

CR-6392-2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.113

CR-6392-2018 (O&M)

Date of Decision: 30.04.2024

BHOORO

....Petitioner

Versus

BHOPAL (SINCE DECEASED) THROUGH LRS AND OTHERS

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. D.K. Tuteja, Advocate,
for the petitioner.

Mr. Mandeep Singh Kundu, Advocate,
for respondents No.1 and 2.

None for respondent No.3.

None for respondent No.4.

ARCHANA PURI, J. (Oral)

CM-2045-CII-2024

The present application has been filed for placing on record the copy of judgment dated 20.09.2012, as Annexure P-8.

In view of the averments made in the application, same is allowed and the requisite judgment is taken on record.

Main case

Challenge in the present revision petition is to the order dated 17.08.2018 (Annexure P-1) passed by learned Trial Court, whereby the petitioner (who is witness in the civil suit), has been directed to undergo DNA test and to appear before Forensic Science Laboratory, Madhuban.

In pursuance of the notice issued, respondents No.1 and 2 have made appearance through counsel. However, none had made appearance on behalf of respondents No.3 and 4. On earlier occasions also, none has made appearance on behalf of respondents No.3 and 4. As such, respondents No.3

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and 4 are proceeded against *ex parte*.

Learned counsel for the parties heard.

The material facts, as culled out from the paperbook are as follows:-

That, initially, Usha Rani (who is respondent No.4 in the present revision petition), had filed a suit for declaration with consequential relief of permanent injunction, against her maternal uncle Bhopal, Ram Pal and maternal grandmother, Bhagwani, to assert her right to 1/4th share in the property, initially owned by her maternal grandfather-Mange Ram and she had stepped into the shoes of Luxmi Devi, her mother (since deceased). Copy of the plaint is Annexure P-2. Written statement was filed at the instance of the defendants, copy whereof is Annexure P-3. Ultimately, the suit was dismissed and feeling aggrieved, Usha Rani, had filed an appeal to assail the judgment of dismissal. The said appeal was decided by learned Appellate Court vide judgment dated 20.09.2012. While appraising the evidence brought on record, with regard to relationship of Usha Rani with the respondents/defendants, it was observed by learned Appellate Court that there is conflicting evidence, coming on record, with regard to relationship of Usha Rani with Luxmi Devi, who was the daughter/sister of the defendants in the main suit, as well as her relationship with Bhooro.

In the given circumstances, when it was spelt out at the instance of Usha Rani about there to be need to examine Bhooro, learned Appellate Court, vide judgment dated 20.09.2012 had accepted the appeal and remanded back the case with a direction to allow Usha Rani to examine Bhooro as witness, to support her case. Also, further direction was given that the respondents may be granted sufficient opportunity to rebut the

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statement of Bhooro.

At this juncture, before proceeding further, it is pertinent to mention that learned Appellate Court had appraised the testimonies of the witnesses, examined during the course of trial, thereby giving detail of the relationship of Usha Rani with Luxmi Devi and Bhooro. This Court is intentionally, not making reference to the discussion, as made by learned Appellate Court, lest it may hamper the interest of either party, at later stage. However, suffice to make mention that there was controversy between the parties to the lis, about relationship of Usha Rani, to be daughter of Luxmi Devi or Bhooro, who were alleged to be co-wives of Mangli Ram. So far as, Mangli Ram, being father of Usha Rani is concerned, there is no dispute between the parties to the present lis. In pursuance of remand of the case, the parties made appearance before learned Trial Court and examination-in-chief of Bhooro was recorded as PW-5. Before conducting of cross-examination of the respondents (defendants in the main case), the petitioner had filed an application for conducting of DNA test of Bhooro, who appeared as witness, PW-5, to know whether there is biological relation with Usha Rani, or not. The said application was allowed vide impugned order, copy whereof is Annexure P-1.

From the documents and pleadings of the case, coming forth, as well as from the judgment of learned Appellate Court, it is evident that though, Usha Rani, had asserted her right in the property of her maternal grandfather, being daughter of Luxmi Devi (since deceased daughter of Mange Ram), but in the written statement to the said suit, the respondents/defendants, though, have denied about Usha Rani to be daughter

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of Luxmi Devi, their sister, but however, they did not make any mention of Usha Rani to be having any relation with Bhooro. It was Usha Rani, who asserted herself to be daughter of Luxmi Devi and for this, at the appellate stage, she had expressed her desire to examine Bhooro to substantiate her relationship with Luxmi Devi. Luxmi Devi and Bhooro are spelt out to be co-wives of Mangli Ram. Nowhere, Bhooro, who has been examined as PW-5, has any concern with the suit property. There is no interest in her favour in the suit property. Even, the relationship, as such, is not spelt out of Bhooro with Mange Ram or with Usha Rani or Luxmi Devi, at the instance of respondents/defendants in the written statement. It was consequent to recording of examination-in-chief of Bhooro, that aforesaid application has been filed for conducting of examination of Bhooro.

This application, in itself, is not maintainable, as Bhooro, as such, has no interest in the suit property, as she is not claiming herself to be mother of Usha Rani. In these circumstances, when the person is not a party to the lis and is deposing in the Court, as only witness, his/her DNA examination, as such, cannot be allowed. In any case, to establish the relationship, so asserted, onus to prove is upon Usha Rani, who is plaintiff before learned Trial Court.

Such being the fact situation, the revision petition is hereby accepted and the impugned order is set aside and the application for seeking DNA examination, is hereby dismissed.

(ARCHANA PURI)
JUDGE

30.04.2024
Himanshu

Whether speaking/reasoned : Yes

Whether reportable : Yes/No