

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

108

RSA-2218-2019 (O&M)
Date of decision:27.02.2024

Surinder Kaur

... Appellant

Vs.

Rajwinder Kaur & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Vipin Mahajan, Advocate and
Ms. Chandanpreet Kaur Ahluwalia, Advocate for the appellant.

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SUKHVINDER KAUR, J.

1. This is a regular second appeal filed by the defendant/appellant against the concurrent finding recorded by both the Courts below vide which suit of the plaintiff was partly decreed.

2. Brief facts as per plaint are that the deceased Baljit Singh S/o Khazan Singh had been recorded as co-sharer to the extent of 1/27 share out of the suit land as detailed in the head note of the plaint. Such Baljit Singh during his lifetime on 20.04.2005 solemnized second marriage with plaintiff No.1 according to Sikh Rites at Gurudwara Ramgarhia Sahib, Tibri Road, Gurdaspur. Out of their wedlock plaintiff No.2 was born on 10.07.2006. Baljit Singh died on 26.05.2015. it was alleged that Baljit Singh was earlier married with Kamal Kaur and out of their wedlock defendant No.2 was born. Deceased took divorce from his earlier wife Kamal Kaur. Daughter of deceased Baljit Singh is residing with defendant No.1, who is her grandmother. Plaintiff No.1 is widow, plaintiff No.2 is daughter, and defendant No.1 is mother and defendant No.2 is daughter of deceased Baljit

Singh and thus plaintiffs have acquired $\frac{1}{2}$ share out of the share recorded in the name of deceased Baljit Singh. Baljit Singh had been recorded as co-sharer to the extent of $\frac{1}{27}$ share of the suit land and as such plaintiffs became co-sharers to the extent of $\frac{1}{108}$ share each out of the suit land. Deceased Baljit Singh was serving in GREF department and after his demise defendant No.1 in connivance with her husband Khazan Singh in a clandestine manner got withdrew the entire benefits of deceased Baljit Singh while ignoring the plaintiffs. Defendants also want to usurp the share of the plaintiffs by threatening to alienate, mortgage and dispose of the share of Baljit Singh recorded in his name to the extent of $\frac{1}{27}$ share out of the suit land illegally and forcibly.

3. Vide judgment and decree dated 05.09.2017, suit of the plaintiff was partly decreed by the trial Court and appeal preferred before the First Appellate Court which was dismissed vide judgment and decree dated 09.12.2019. Hence, the present second appeal has been filed by the defendants/appellants.

4. Learned counsel for the appellant has contended that both the Courts below had not appreciated the fact that the respondents/plaintiffs could not prove their case by leading sufficient oral as well as documentary evidence, but the appellants/defendants have duly proved on record that respondent/plaintiff No.1 is not legally wedded wife of deceased Baljit Singh as she was earlier married with one Nirmal Singh in the year 2002 and without taking divorce from her previous husband, she came in contact with deceased Baljit Singh and started living with him. No marriage ceremony was ever performed between respondent/plaintiff No.1 and Baljit Singh. He

has further contended that after death of Baljit Singh, she left the house of deceased Baljit Singh and started living in her parental house. So the heavy onus was upon respondent/plaintiff No.1 to prove that she was legally wedded wife of the deceased Baljit Singh which she has miserably failed to prove on record. He has argued that as such she is not entitled to any share in the property left behind by Baljit Singh, son of appellant/defendant No.1 in the joint khata. Only the appellant/defendant and the minor daughter Navneet Kaur are entitled to the estate of Baljit Singh deceased, which factual aspect of the matter has not been taken into consideration by both the Courts below while decreeing the suit of the plaintiffs/respondents.

5. This is the specific pleading of appellant/defendant No.1 that the plaintiff/respondent No.1 solemnized second marriage with deceased Baljit Singh by concealing the fact of her previous marriage with Nirmal Singh S/o Bahadur Singh, without taking any divorce from said Nirmal Singh. So marriage of plaintiff No.1 with deceased Baljit Singh was null and void and the onus was thus upon defendant No.1 to establish the aforesaid facts as claimed by her. No documentary evidence regarding the same has been adduced on record. Even the oral evidence that has been led by the defendant No.1 in this respect is not sufficient to prove the aforesaid plea. DW1 Khazan Singh father-in-law of plaintiff No.1 and father of deceased Baljit Singh had categorically admitted during his cross-examination that he could not produce any proof of earlier marriage of plaintiff No.1 with Nirmal Singh. DW2 Baldev Singh has also stated during his cross-examination that he did not know Rajwinder Kaur - plaintiff No.1, which belief his stand that he had attended the marriage of plaintiff No.1,

solemnized with Nirmal Singh. He could not give exact date of marriage of plaintiff No.1 with said Nirmal Singh and the name of the *granthi* who had got solemnized their marriage.

6. So both the Courts below have rightly come to the conclusion that earlier marriage of Rajwinder Kaur with Nirmal Singh had not been proved, whereas admittedly Rajwinder Kaur lived with deceased Baljit Singh and one daughter i.e. defendant No.2 was born out of their relationship. So it has been rightly held that Rajwinder Kaur widow of deceased Baljit Singh is also entitled to share of property left behind by Baljit Singh to the extent of 1/4 share of property. So the plaintiffs and the defendants are the only legal heirs of deceased Baljit Singh who fall under the category of Clause I legal heirs of the deceased, and are entitled to the 1/4 share each out of 1/27 share of the deceased Baljit Singh. In the present suit, the other legal heirs of deceased Baljit Singh had not come to the Court and were not impleaded as parties to the suit.

7. No question of law much less substantial question of law arises for determination in the present second appeal. The appeal being without merits stands dismissed.

8. All pending applications, if any, also stand disposed of accordingly.

27.02.2024
harjeet

(SUKHVINDER KAUR)
JUDGE

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |