

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****201****RSA-401-1995 (O&M)****Date of Decision : 03.10.2024**

Sukhpal Kaur

....Appellant

VERSUS

Harjinder Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Maanvi Verma, Advocate for
Mr. Rajneesh Malhotra, Advocate for the appellant.

Mr. Adarsh Jain, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the plaintiff-appellant challenging the concurrent findings of fact returned by the Trial Court vide judgment and decree dated 17.10.1990 and by the First Appellate Court vide judgment and decree dated 22.07.1994.

2. The case set up by the plaintiff-appellant was that defendant-respondent No.3 is her father and he married twice. From the first wife there was no child but from the second wife, namely, Balwant Kaur, the plaintiff-appellant was born. It was further averred that the plaintiff-appellant was married in the year 1971 but her husband expired due to an accident. Thereafter, the plaintiff-appellant was persuaded by her father to get married a second time to Amrik Singh. The said marriage was solemnized on 13.04.1974. It was further averred that at the time of the second marriage of the plaintiff-appellant, defendant-respondent No.3 had given his half share in

the land in dispute to the plaintiff-appellant as she was the only natural heir and successor-in-interest of defendant-respondent No.3 as *Istridhan*. It was further the case that on 28.11.1976, defendant-respondent No.3 brought defendant-respondent No.1 in his house against the wishes of his relatives and that defendant-respondent No.3 never legally married defendant-respondent No.1. It was further averred that defendant-respondent No.2 – Manjit Singh as well as Simranjit Kaur and Paramjit Kaur were not born out of the wedlock of defendant-respondent No.1 and defendant-respondent No.3. It was further the case that defendant-respondent Nos.1 and 2 filed a suit against defendant-respondent No.3. The same was decreed in their favour in the year 1986 and defendant-respondent Nos.1 and 2 took possession of the suit property forcibly and illegally. The challenge to the decree dated 20.07.1986 was on the ground that defendant-respondent No.1 was never married to defendant-respondent No.3 and that defendant-respondent No.2 was not the legal son of defendant-respondent No.3. The further ground was that the half share belonged to the plaintiff-appellant which was gifted to her at the time of her marriage as *Kanyadan* and that defendant-respondent No.3 was addicted to various vices and also remained under the influence of defendant-respondent Nos.1 and 2. On notice, the defendant-respondents filed their written statement. It was averred that defendant-respondent No.3 married defendant-respondent No.1 and that out of the said wedlock defendant-respondent No.2 and two daughters were born. The allegation of having given half share of the land to the plaintiff-appellant as *Kanyadan* was refuted. The other allegations in the plaint were

also refuted. Replication was filed. On the basis of pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is owner in possession of $\frac{1}{2}$ share on the suit land ? OPP
2. Whether the decree dated 18.07.1986 in Civil Suit titled Smt. Harjinder Kaur vs. Harcharan Singh No.427 of 1986 is null, void, illegal and not binding on the rights of the plaintiff as alleged ? OPP
3. Whether the plaintiff has no locus standi to file the present suit ? OPD
4. Whether the suit is not maintainable in the present form ? OPD
5. Relief.

3. The Trial Court dismissed the suit vide judgment and decree dated 17.10.1990. Aggrieved by the same an appeal was preferred which appeal was also dismissed vide judgment and decree dated 22.07.1994. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellant would contend that the land was given to the plaintiff-appellant at the time of her marriage as *Kanyadan* and that she was assured that the suit land would be transferred in the name of the plaintiff-appellant. It is further the contention that the suit land was forcibly taken by the defendant-respondents.

5. *Per contra* learned counsel for respondent Nos.1 and 2 would contend that there is not an iota of evidence on the record to show that any

gift was made in favour of the plaintiff-appellant as alleged and further that there is no evidence to the effect that the possession was ever given to the plaintiff-appellant.

6. Heard.

7. In the present case though the stand taken was that the half share in the property in dispute was gifted to the plaintiff-appellant at the time of her marriage as *Kanyadan*, however, no such evidence was led to even remotely suggest that the property was gifted to her at the time of *Kanyadan*. Also, there is no evidence on the record to even remotely suggest that the possession was ever handed over to the plaintiff-appellant herein. Even the revenue record reflects the defendant-respondent No.3 as the owner in possession of the suit property. In the absence of any evidence having been led by the plaintiff-appellant to prove her case, no fault can be found with the judgments and decrees passed by both the Courts.

8. In view of the above, I do not find any merit in the present appeal. No question of law much less substantial question of law arises for determination in the present appeal. The present appeal being devoid of any merit is accordingly dismissed. Pending application, if any, also stands disposed off.

03.10.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO