IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1137-2023 (O&M)
Pronounced on: 22.04.2024

RanvirKaur and others

…Petitioners

Versus

Sangeeta and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. N. S. Khandola, Advocate
for the appellants.

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RITU TAGORE, J.

1. Appellants-defendants No.1 to 3 are assailing the concurrent findings of the learned Courts below, whereby the suit for declaration and permanent injunction filed by respondents No.1 and 2-plaintiffs was partly decreed in their favour, and the first appeal preferred by the appellants, has been dismissed.

2. For the sake of convenience, herein, parties to the *lis,* shall be referred to as per their status before the learned trial Court.

3. In order to appreciate the issues involved in this appeal, it is necessary to set out the relevant facts of the case.

4. According to plaintiff No.1-Sangeeta, on 23.01.2008, her marriage was solemnized with Harnek Singh son of Ajaib Singh resident of village Jhampur, Tehsil Kharar, District Mohali, as per Sikh rites and

ceremonies, and plaintiff No.2, a daughter, was born from the said wedlock. Harnek Singh died on 24.11.2008.

5. It is further the case of the plaintiffs that Harnek Singh had joint Monthly Income Scheme accounts at post office Mullanpur bearing No.650920 and 650922 as well as a saving account No.1383968 with defendants No.1 and 2, who are sisters, and defendant No.3, the mother of deceased. The deceased used to operate the said accounts and withdraw money from the same during his life time.

6. It is also the case of the plaintiffs that after the death of Harnek Singh, defendants No.1 to 3 attempted to withdraw the amount from the accounts (*ibid*), illegally in connivance with the postmaster, Mullanpur, prejudicing the rights of plaintiffs as legal heirs of the deceased over the amount in question, necessitating them to institute a suit for permanent injunction against defendants and postmaster, Mullanpur. Further, it is pleaded that during pendency of the said suit, as per orders of this Court, the amount lying in post office was transferred in the Punjab National Bank, defendant No.4. Thereafter, plaintiffs withdrew the aforementioned suit for permanent injunction and filed the instant suit.

7. The plaintiffs have pleaded that they are legal heirs of deceased, Harnek Singh, being his wife and daughter, thereof entitled to claim their rights over the amount lying in the Bank. The defendants do not admit their claim despite several requests made to them, which resulted in filing of the instant suit.

8. Upon being put to notice by the learned trial Court, defendants No.1 to 3, appeared and filed joint written statement and pleaded that Harnek Singh was brother of defendants No.1 and 2 and son of defendant No.3. They denied plaintiffs' relationship with deceased Harnek Singh by

pleading that no marriage of Harnek Singh was performed with plaintiff No.1. She is married to Deepak Shorie resident of House No.2645, Sector 47-C, Chandigarh and has one son from the said wedlock.

9. The defendants No.1 to 3 admitted the existence of post office accounts in question being joint with deceased Harnek Singh. However, they pleaded that as per post office rules and Monthly Income Scheme, after the death of one of the joint account holders, the survivor of the joint account holder, is entitled to operate the account and to receive the payment after the death of co-depositor, being a legal operator of the account. It is pleaded that defendantsNo.1 to 3 are legal heirs and survivors of the joint accounts and are entitled to receive the amount and plaintiffs have no right to receive the same. However, filing of a civil suit for permanent injunction and its subsequent withdrawal by plaintiffs is admitted. The transfer of the amounts to Punjab National Bank, defendant No.4 as per order dated 29.04.2009, passed in CWP No.6424 of 2009, is also admitted by the defendants. By challenging the *locus standi*of the plaintiffs to file the suit, they prayed for its dismissal.

10. Defendant No.4-PunjabNational Bank, filed the written statement and admitted receiving the amount from the defendants No.1 to 3 and depositing the same in FDRs, and further freezing the payment of said FDRs as per Court order. It is pleaded by Bank that plaintiffs have no *locus standi* and cause of action to file the suit and prayed for its dismissal.

11. The plaintiffs filed the replication and reiterated their version by controverting the defendants' version. Since, the parties were at variance, the learned trial Court framed the following issues:-

> *"I. Whether the plaintiff is entitled to the declaration as prayed for? OPP*

> *II. Whether the plaintiff is entitled to receive the amounts in the account No.077900DP00002023 in the name of defendant No.1, 077900DP00002014 in the name of defendant No.3, 077900DP00002032 in the name of defendant No.2 transferred in the bank of defendant No.4 in the name of the plaintiff? OPP*
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> *III. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for? OPP*
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> *IV. Whether the suit of the plaintiff is not maintainable? OPD*
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> *V. Whether the suit of the plaintiff is time bared? OPD*
>
> *VI. Whether the plaintiff has not come to the Court with clean hands?OPD*
>
> *VII. Relief."*

12. The parties presented the evidence in support of their averments, as detailed in the judgment of learned trial Court. Upon appraisal of evidence, learned trial Court vide judgment and decree dated 01.08.2019, partly decreed the suit with costs, observing that plaintiffs and defendant No.3, the mother, are Class-I heirs of the deceased and are entitled to claim the amount left by the deceased Harnek Singh in the accounts in question, and restrained the defendants No.1 to 3 from withdrawing or operating the account maintained with Punjab National Bank (defendant No.4), until the issuance of Succession Certificate in accordance with law.

13. The defendants appealed against the judgment and decree of learned trial Court. On re-appraisal of the evidence, learned Appellate Court, affirmed the findings of learned trial Court and dismissed the appeal. Being aggrieved by the aforementioned judgment and decree, the defendants No.1 to 3 preferred this Regular Second Appeal.

14. Learned counsel for the appellants submitted that opening of three accounts in Post Office Mullanpur, jointly in the names of defendants No.1 to 3 and their deceased brother Harnek Singh, with defendant No.1 (RanvirKaur) as nominee to receive the amount from the saving account No.1383968, in case of death of Harnek Singh, is not in dispute. The amount

is lying in the shape of FDR in Punjab National Bank (defendant No.4), as per the order passed in CWP No.6424 of 2009. Learned counsel submitted that both the Courts below failed to consider the fact that two accounts were opened by defendants No.1 and 2 alongwith their deceased brother Harnek Singh, in accordance with post office Monthly Income Account Rules, 1987, which provides that if one of the depositor of the Monthly Income Scheme dies; the account will be treated as single account in the name of the surviving depositor from the date of death of the said depositor and the surviving depositor will withdraw the excess amount in excess of the limit for single depositor. Learned counsel stated that learned Courts below overlooked the said rules and wrongly held that respondents are entitled to claim the amount. Learned counsel stated that one of the accounts opened in post office Mullanpur was joint with appellant No.2 and deceased Harnek Singh and appellant No.1 was the nominee to receive the amount in case of death of the account holder. This aspect was not taken into account and Post Office Savings Bank General Rules, 1981 were wrongly interpreted by the learned Courts below.

15. It is also contended by the learned counsel that relegating the parties to obtain Succession Certificate without declaring the title and share of the account-holder is bad in eyes of law, as such, issues cannot be decided in summary proceedings of grant of Succession Certificate. The respective title of the account holders could only be determined in civil suit. Furthermore, granting the relief by way of Succession Certificate was beyond the pleadings of the plaintiffs, which is not permissible under the law. In support of his arguments, learned counsel referred to a judgment of Hon'ble the Supreme Court of India in ***State of Uttarakhand and another Vs. Mandir Sri LaxmanSidhMaharaj, 2017(4) R.C.R. (Civil) 801***.

16. Learned counsel also urged that learned Courts below failed to consider that suit filed by plaintiffs was time barred. It was filed after 6 years from the death of deceased Harnek Singh, whereas a suit for declaration was required to be filed within three years from death of deceased Harnek Singh. Learned counsel also urged that learned Courts below wrongly held the plaintiffs as legal heirs of deceased, whereas no cogent evidence was led by plaintiffs to prove that plaintiff No.1 was married to Harnek Singh.

17. On the above submissions, it is stated by learned counsel for the appellants that findings of learned Courts below are against facts and law, and are liable to be set aside. Accordingly, a prayer is made to set them aside by dismissing the suit of plaintiffs.

18. I have considered the submissions of learned counsel for appellants and have gone through the record, and hold that findings rendered by learned trial Court which are affirmed by the learned first Appellate Court are based on correct appreciation of evidence. They are factually and legally valid for the reasons stated below.

(i) Learned counsel for the appellant-defendants No.1 to 3 failed to assail the findings recorded by learned trial Court, holding plaintiff No.1 as wife and plaintiff No.2 as daughter of deceased, Harnek Singh and, as such, they are Class-I heirs of the deceased. For drawing aforesaid inferences and conclusions, learned Courts below considered the unrebutted version of the plaintiff No.1, who deposed that her marriage was solemnized with Harnek Singh on 23.01.2008 and plaintiff No.2 was born from the said wedlock, which received support from unblemished testimonial account of PW-3, who attended the marriage of the plaintiff No.1 with Harnek Singh and saw them cohabiting together as husband and wife. The learned Courts below also noted the fact that in earlier suit (Ex.P-3/9) for partition and possession filed by plaintiffs against defendants, the plaintiffs were declared as legal heirs of Harnek Singh and defendants did not challenge the aforesaid findings. SukvirKaur the sister of deceased, while appearing as DW-1 admitted that they never filed any suit challenging that plaintiff No.1 and plaintiff No.2 are not the legally wedded wife and daughter of her deceased brother, Harnek Singh. Her statement on the whole, denying the marriage of plaintiff No.1 with deceased Harnek Singh is casual projection of denial and avoidance, which is not sufficient to believe the same. In view of the evidence, it can be fairly held that learned Courts below rightly declared plaintiffs as Class-I legal heirs of deceased Harnek Singh.

ii) Once plaintiffs have been declared as Class-I LRs of deceased, as such, they have *locus standi*and cause of action to file the suit. The learned lower Courts, thus, rightly held so. No illegality can be imputed to said findings.

iii) Now,falls for determination the spinal issue; whether observation of the learned Courts below holding the entitlement of plaintiffs to the amount lying in the bank, pertaining to the joint account of deceased, is justified? Learned counsel for the appellants-defendants No.1 to 3 has referred to the Rule 16 of the Post Office Rules, pertaining to Monthly Income account, which reads as under:-

> *"If one of the depositors of a MIS account dies, the account will be treated as a single account in the name of the surviving depositor from the date of death of the said depositor. When a report to this effect is received in the post office, the Postmaster will ask the surviving depositor to withdraw the excess amount in excess of the limit prescribed for single depositor as this amount will not carry interest from the date of death of the joint depositor. The interest already paid on this excess amount will be recovered or adjusted."*

iii(1) The learned counsel also referred to para No.23 of the judgment of the learned trial Court where the Court quoted the Post Office Savings Bank General Rules, 1981 Chapter 8 Clause 15 providing that post office is required to give precedence to the nominee over all other persons staking claims on the amount while settling the deceased's claims cases and such payment made to the nominee absolves the post office from all future liability in respect of the deposit. The learned counsel, thus, on the basis of the said Rules has urged that learned Courts below erred in restraining the defendants No.1 to 3-nominee to deal with the amount of the deceased lying in the post office schemes.

iii(2) The perusal of the above mentioned Rules would show that in case of rival claims on the death of an account-holder, the post office shall discharge its liability by giving amount to the nominee(s). Likewise in case of 'Monthly Income Scheme Account' on death of a joint account holder, account will be treated single and surviving depositor is permitted to withdraw the access amount beyond the limit prescribed for single depositor. These Rules do not provide that legal heir(s) is/are not entitled to the amount left by the deceased. A nominee is a temporary custodian appointed by owner until succeeded by legal heirs. The rights of a nominee are subordinate to those of beneficiaries of the law. In ***Shakti Yezdani and another Vs. JayanandJayantSalgaonkar and others, 2024(1) RCR (Civil) 270,***it was held as under:-

> *"26. A consistent view appears to have been taken by the Courts, while interpreting the related provisions of nomination under different statutes. It is clear from the referred judgments that the nomination so made would not lead to the nominee attaining absolute title over the subject property for which such nomination was made. In other words, the usual mode of succession is not to be impacted by such nomination. The legal heirs therefore have not been excluded by virtue of nomination."*

iii(3) In ***Vishin N. Khandchandani Vs. VidyaLachmandasKhanchandani, 2000(4) RCR (Civil) 95*** it was held as:

> "*Any amount paid to the nominee after making valid deductions it becomes the estate of the deceased and devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder - Nominee has a prior right to receive the amount - Other heirs of the holder have a right to claim the same as per their right to succession to the estate of the holder - Therefore the Act is no bar in grant of succession certificate in favour of legal heirs/representatives of*

deceased holder to recover the amount of certificates from the nominee - The law laid down in Sarbati Devi's case, 1984(1) SCC 424 holds the field and is equally applicable to the nominee becoming entitled to the payment of national savings certificates as well."

iii(4) Since, plaintiffs have been declared as class-I legal heirs of deceased Harnek Singh, therefore, they are entitled to lay claim over the amount left by the deceased in schemes and the saving account. Accordingly, the findings of learned Courts below are legally and factually valid.

iii(5) The learned Courts below has observed that both plaintiffs and mother (defendant No.3) are the class-I heirs of deceased and are entitled to succeed to property left by deceased by way of natural succession. So, it is not the case where the rights of the parties have not been determined. For recovery of debts/ securities left by the decease, as per provision of law, SuccessionCertificate is required. Learned Appellate Court also observed that petitioners have already filed a petition for grant of Succession Certificate. The Court has inherent power to issue such orders or directions as may be necessary for the ends of justice. Thus, directions given by the Court to apply for Succession Certificate for obtaining the amount in question left by the deceased cannot be regarded as flawed. The plaintiffs have pleaded that on threat being issued by defendants No.1 to 3 to withdraw the amount, they filed the suit. It is an admitted fact that earlier, plaintiffs had filed a suit for permanent injunction, restraining the defendants No.1to 3 and Sub Post Mater Mullanpur from withdrawing that amount in question. As per Article 58 of Limitation Act suit for declaration is filed within three years when right to sue, first accrues. In given facts and evidence presented on record, suit does not appear to be time barred.

19. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.

20. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on application of oral and documentary evidence. I affirm the findings and find no ground for interference much less involvement of any substantial question of law.

21. Resultantly, there is no merit in the appeal and is, hereby, dismissed.

22. Pending miscellaneous application(s), if any, are also disposed of accordingly.

(RITU TAGORE)
JUDGE

22.04.2024
Rimpal

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