



THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

101

RSA-279-1992 (O&M)
Reserved on : 27.01.2025
Date of Decision : 06.02.2025

Chanderawali & Anr ... Appellant(s)

VERSUS

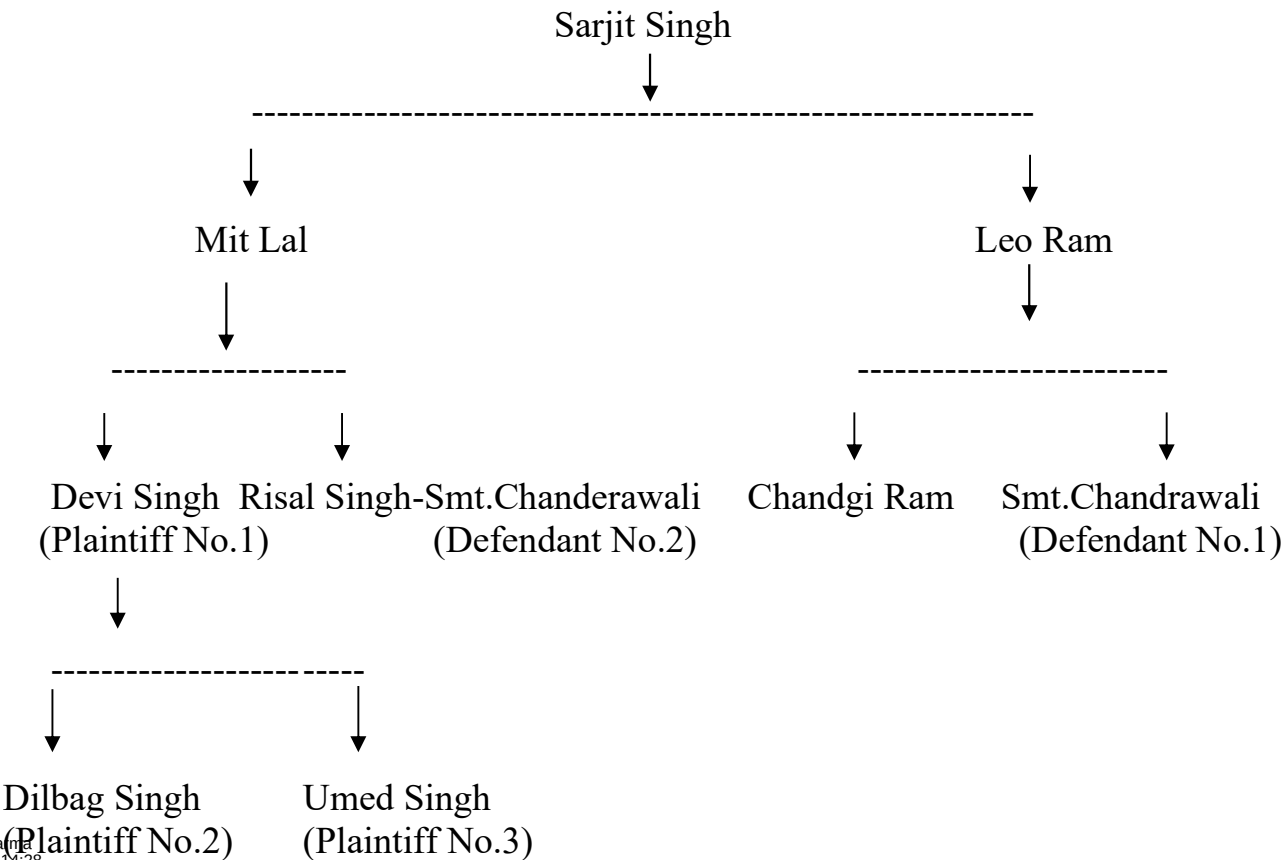
Devi Singh @ Dewa Singh (deceased) through LRs & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vivek Dahiya, Advocate for appellant No.1.
Mr. N.C. Kinra, Advocate for the respondents.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellants challenging the judgment and decree dated 12.12.1991 passed by the First Appellate Court whereby the judgment and decree dated 18.09.1990 passed by the Trial Court dismissing the suit of the plaintiff-respondents has been reversed and the suit has been decreed.
2. For appreciating the point in issue in the present case the following pedigree table is being reproduced :



3. The plaintiff-respondents filed the present suit for declaration that they were co-owners of land comprised in Khewat No.83 of revenue estate of Village Ladpur. Sarjit Singh, the predecessor-in-interest of the plaintiff-respondents was the owner of the land. After the death of Sarjit Singh, his property was inherited by his two sons, namely, Mit Lal and Leo Ram. On the death of Mit Lal the property was inherited by his sons, namely, Devi Singh and Risal Singh. Risal Singh died on 04.11.1944 leaving behind his widow defendant-appellant No.2 – Chanderawali. It was averred in the plaint that Chanderawali (defendant-appellant No.2 herein) contracted a karewa marriage with Chandgi Ram son of Leo Ram on 07.11.1945 and that a female child was born from the wedlock, however, the child died. Thereafter, Chandgi Ram died in 1956 and Chanderawali (defendant-appellant No.2 herein) left the village and settled in village Mitrean in Delhi with her parents. It was further the case set up that as a result of the karewa marriage, the property of Risal Singh would be inherited by the plaintiff-respondent No.1 and that Chanderawali (defendant-appellant No.2 herein) would have no right, title or interest in the property. The suit was filed on 09.02.1987 and it was averred that the plaintiff-respondent No.1 – Devi Singh – was an illiterate person and that he came to know that the land stood in the name of Chanderawali (defendant-appellant No.2 herein) and that she had sold the land by way of a sale deed dated 23.08.1984 in favour of Chandrawali daughter of Leo Ram (defendant-appellant No.1). The suit was filed challenging the right of Chanderawali (defendant-appellant No.2 herein) in the suit property on the ground that she had contracted a karewa marriage with Chandgi Ram. In the written statement filed by Chanderawali (defendant-appellant No.2 herein) it was admitted that Risal Singh had died

in 1944. It was denied that she had contracted a karewa marriage with Chandgi Ram. It was further averred that in a suit for pre-emption which was filed qua a sale made by her the plaintiff-respondent No.1 – Devi Singh – had himself appeared as a witness. Chandrawali daughter of Leo Ram (defendant-appellant No.1) was proceeded against *ex parte*. Replication was filed. On the basis of the pleadings, the following issues were framed :

1. Whether the sale deed dated 23.8.84 executed by defendant No.2 in favour of defendant No.1 is illegal, void and not binding on the plaintiffs as alleged in the plaint ? OPP
2. Whether defendant No.2 entered into a Karewa marriage with Chandgi on 7.11.45 ? If so its effect ? OPP
3. If Karewa marriage is proved, whether plaintiffs have become owners of the property after said Karewa marriage ? OPP
4. Whether the plaintiffs are entitled for permanent injunction as prayed for in the plaint ? OPP
5. Whether the suit is time barred ? OPD
6. Whether the suit is not maintainable in the present form ? OPD
7. Whether the plaintiffs are estopped by their own act and conduct from filing this suit ? OPD
8. Whether the suit is bad for misjoinder of necessary parties ? OPD
9. Whether the defendant No.1 is a bonafide purchaser in good faith for consideration ? OPD
10. Relief.

4. The Trial Court vide judgment and decree dated 18.09.1990 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-respondents and vide judgment and decree dated 12.12.1991 the appeal was allowed by the First Appellate Court and the judgment and

decree passed by the Trial Court was reversed. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellant No.1 would contend that the mutation in favour of Chandrawali (defendant-appellant No.2 herein) was entered into on 16.01.1945 (Ex.D2) and she had been in possession of the suit property since the death of Risal Singh. It is further the contention of the learned counsel for defendant-appellant No.1 that it has come on the record, which was so admitted by the plaintiff-respondents, that the pension of Risal Singh was being drawn by Chandrawali (defendant-appellant No.2 herein) as his widow. The learned counsel has further contended that qua the alleged Karewa marriage performed with Chandgi Ram there is no custom which has been pleaded and proved by the plaintiff-respondents according to which Chandrawali (defendant-appellant No.2 herein) could have contracted a Karewa marriage with the cousin of her husband. The learned counsel has further contended that much reliance has been placed on the record of a civil suit being CS-598-1984 decided on 19.03.1986, which was a suit for possession filed by one Sarupi against Chandrawali daughter of Leo Ram (defendant-appellant No.1), wherein the plaintiff-respondent No.1 – Devi Singh – had appeared as a witness and was given a suggestion by the counsel for the defendant-appellant No.1 whether it was correct that after the death of Risal Singh, Chandrawali (defendant-appellant No.2 herein) had contracted a Karewa marriage with Chandgi Ram. The learned counsel would further contend that there is no admission on the part of Chandrawali (defendant-appellant No.2 herein) that there was any Karewa marriage with Chandgi Ram. The learned counsel, referring to the judgment and decree passed by the First Appellate Court, has further

contended that the entire judgment is based on conjectures and surmises.

6. *Per contra*, the learned counsel for the plaintiff-respondents would contend that in Jaat community, there is a custom of Karewa marriage and since Chanderawali (defendant-appellant No.2 herein) had contracted a Karewa marriage with Chandgi Ram son of Leo Ram i.e. cousin of Risal Singh, she lost all her rights to the property of Risal Singh. It is further the contention of the learned counsel for the plaintiff-respondents that in the pre-emption suit when Devi Singh appeared as a witness, a specific suggestion was put to him by the counsel for the defendant-appellant No.1 regarding the Karewa marriage between Chandgi Ram and Chanderawali (defendant-appellant No.2 herein). Further reliance has been placed upon the oral testimonies of the witnesses who appeared on behalf of the plaintiff-respondents to prove that Chanderawali (defendant-appellant No.2 herein) had contracted a Karewa marriage with Chandgi Ram.

7. I have heard the learned counsel for the parties.

8. In the present case the Trial Court had dismissed the suit after returning a finding that Chanderawali (defendant-appellant No.2 herein) was drawing the pension of her husband – Risal Singh – who was serving in the Indian Military at the time of his death as his widow which was an undisputed fact. The property of Chandgi Ram son of Leo Ram who died in 1973 was mutated on 11.01.1974 (Ex.D3) in favour of the daughter of Leo Ram. No property was mutated in the name of Chanderawali (defendant-appellant No.2 herein). Reliance placed upon the suggestion put to Devi Singh in the pre-emption suit by the learned counsel for the plaintiff-respondents would not come to their aid inasmuch as Chanderawali (defendant-appellant No.2 herein) was not a party to the said suit. The

parties to the suit were Sarupi and Chandrawali daughter of Leo Ram (defendant-appellant No.1 herein). Ex.PZ is the examination-in-chief and cross-examination of Devi Singh in the said case in which a suggestion was put regarding the Karewa marriage of Chandgi Ram and Chanderawali (defendant-appellant No.2 herein). Though the leaned counsel for the plaintiff-respondents has tried to draw mileage from the said admission, however, in the absence of any clear unambiguous and unconditional admission, no advantage can be drawn from the same. There is no admission in the statement of Chanderawali (defendant-appellant No.2 herein) when she stepped into the witness box as DW4 regarding the Karewa marriage with Chandgi Ram. Since the year 1945 (Ex.D2) the property stands mutated in the name of Chanderawali (defendant-appellant No.2 herein). The First Appellate Court while reversing the judgment and decree passed by the Trial Court has based its findings on assumptions and presumptions and shifting the onus on to Chanderawali (defendant-appellant No.2 herein) to show cause as to why she had not left the village after the death of Risal Singh and further held that it does not appeal to reason as to why a widow would remain about 12 years in the house of her deceased husband and thereafter shifted to her parents. The entire reliance by the First Appellate Court is on the oral testimonies and despite holding that though there was no ration card or voter card to show that Chanderawali (defendant-appellant No.2 herein) was the wife of Chandgi Ram yet held that it cannot be said that there was no Karewa marriage. The oral testimonies viz-a-viz the documentary evidence i.e. the mutation entered into on 16.01.1945, the undisputed fact that Chanderawali (defendant-appellant No.2 herein) was drawing the pension of her husband – Risal Singh – as his widow as also the fact that the

entire property of Leo Ram had been mutated in the name of his daughter and Chanderawali (defendant-appellant No.2 herein) got no share, go a long way to show that there was no Karewa marriage performed by Chanderawali (defendant-appellant No.2 herein) with Chandgi Ram especially in the absence of any cogent evidence to the contrary. A stray suggestion in a suit in which Chanderawali (defendant-appellant No.2 herein) herself was not a party cannot be held against her to hold that she had performed Karewa marriage with Chandgi Ram. In the absence of any cogent evidence to even remotely suggest that there was a Karewa marriage between Chanderawali (defendant-appellant No.2 herein) and Chandgi Ram, the judgment and decree passed by the First Appellate Court cannot be sustained.

9. In view of the judgment of the Hon'ble Supreme Court in the case of **Pankajakshi (Dead) through LRs & Ors. vs. Chandrika & Ors. [AIR 2016 SC (Civil) 1091]** there would be no requirement to frame substantial questions of law.

10. In view of the above, the present appeal is allowed. The judgment and decree dated 12.12.1991 passed by the First Appellate Court is set aside. The suit of the plaintiff-respondents is dismissed. Pending applications, if any, also stand disposed off.

06.02.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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