

[107] IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-6318-2018 (O&M)  
Date of Decision : 06.02.2023

Rajinder Kaur ...Appellant

versus

Kulwant Singh (deceased) through  
his LR's and others ....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Nand Lal Sammi, Advocate for the appellant.

\*\*\*

B.S. Walia, J.

[1] Challenge in the regular second appeal is to judgment and decree dated 08.10.2018 in Civil Appeal No.372 dated 05.09.2014/ 30.09.2016, upholding the judgment and decree dated 31.07.2014 passed by the learned Civil Judge (Junior Division), Chandigarh in Civil Suit No.238 dated 25.08.2004.

[2] Learned counsel contends that plaintiff Nos. 1 to 3, (plaintiff Nos. 1 & 2 now deceased) and now represented through their LR's i.e. respondent Nos.1 (i) to (iv) and respondent No. 2, besides respondent No. 2 had filed a civil suit against appellant / defendant No. 2 for a direction to respondent No.3 / i.e. defendant No. 1, to transfer the ownership of built up unit No.292/2, MIG Category-III, Sector 45-A, Chandigarh, on the basis of Will dated 02.09.2003 executed by Joga Singh, allottee of the aforementioned flat, on account of being his LR's, as also for a permanent injunction for restraining appellant / defendant No.2 from interfering, in any way, in the peaceful possession of the plaintiff's over the flat in question.

- [3] On the basis of pleadings, the following issues were framed:-
- “ 1. *Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP*
2. *Whether the plaintiffs are entitled to mandatory injunction as prayed for? OPP*
3. *Whether the present suit is not maintainable? OPD*
4. *Relief. ”*

[4] Learned Counsel contends that on the basis of pleadings, evidence led and submissions advanced by the parties, the learned trial Court decided issue Nos.1 to 3 in favour of the plaintiffs, consequently, decreed the suit with costs by directing respondent No.3/defendant No.1 to transfer the ownership of built-up unit No.292/2, MIG Category-III, Sector 45-A, Chandigarh in favour of plaintiff Nos.2 & 3 on the basis of Will dated 02.09.2003 as plaintiff No.1 had in the meantime died and further restrained appellant / defendant No.2 from interfering in any manner in the peaceful possession of the plaintiffs over the above said flat while appeal filed by appellant/defendant No.2 was dismissed and judgment and decree dated 31.07.2014 passed by the learned Civil Judge (Senior Division), Chandigarh upheld.

[5] Learned Counsel contends that the Will in question dated 02.09.2003 on the basis of which the civil suit was filed was surrounded by suspicious circumstances as the same was, in English, with tight margins, executed at Village Daffar, District Hoshiarpur whereas the deceased used to reside at Chandigarh with his wife i.e. the appellant, signatures of the testator on the Will dated 02.09.2003 were forged, testator had died on 14.10.2003 whereas the Will was executed on 14.09.2003 i.e. 01 month 12 days prior to his death and the same raised doubts qua its execution since testator was hale and hearty and only 45

years of age at the time of his death, appellant was married to the testator on 10.05.1999 as evident from the marriage invitation card (Ex. D-2) and marriage photographs (Ex. D-3 to D-7), besides identity card issued by the Election Commission, Chandigarh in the name of the appellant, reflecting name of testator as her husband and her address as 292/2, MIG Category-III, Sector 45-A, Chandigarh i.e. Ex. D-10, therefore, the alleged Will was liable to be set aside and the appellant, being the widow of Joga Singh entitled to succeed to dwelling unit No. 292/2, MIG Category-III, Sector 45-A, Chandigarh. No other point has been argued.

[6] Perusal of the record reveals that the appellant had filed MACT Case No.122 of 21.10.2003, within days *of* the death of Joga Singh, titled as Rajinder Kaur vs Mohinder Sharma and others claiming herself to be his wife whereas MACT Case No.108 of 18.11.2003, titled as Charan Dass and others vs Mohinder Sharma and others was filed by the father, brother and sister of Joga Singh, claiming compensation on account of death of Joga Singh on ground of being his dependents/legal heirs and that while the claim petition filed by the appellant was dismissed, the petition preferred by Charan Dass and others was allowed vide common award dated 26.02.2009 whereafter FAO No.3275 of 2009 filed by Mohinder Kaur, before the Punjab and Haryana High Court was allowed vide judgment dated 12.10.2009 and compensation payable enhanced. Likewise, the appellant, too preferred an appeal before the Punjab & Haryana High Court against the common award, but the same was dismissed on 03.02.2011 and challenge by the appellant to the dismissal of the appeal was rejected by Hon'ble the Supreme Court, thereby, award dated 26.02.2009 passed by the learned Motor Accident

Claims Tribunal, Chandigarh attained finality. Relevant extract of detailed order passed in FAO No. 2478 of 2009 is reproduced as under:-

*“5. If the incident of marriage must be supported by the evidence of the father, mother or a friend, I would see it in the context of how the marriage is sought to be denied and the aspects of evidence which are given by the respondents to deny the same. They had at least nine reasons to say as to why the marriage could not have taken place. One, it was an admitted fact that parents of the deceased had not come. It was not the evidence of the petitioner that they had not been invited but it was sought to be contended that the father of the deceased was too ill to attend that marriage. In my view, the absence of the near relative of the deceased was a material fact. Two, the second aspect was that when the incident of marriage was itself in question the claimant ought to have produced documents to show that on the relevant date when their marriage had taken place, she must have taken leave, for after all, she was a Government servant and therefore, if she was shown to be absent from office on that day and if she had applied for leave giving the incident of marriage as a reason, it would have obtained credibility. It is an admitted fact that such detail was not produced. Three, the appellant had taken LIC policy before the marriage and even after the marriage, if there had been as close of relationship for her as a husband, there had been no change in the nomination. Nominating her husband was taken by the Tribunal as one of the factor to discount the value of evidence on the appellant side. Four, none of the neighbours of the house where the deceased was supposed to have lived along with the appellant as husband and wife was examined in this case. Normally, the treatment of the society of a man and woman as husband and wife is given reasonable weight. After all, institution of marriage itself survives only in the manner in which the society views a couple. I will not, therefore, treat this to be a minor factor but I would have expected some evidence from the appellant as to why none of the neighbours to the*

*appellant could be examined in this case. Five, the person, who had conducted the marriage namely the priest was not examined nor was any reason given as to why he could not be examined. Six, the appellant herself admitted that she did not know where the bhog ceremony of the deceased took place especially when it was contended on behalf of the respondents that the bhog ceremony was held at Hoshiarpur and she was not present. Seven, the manner of institution of the case itself was rather curious. The death had taken place on 14.10.2003 and immediately within a week after the accident, the case had been filed. The Tribunal found this to be rather a curious situation for no person would have thought of filing a case even within a week and even before the bhog ceremony was complete. Eight, the manner of institution of the case also excited the suspicion of the Tribunal for it said that the petition had been presented with the father of the deceased as one of the claimants. The father's signature itself was not secured in the claim petition and he had not verified the petition. The appellant was not prepared to state that she had the consent of the father of the deceased to file the case. In a situation like this if the father was also required to join the petition and he was not prepared to join the case, the procedure must have been only to show the person as a respondent and not to show the person as a co-petitioner and with no signature of such a person. Nine, the official, who was working along with the deceased had also brought in the records to show that the deceased had mentioned the details of family only of persons consisting of his brother, sister and father and he had not mentioned the appellant as the wife in the official record. It must be seen similarly the appellant herself had not shown the deceased as husband in any of the official records.*

*6. If the case must be seen only from the perspective of the documents filed by the appellant then the inference might have been possible that the appellant had established her marriage. Forensics of judicial appreciation consists of sifting of evidence tendered by parties. In this case, in proof of the contention of*

*the appellant that she had been married to the deceased, the photographs showing the marriage ceremony were filed in Court, the person who claimed that he had attended the wedding PW4 and the father of the appellant were also examined, and the voter identity card described her as the wife were all to be taken as establishing the marriage then I would take them on the other scale the improbabilities of such a contention which have been enumerated at least through 9 points referred to above. The scale tilts in favour of contention pointing out to the improbability of the marriage. ”*

[7] Perusal of the record reveals that claim of the appellant / defendant No.2 that she was the legally wedded wife of deceased Joga Singh was rejected by the learned MACT / High Court and said findings upheld upto Hon'ble the Supreme Court.

[8] Secondly, the appellant / defendant No.2 did not mention a single word in the written statement filed by her in the civil suit regarding the date, place and time, of her alleged marriage with Joga Singh.

[9] Thirdly, Mewa Singh i.e. father of appellant / defendant No. 2 who appeared as DW7, did not state about date, time and place of marriage of appellant and conceded in his cross examination that he had never seen Joga Singh except at the time of marriage, that parents and sister of Joga Singh did not attend the marriage, no entry was made in the Register of the Gurudwara regarding solemnization of marriage between Joga Singh and Rajinder Kaur, that the appellant / defendant No. 2 was having her vote at Ludhiana and had cast the same there in the year 2002, as also that he had not attended the Bhog ceremony of Joga Singh besides feigned ignorance regarding the death of mother and father of Joga Singh.

[10] Fourthly, DW-1i.e. Sukhdev Raj Vohra, although stated that Joga Singh used to discuss family matters, yet admitted that he lived in

House No. 307/1, Sector 45-A, Chandigarh, only w.e.f. the year 2005 and that prior thereto he had been residing in H. No. 41, Sector 16-A, Chandigarh.

[11] Fifthly, DW-2 Parminder Singh, SDO Legal, BSNL, Sector 34, Chandigarh, admitted that Telephone No.2645110 was installed in House No.292/2, Sector 45-A, Chandigarh in the year 2010.

[12] Sixthly, DW-8 Surinder Pal Singh, examined to prove the photographs of the marriage ceremony conceded that he had not brought the negatives of the photographs, that the photographs were not got developed by him, nor did he prove the negatives of the photographs.

[13] I have considered the submissions of learned counsel and perused the record as referred to by him. Admittedly, the claim petition titled as 'Rajinder Kaur versus Mohinder Sharma and others claiming compensation on the ground that appellant was the widow of Joga Singh was dismissed by the MACT, Chandigarh on 26.02.2009, whereas MACT Case No.108 dated 18.11.2003 titled as 'Charan Dass and others versus Mohinder Sharma and others filed by (father, brother and sister of Joga Singh) claiming compensation on account of being his dependents/legal heirs was allowed vide common award dated 26.02.2009. FAO No. 3275 of 2009 filed by Mohinder Kaur (sister) was allowed and compensation payable enhanced vide judgment dated 12.10.2009 whereas FAO No. 2478 of 2009 preferred by Rajinder Kaur was dismissed on 03.02.2011 as was SLP filed by her challenging order dated 03.02.2011. Consequently, award dated 26.02.2009 passed by the tribunal attained finality.

[14] Thus, once claim of the appellant for compensation on account of death of Joga Singh on the basis of her being his wife was not accepted upto Hon'ble the Supreme Court (with the question *qua* marriage of

appellant-defendant No.2 with deceased Joga Singh being directly and substantially in issue between the parties in Claim Petition No. 122 of 2003 & FAO No.2479 of 2009) and decision in respect thereto between the parties having attained finality upto Hon'ble the Supreme Court, therefore in view of the decision of Hon'ble the Supreme Court in AIR 1994 SC 152, as well as decision in '**Andanur Kalamma and others vs Gangamma (dead) by Lrs**2018 (2) JCR 250, the findings therein would operate as *res judicata* in the civil suit between the parties.

[15] Admittedly, appellant / defendant No.2 did not mention a single word in the written statement filed by her in the civil suit regarding the date, time and place, on which her marriage was solemnized with Joga Singh and further, while appearing as DW-6 she denied having filed a claim petition against Mohinder Kaur and Kulwant Singh but in the same breath conceded that claim petition was also filed by Kulwant Singh and Mohinder Singh and although, specific suggestion was given to her that she had filed the claim petition on 21.10.2003, within 7 days of the death of Joga Singh, she denied the suggestion, although she conceded that the same was dismissed on 26.02.2009 by the MACT, Chandigarh. She also conceded that she had filed a written statement in the civil suit between the parties but had not mentioned taking leave from her Department from 10.5.1999 to 13.5.1999, 14.6.1999 to 30.6.1999 and 7.9.1999 to 18.10.1999 therein and had mentioned about the same only in the affidavit filed by her as DW-6. Whereas it is settled law that no amount of evidence can be read qua a fact not pleaded. Appellant also stated before the trial court that her Ring ceremony with Joga Singh took place in January / April 1999 but conceded that neither any photographs were clicked nor any friend was called at the time of said ceremony and she also failed to tell the name of even one of the

friends / neighbours of Joga Singh who accompanied or attended the ceremony. Appellant also admitted that no register was maintained by the Gurudwara regarding solemnization of marriage, despite the Gurudwara where the marriage was solemnized being a Registered Society, nor she disclosed the name of any of her or Joga Singh's colleague or neighbour who attended the marriage ceremony at Ludhiana. She also conceded that voter card was issued to her on 21.10.2003., i.e. after the death of Joga Singh on 14.10.2003. Further although specific question was put to her that Joga Singh had mentioned himself as Bachelor in the record of his office, she expressed ignorance regarding the same but admitted that Joga Singh had nominated his younger brother Kulwant Singh and unmarried sister Mohinder Kaur in the office record to receive all benefits on his death as also that she had obtained a LIC Policy at Ludhiana, which matured in the year 2007 in which she had nominated her brother and father as her nominees. She also conceded that she did not attend the Bhog Ceremony of her husband-JogaSingh at Hoshiarpur although she tried to cover up the same by contending that she could not attend due to threat held out to her. Appellant / defendant No. 2 also feigned ignorance regarding one Kamlesh Kumar having filed a suit for specific performance qua the property in question on the basis of an Agreement to Sell in his favour by deceased Joga Singh through GPA and of said suit for specific performance having been decreed by the Civil Judge (Junior Division), Chandigarh. Thus the evidence of appellant as DW6 does not substantiate her claim nor inspires confidence.

[16] Likewise, evidence of her father DW-7, Mewa Singh, does not advance the claim of the appellant as he admitted having seen Joga Singh only once allegedly at the time of his marriage, besides conceded that the parents and sister of Joga Singh were not present at the marriage, that no

entry was made in the Register of the Gurudwara regarding solemnization of marriage between Joga Singh and Rajinder Kaur, that the date of birth of his children was not known to him, that appellant / defendant No. 2 was having her vote at Ludhiana and that she had cast the same there in the year 2002 and lastly that he had not attended the Bhog ceremony of Joga Singh. He however, feigned ignorance regarding the death of mother and father of Joga Singh. The aforementioned testimony of DW7 in no way substantiates the claim of the appellant / defendant No. 2 nor inspires confidence. Similarly, the evidence of DW-1 Sukhdev Raj Vohra is also of no help to the appellant since he did not utter a single word as to how he came in contact with late Joga Singh, as he was neither working in Joga Singh's office nor was his neighbor and came to reside in Sector 45-A, Chandigarh, two years after the death of Joga Singh. The aforementioned position creates a doubt regarding the veracity of the testimony of said witness because no evidence was led of how witness knew Joga Singh, nor he attended the marriage or any ceremony of appellant and Joga Singh. In the circumstances, it is not believable that Joga Singh used to discuss his problems with DW-1.

[17] Evidence of DW-2 Parminder Singh, SDO Legal, BSNL, Sector 34, Chandigarh also does not advance the case of the appellant as the telephone installed in dwelling unit No.292/2, MIG Category-III, Sector 45-A, Chandigarh was admittedly changed in the name of the appellant in the year 2010, during the pendency of the civil suit, apparently, to create evidence.

[18] DW-8, Surinder Pal Singh, who allegedly clicked the photographs of the alleged marriage ceremony of appellant / defendant No.2 to Joga Singh on 10.05.1999 conceded that he had not brought the negatives of the photographs clicked by him neither he proved the

negatives/photographs allegedly clicked by him and also admitted that the photographs were not got developed by him regarding the alleged marriage between Joga Singh and Rajinder Kaur, therefore, his testimony is also of no help to the appellant-defendant.

[19] Contention that the Will had been forged by the plaintiffs to usurp the properties of the deceased as the testator was residing in Chandigarh but Will was executed at Village Daffar in itself is meaningless as the testator had roots in Village Daffar while his bhog was performed at Hoshiarpur. Moreover, execution of the Will by Joga Singh in favour of plaintiff's, Charan Singh (father, since deceased), Kulwant Singh (brother, since deceased) and Mohinder Kaur (sister) was proved by the plaintiffs by examining PW-1 Sewa Singh, attesting witness of the Will, who duly corroborated the version of the plaintiff's in his deposition and testified that the testator was known to him, was working as Scientist in CSIO, Chandigarh and used to visit his village i.e. Daffar to see him, that he was unmarried at the time of his death and used to support his father Charan Dass, his unmarried sister Mohinder Kaur and brother Kulwant Singh. He further deposed that on 02.09.2003 Joga Singh visited his house along with a duly typed Will to execute the said Will in favour of the plaintiff's, that Sewa Singh s/o Atma Singh was also called by Joga Singh at his residence and after arrival of Sewa Singh, Joga Singh explained the contents of the Will to them in Punjabi, whereafter he put his signatures on said Will in their presence and thereafter they put their signatures as witnesses on the Will Ex.P1. Besides, PW Jasbir Singh, identified the signature of his father Sewa Singh s/o Atma Singh over the Will Ex.P1 and testified that his father Sewa Singh had expired on 20.07.2005 at village Daffer and he was well aware of the handwriting of his father as he had seen him signing and writing on a

number of occasions and he identified the signatures of his father as witness No.1 on Will Ex.P1. Thus the Will in favour of the plaintiffs stood duly proved in terms of Section 68 of the Indian Evidence Act, 1872.

[20] Plaintiffs also proved before the trial court that deceased Joga Singh had executed general power of attorney (Ex. P4) dated 23.10.2000 in their favour, which was registered with the Sub Registrar, Gardiwala, for the sale of the house in question and they also produced on record copy of agreement to sell dated 21.09.2000 (Ex. P-3) executed by plaintiff Nos.2 and 3 in favour of Kamlesh Kumar Sharma with respect to the house in question on the basis of the above said general power of attorney for execution of sale deed, which was to be executed on 21.09.2003 but due to unfortunate death of Joga Singh on 14.10.2003, the Power of Attorney became redundant, therefore, the date for execution of the sale deed was extended till 05.02.2004 but Kamlesh Kumar Sharma filed a suit for specific performance against the plaintiffs, and the same was decreed whereafter, Chandigarh Housing Board i.e. defendant No.1 transferred the house in question in the name of Kamlesh Kumar Sharma as per the directions of the Executing Court. Therefore from execution of the above GPA by Joga Singh in favour of plaintiff Nos.2 and 3 it is clear that Joga Singh was having good relations with being their sibling, unmarried and also having mentioned them as his nominees in the official record, therefore, he had every reason to execute the Will in question in their favour. Merely because the Will was executed at Village Daffar, would not render the same surrounded by suspicious circumstances as Joga Singh's belonged to said Village and both the attesting witnesses were known to him and there was nothing unusual if he had executed the Will at Village Daffar instead of Chandigarh because he was not a permanent resident of Chandigarh and he might not be having any

person close to him in Chandigarh in whose presence the Will in question could have been executed by him at Chandigarh. Appellant / defendant No.2 has not produced any evidence which could prove that the Will in question was surrounded by suspicious circumstances and in the aforementioned background, it is evident that Will dated 02.09.2003 was executed by late Joga Singh in favour of the plaintiffs. Besides, one of the witnesses to the Will proved the Will while the son of the other witness identified the signatures on the Will to be that of his father, thereby, the Will stands proved in terms of Section 68 of the Indian Evidence Act, 1872. The plea that spacing of the Will was constricted is meaningless in view of the same not being handwritten but a computer printout.

[21] Accordingly, in the light of the position noted above, no grounds whatsoever exist warranting interference with the well reasoned judgment and decree passed by the learned Addl. District Judge, Chandigarh upholding the equally well reasoned judgment and decree passed by the learned trial court. No substantial question of law, much less question of law arise for consideration in the instant case.

[22] Accordingly, finding no merit in the appeal, the same is *dismissed in limine*.

**(B.S. Walia)**  
**Judge**

06.02.2023

'Rajneesh'

|                                   |   |               |
|-----------------------------------|---|---------------|
| <i>Whether speaking/ reasoned</i> | : | <i>Yes/No</i> |
| <i>Whether reportable</i>         | : | <i>Yes/No</i> |