the photographs of her marriage, but has not given any satisfactory reply for not placing them on the record. She has further admitted that she has not mentioned any specific date, month and year in her affidavit Ex.PW3/A, regarding the solemnization of her marriage with Ram Lubhaya. She has further admitted that she applied for succession Certificate, after the death of her husband but the petition was dismissed and further unable to place on record any document in the form of Ration Card, Voter Card or any other document, from where her identity as wife of Ram Lubhaya is established on record. He has even further admitted that she was not having any birth certificate of her child, wherein Ram Lubhaya is shown as Father. Same is the contention of PW2 Kashmir Kumar, who had admitted that he was not in possession of any document to establish his relationship with deceased Ram Lubhaya. The dismissal of the petitions for succession certificates filed by them is also admitted. PW Rattan Singh has also admitted that he had not attended any ceremony of marriage between the parties, whereas on the other hand, the defendant has placed on record service book record of deceased Ram Lubhaya in the form of Ex.D2 perusal of which clearly reveals that there is no mention of the plaintiff in the same. Ex.D3 and Ex.D4 Nomination Form reveals that no nominee has been appointed by deceased Ram Lubhaya. Ex.D5 reveals that Ram Lubhaya has mentioned one Parkash Chand as his father for the purpose of family in the document filled by him kept in record by defendant no.2. Perusal of other documents reveals that there is nothing placed on record by the plaintiff to substantiate

their claim. Ex.D48 Judgment of Civil Court in case titled Parkash Chand Vs. General Public, clearly reveals that Parkash Chand was issued succession certificate as legal heir entitling him to claim his service benefits, which defendant had released to him. From the bare perusal of the evidence brought on record by both the parties, in support of their relevant claim it is clear that the plaintiffs have not able to establish any cogent evidence on record to put forward their case to the effect that they are only the legal-heirs of deceased Ram Lubhaya.'

9. In the second attempt made by the appellants before the First Appellate Court, it was held that there is no material available in support of the pleadings raised by the plaintiffs in their suit. It was also noticed that vide judgment and decree dated 20.04.2007(Ex.D-48) passed by the Competent Court, Amritsar, there is already a succession certificate issued, in favour of Parkash Chand-father of Ram Lubhaya, and in compliance to the said judgment and decree, service benefits had already been released in favour of said Parkash Chand.

10. Findings recorded in this regard by learned First Appellate Court in its paragraph Nos.13 and 14 are as under:

'13. I have considered the arguments. Major point in controversy is that whether present appellants/plaintiffs are the legal heirs of deceased Ram Lubhaya or not. Perusal of record and Judgment of Id. Lower court shows that plaintiffs have examined Rattan Singh as PW-1, Kashmir Kumar as PW- 2 and Paramjit Kaur as PW-3. Plaintiffs are alleging that they are only legal heirs of deceased Ram Lubhaya and they are entitled for the service benefit of Ram Lubhaya. As per the record of department Ex.D-1 to Ex.D-47, Ram Lubhaya deceased had not furnished any detail of family nor he appointed any nominee of his service benefits. Official of department directed both the parties i.e. appellants/plaintiffs and another claimant namely Parkash Chand, who was father of deceased to get the succession

certificate. Ld. Court of Mrs. Preeti Sahnt, Addl. Civil (Senior Division). Amritsar granted-succession certificate to Parkash Chand i.e. father of Ram Lubhaya on 20.07.2004 which is Ex.D-48 and upon the said document, defendant no.2 released the said benefit to Parkash Chand as per the order of the court. Paramjit Kaur appellant/plaintiff has not produced any proof regarding their claim. Even she has not placed any photograph of her marriage with deceased Ram Lubhaya nor any specific date, month or year was mentioned by her as to when she solemnized marriage with Ram Lubhaya. She even admitted that had applied for succession certificate after death of her husband, but petition was dismissed. No document was produced like ration card, voter card or any other document which could substantiate that she was legally wedded wife of Ram Lubhaya. Even, she could not produce birth certificate of her son which could have proved that Ram Lubhaya, father of Kashmir Kumar, plaintiff no.2. So, trial court has rightly dismissed the suit of the appellants/plaintiffs

***14.** In view of my above discussion, there is no illegality in well reasoned Judgment dated 22.03.2012 passed by the Ld. Lower Court and as such appeal filed by appellants/plaintiffs is hereby dismissed with cost. Decree sheet be prepared accordingly. Record of Ld. Lower Court be sent back along with copy of this Judgment and file of this appeal be consigned after due compliance to the record room , after due compliance.'*

11. During the course of arguments, this Court asked the learned counsel for the appellants/plaintiffs ***whether judgment and decree dated 20.07.2004 (Ex.D-48) has ever been challenged by the appellants/plaintiffs and if challenged, what is the outcome of the same?***

In response to the query, learned counsel for the appellants/plaintiffs states that said judgment and decree dated 20.07.2004 (Ex.D-48) was never challenged by the appellants/plaintiffs.

12. In view of the same, this Court do not find any

substantial reasons to interfere with the findings recorded by the Courts below. Accordingly, the impugned judgment and decree is maintained and the present appeal is hereby dismissed.

13. Since, present appeal has been heard and dismissed on merits, there is no need to pass any separate order in the pending applications and the same stands disposed of.

September 12,2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no