

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

- 1. RSA-1381-1989 (O&M)
Reserved on: 22.02.2024
Date of decision: 03.04.2024

KAMALJIT KAUR

..Appellant

Versus

M/S ROOP RAI TIMBER WORKS AND ORS.

..Respondents

- 2. RSA-627-1990 (O&M)

M/S PRITAM SINGH ROOP RAI AND SONS & ORS.

..Appellants

Versus

KAMALJIT KAUR AND ORS.

..Respondent

- 3. RSA-1150-1987 (O&M)

PRITAM SINGH (DECEASED) THROUGH LRS & ORS.

..Appellants

Versus

KAMALJIT KAUR AND ORS.

..Respondents

- 4. RSA-1429-1990 (O&M)

PRITAM SINGH (DECEASED) THROUGH LRS

..Appellants

Versus

PEERLESS GENERAL FINANCE AND INVESTMENT
COMPANY LTD. & ORS.

..Respondents

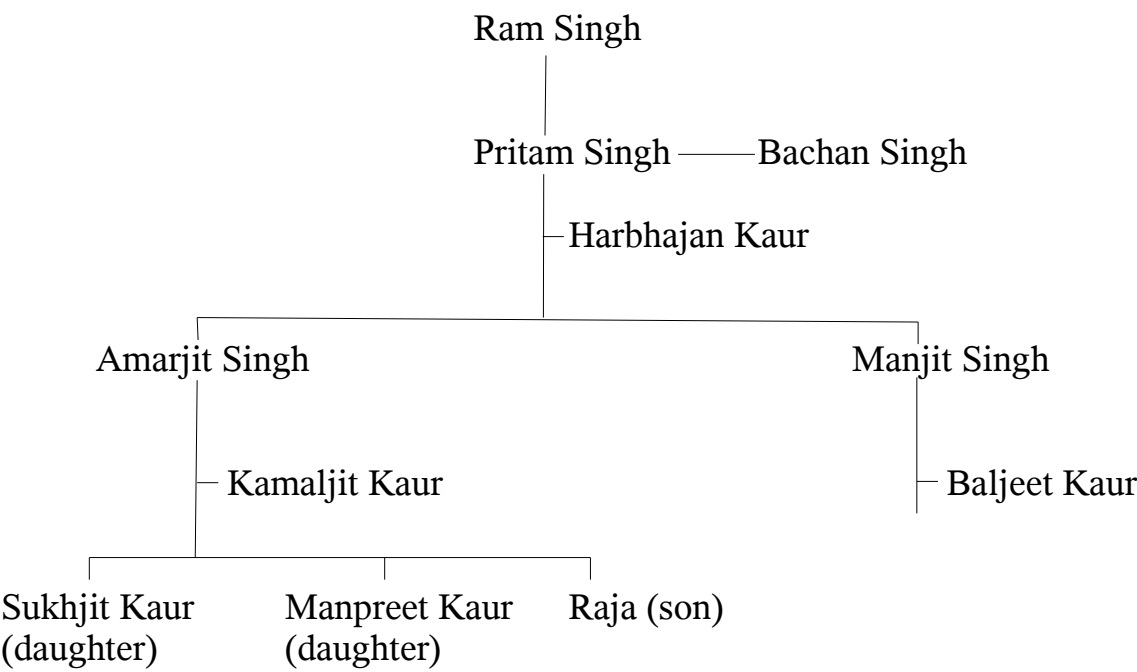
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Piyush Kant Jain, Advocate
for the appellant (in RSA-1381-1989)
for respondent No.1 (in RSA-627-1990 & RSA-1150-1987)
for respondent No.3 (in RSA-1429-1990).

Mr. Amit Jain, Sr. Advocate
with Mr. Varun Parkash, Advocate
for the appellants (in RSA-627-1990, RSA-1429-1990
and RSA-1150-1987).
for respondent No.2 (in RSA-1381-1989).

ANIL KSHETARPAL, J.

1. With the consent of the learned counsel representing the parties, four connected appeals arising from four separate suits but connected with each other shall stand disposed of by a common judgment.
2. A pedigree table of the family is drawn as under in order to understand the relationship between the parties:-



3. Smt. Kamaljit Kaur widow of Sh. Amarjit Singh filed a Civil Suit No.371 dated 11.06.1986 for dissolution and rendition of accounts of the partnership firm M/s Roop Rai Timber Works with effect from 24.01.1981. It was claimed in the suit that the plaintiff was a partner in the partnership firm by virtue of partnership deed dated 24.04.1981. The

plaintiff was entitled to the profits and loss to the extent of 33.33%. Her

husband, Sh. Amarjit died on 27.02.1982, and after the death of her husband, defendants have started denying the status of plaintiff as a partner in the firm, and she has not been allowed access to the account book of the firm and excluded from the business and management of the firm. The defendants admitted the execution of the partnership deed dated 24.04.1981. However, it was claimed that the plaintiff voluntarily retired from the partnership after receiving a sum of Rs.57,164.41/- in full and final settlement of her accounts. She also executed an acknowledgment of retirement dated 16.04.1982. The partnership firm was dissolved with effect from 31.03.1982, and the plaintiff's retirement came into effect with effect from 01.04.1982. The plaintiff has received a sum of Rs.7,000/- more than her due share and the plaintiff has also acknowledged her retirement from the partnership vide receipt dated 11.12.1982. After filing replication, the issues were called out, and the suit filed by the plaintiff for past with share of each partner to the extent of 33.33% from the date of dissolution of firm as on 12.06.1982. Upon reappraisal of evidence, the First Appellate Court has reversed the judgment and decree passed by the trial Court, against which RSA-1381-1989 has been filed.

4. On 11.06.1982 itself, Smt. Kamaljit Kaur and her 3 children filed Civil Suit No.370 of 1982 for dissolution and rendition of accounts of the firm M/s Pritam Singh Roop Rai and Sons. In this suit, the plaintiffs claim that late Sh. Amarjit Singh, husband of plaintiff No.1, was partner to the extent of 40% who died on 27.02.1982. Defendant No.2 and 3 after the death of Sh. Amarjit Singh have executed another partnership deed dated 02.03.1982, which is not binding on the plaintiffs. The plaintiffs have been excluded from the management and are misusing and mis-utilizing stock,

5. Defendant No.2 and 3 contested the suit on the ground that Sh. Amarjit Singh executed a Will dated 13.10.1980, in favour of his father Sh. Pritam Singh and therefore, the plaintiffs have no locus to file the suit. It was claimed that the partnership stood dissolved on the death of Sh. Amarjit Singh on 27.02.1982, and the amount standing in the name of Sh. Amarjit Singh was to be credited as per retirement deed dated 16.04.1982, which was reiterated in the agreement dated 11.11.1982. Both the Courts decreed plaintiff's suit and held that the Will dated 13.12.1982, is surrounded by suspicious circumstances which is subject matter of RSA-627-1990. The defendants have filed RSA-627-1990, challenging the concurrent judgments of the Courts below.

6. Smt. Kamaljit Kaur also filed Civil Suit No.687 of 1982 for the grant of decree of declaration that the decree passed on 09.11.1982 in Civil Suit No.431 dated 11.06.1982, is illegal, void and not binding upon the plaintiff with a consequential relief of permanent injunction restraining defendants No.2 and 3 from operating the bank accounts and restraining defendant No.4 and 5 from allowing operation of bank accounts of the firm M/s Roop Rai Timber Works. In this case, she claims that the decree has been obtained by coercion and fraud. Defendants No.1 to 3 contested the suit while denying any pressure, duress, fraud or undue influence. Both the Courts have decreed Smt. Kamaljit Kaur's suit. The defendants have assailed the correctness of concurrent findings of fact in RSA-1150-1987.

7. Sh. Pritam Singh filed Civil Suit No.143-1983, claiming the property left behind by Sh. Amarjit Singh on the basis of Will dated 13.11.1980, with a consequential relief of permanent injunction. This suit was contested by Smt. Kamaljit Kaur and her children. The suit was

Dismissed by the trial Court, which in appeal has been upheld by the First

Appellate Court. The plaintiff has filed RSA-1429-1990, challenging the concurrent findings of fact arrived at by the Courts below while dismissing his suit.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the judgments of the Courts below in all the cases as well as requisitioned lower Court record.

9. In RSA-1381-1989, the learned counsel representing the appellant (Smt. Kamaljit Kaur) contends that Sh. Pritam Singh has failed to prove that Smt. Kamaljit Kaur appended her signatures on documents dated 16.04.1982. While referring to the deposition of Sh. Ram Murty Aggarwal, the learned counsel representing the appellant contends that Sh. Pritam Singh has failed to prove that Smt. Kamaljit Kaur did sign the retirement deed and settled her accounts. He submit that DW-5 Sh. Subhash Kumar has failed to prove agreement dated 11.11.1982.

10. Per contra, the learned counsel representing Sh. Pritam Singh, Sh. Manjit Singh, Smt. Baljeet Kaur contends that in RSA-1381-1989, the findings of fact arrived at by the First Appellate Court need no interference. He has submitted that the documents have been proved on appreciation of evidence.

11. This Court has carefully examined the document dated 16.04.1982, which is Ex.D-3 in Civil Suit No.371 dated 11.06.1986.

In this receipt, she acknowledges her voluntary retirement and receipt of Rs.57,164.41/- as her share from M/s Roop Rai Timber Works in full and final settlement of her accounts. She also acknowledges that the amount found due in the name of her husband late Sh. Amarjit Singh in the firm M/s Pritam Singh Roop Rai and Sons, G.T. Road, Khanna, be credited in the

names of her children Smt. Surjeet Kaur etc. In view of the documentary

evidence, it would not be appropriate to rely upon oral evidence. Moreover, in Ex.D-10, the copy of the written statement filed by Smt. Kamaljit Kaur in the civil suit titled as Roop Rai Timber Works and others Vs. Smt. Kamaljit Kaur, she has admitted that there was talk of compromise and with the intervention of respectable, some progress was made.

12. Keeping in view of aforesaid facts, It would not be appropriate for this Court to interfere with the findings of fact arrived at by the First Appellate Court in RSA-1381-1989. Smt. Kamaljit Kaur has failed to prove that her signatures were obtained under duress, coercion , undue influence or fraud. She has failed to plead and prove the complete particulars of the fraud, which is alleged to have been played by her father-in-law Sh. Pritam Singh.

RSA-627-1990

13. In RSA-627-1990, the defendants are assailing the concurrent findings of fact arrived at by the Courts below while decreeing plaintiff's suit for dissolution of partnership from M/s Pritam Singh Roop Rai and Sons. In this partnership firm, Sh. Pritam Singh had 40% share, whereas Sh. Manjit Singh and Sh. Amarjit Singh had 30% each. On the other hand, Sh. Pritam Singh claimed that the partnership deed has already been dissolved. However, it was found by the Courts below that no evidence has been led to prove dissolution of partnership M/s Pritam Singh and Roop Rai Sons.

Though, Sh. Pritam Singh claimed share of Sh. Amarjit Singh, his son, on the basis of Will dated 13.11.1980. However, both the Courts have found that Sh. Pritam Singh failed to remove the suspicious circumstances. It has come on record that both the attesting witnesses namely DW-5 Sh. Mangal Singh and DW-6 Sh. Kirpal Singh are entrusted witnesses as Sh. Mangal

friend of Sh. Manjit Singh. Both the Courts have also found that execution of Will is surrounded by suspicion as there is no reason for Sh. Amarjit Singh to execute the Will at the fine youth age of 25 years while excluding his wife and 3 minor children, particularly when there is no evidence of disturbance in his married life.

14. Though, sincere efforts were made by the learned counsel representing Sh. Pritam Singh, however, failed to draw the attention of the Court to any substantive error. Hence, RSA-627-1990, is also dismissed.

RSA-1150-1987

15. RSA-1150-1987, has been filed by defendant No.1 to 3 against the concurrent findings of fact arrived at by the Courts below while decreeing Smt. Kamaljit Kaur's suit for the grant of decree of declaration that the decree passed on 09.11.1982 in Civil Suit No.431 dated 11.06.1982, is illegal, null and void. M/s Roop Rai Timber Works and Sh. Pritam Singh filed Civil Suit No.431-1982 against Smt. Kamaljit Kaur for the grant of decree of permanent injunction causing interference in the conduct of business of the firm including bank accounts and for directing State Bank of India and Punjab National Bank not to stop operation of the accounts. Smt. Kamaljit Kaur on 09.11.1982, made the statement that she does not press her application under Section 10 of the Code of Civil Procedure, 1908, and has no objection if the suit is decreed. Now, Smt. Kamaljit Kaur claims that the aforesaid statement was made under pressure. Both the Courts decreed the suit. As already noticed, the firm M/s Roop Rai Timber Works stood dissolved with effect from 31.03.1982. In these circumstances, the findings of the fact Courts below is erroneous because she has no right to interfere in the working of the firm. Hence, the judgments of the Courts below are set

RSA-1429-1990

16. In RSA-1429-1990, the plaintiff Sh. Pritam Singh has challenged the concurrent findings of fact arrived at by the Courts below while dismissing his suit for declaration that he is owner in possession of the properties left behind by his son Sh. Amarjit Singh on the basis of Will dated 13.12.1980. Both the Courts have found that the unregistered Will dated 13.12.1980, is surrounded by suspicious circumstances which have not be satisfactorily explained by the propounder. The learned counsel representing the appellant though made sincere efforts, however, failed to draw the attention of the Court to any substantive error. Hence, RSA-1429-1990, is also dismissed.

17. Resultantly, RSA-1150-1987, shall stand allowed, whereas the remaining three regular second appeals shall stand dismissed.

19. All the pending miscellaneous applications, if any, are also disposed of.

April 03rd, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*