

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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RSA-2180-1993 (O&M)
Date of decision: 11.03.2024

Nano Devi

...Appellant

VERSUS

Kishni since deceased through LRs

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Munish Jolly, Advocate for the appellant.

Mr. Jagdish Manchanda, Advocate and
Mr. Nischal Chetanya Manchanda, Advocate
for the respondent.

VINOD S. BHARDWAJ, J. (Oral)

1. The instant appeal has been preferred against the judgment and decree dated 18.02.1993 passed in Civil Suit No.213 of 1990 by the Sub-Judge II Class, Karnal, whereby the suit of the appellant-plaintiff was dismissed as well as against the judgment and decree dated 05.06.1993 passed in Civil Appeal No.13 of 1993 by Additional District Judge, Karnal, whereby the appeal preferred against the judgment and decree dated 18.02.1993 was also dismissed.

2. Briefly the controversy is that a suit for declaration had been filed by the appellant-plaintiff claiming pension as widow of one Assa Ram. It was claimed that Assa Ram son of Shankar Dass was working as a Bailiff in the Court of Senior Sub-Judge, Karnal, wherefrom he retired and

thereafter died on 10.09.1986. Being a widow, she claimed that she is entitled to receive the family pension of the deceased Assa Ram and that defendant-Smt. Kishni had no claim to the same. It was further submitted that Assa Ram had performed a *Kareva* marriage with Kishni in 1952 and that Kishni already had one son from her previous marriage. However, Kishni deserted the company of Assa Ram and started living with Baru Ram, her previous husband, from whom one son namely Mam Chand was born. When the appellant-plaintiff approached the office of Senior Sub-Judge, Karnal for grant of family pension, then she was informed about the said dispute whereupon above suit was filed.

3. Written statement was filed on behalf of the respondent-defendant raising a preliminary objection that the suit was not maintainable and it was pointed out that during his life-time Assa Ram, lived with the respondent-defendant and he had also performed marriage with appellant-plaintiff. Following issues were framed on the basis of the pleadings:

- “1. Whether the plaintiff is entitled to family pension in respect of death of Assa Ram, P.P.O. 8791/PB? OPP***
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD***
- 3. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD***
- 4. Whether the plaintiff has not come to the court with clean hands and has concealed the material fact? OPD***
- 5. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD***

6. *Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? OPD.*

7. *Relief.*

4. Parties led their respective evidence before the Sub-Judge II Class, Karnal, and upon consideration on the same, it was recorded that since both the marriages were performed by Assa Ram prior to the year 1952 and that the said marriage(s) were valid under customary laws applicable till then, before coming into force of the Hindu Marriage Act, 1955. Thus, the plaintiff-appellant/Nano Devi as well as respondent-defendant/Kishni were held to be legally wedded wives of deceased-Assa Ram and they were both held entitled equally to the pension of Assa Ram.

5. Aggrieved thereof, the appellant-plaintiff preferred an appeal before the District Judge, Karnal. The said appeal was also dismissed vide judgment and decree dated 05.06.1993 passed by the Additional District Judge, Karnal. Hence, the present appeal.

6. Learned counsel appearing on behalf of the appellant informs that during the pendency of the present appeal, respondent-defendant/Kishni Devi died on 02.01.1997 while the appellant-plaintiff/Nano Devi died on 05.03.2004. He contends that CM-10478-C-2008 was filed by the appellant-plaintiff under Order 41 Rule 27 for placing on record certain additional facts and thus leading fresh evidence in the form of copy of judgment and decree dated 31.07.1998 passed in Civil Appeal No. 88 of 1998 dated 12.02.1996 in case titled as 'Smt. Krishna Devi and another Vs. Tara Chand' by the Court of Additional District Judge, Karnal. He contends that the present appeal was admitted vide order dated 15.02.1994 and at the stage of

admission, stay was granted against disbursement of pension to either of the parties. It is submitted that the dispute now survives only to the extent of pension that had accrued in favour of the parties since passing of the stay order i.e. 15.02.1994 and till the death of appellant-plaintiff on 05.03.2004. While referring to the judgment and decree dated 31.07.1998 passed by the Additional District Judge, Karnal, in Civil Appeal No. 88 of 1998 dated 12.02.1996, he submits that the dispute before the Appellate Court was arising from the judgment and decree dated 20.01.1996 passed by the Court of Civil Judge (Jr. Divn.), Karnal, whereby the suit of the respondent-defendant/Krishna Devi and Mam Chand, who was claiming himself to be the legally adopted son of Kishni/Krishna Devi and Assa Ram was dismissed. In the appeal, the Appellate Court had noted a finding that Smt. Krishna Devi was a legally wedded wife of deceased-Assa Ram, who had executed a valid Will in favour of his adopted son Tara Chand and that Mam Chand-the son of Smt. Krishna Devi from her previous husband Baru Ram was not entitled to succeed to the property of Assa Ram.

7. Learned counsel appearing on behalf of the appellant further contends that the above said judgment and decree dated 31.07.1998 passed by the Additional District Judge, Karnal, in Civil Appeal No. 88 of 1998 dated 12.02.1996 has already attained finality and no regular second appeal has been filed against the same.

8. Taking into consideration, the circumstances available on record by way of additional evidence, I find that there are not sufficient grounds to interfere in the above said judgment and decree dated 18.02.1993 passed in Civil Suit No.213 of 1990 by the Sub-Judge II Class, Karnal, and

the judgment and decree dated 05.06.1993 passed in Civil Appeal No.13 of 1993 by Additional District Judge, Karnal, in so far as the claim inter se in between the appellant-plaintiff/Nano Devi and respondent-defendant/Kishni are concerned. However, as the claim now only survives with respect to release of family pension of deceased-Assa Ram, it is directed that the above said amount of pension, which was stayed pursuant to the order dated 15.02.1994 passed by this Court, be released in favour of Tara Chand-adopted son of Assa Ram, in whose favour judgment and decree dated 31.07.1998 has been passed, for the pension due to Nano Devi-appellant-plaintiff and to Mam Chand w.r.t. the pension to the said $\frac{1}{2}$ share, till date of her death, to Mam Chand. It is significant to observe that the pension which fell in the share of Kishni would be her absolute property and Mam Chand, being her son, is entitled to succeed to the same, as per the Hindu Succession Act, 1956, notwithstanding that he was not born from the loins of Assa Ram.

9. This order shall however not operate as a bar on Mam Chand to adduce any other evidence/order that may have been passed in any appeal preferred, against the said judgment and decree dated 31.07.1998. Under such an eventuality, the Executing Court/Department shall take such subsequent orders into consideration.

10. The appeal is accordingly **dismissed**.

11. The pending civil misc. application, if any, stands disposed of.

(VINOD S. BHARDWAJ)
JUDGE

11.03.2024

Mangal Singh

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