

(2003) 08 P&H CK 0051

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1336 of 1980

Sant Kaur @ Santo

APPELLANT

Vs

Tej Kaur and Others

RESPONDENT

Date of Decision: Aug. 22, 2003

Acts Referred:

- Representation of the People Act, 1951 - Section 74(1)

Citation: (2003) 135 PLR 815 : (2003) 4 RCR(Civil) 419

Hon'ble Judges: S.S. Nijjar, J

Bench: Single Bench

Advocate: Alok Jain, for the Appellant; I.S. Vimal, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Nijjar, J.

This Regular Second Appeal has been filed against the judgment and decree dated 24.01.1980 rendered by Mr. Sarup Chand Gupta, Additional District Judge, Faridkot, in Civil Appeal No. 106 of 1979, accepting the appeal against the judgment and decree dated 08.11.1978 passed by Mr. K.K. Kataria, PCS, Sub Judge, 1st Class, Moga. in Civil Suit No. 210 of 1976, whereby the suit of the plaintiffs had been decreed for possession of half share of the house in dispute towards the eastern side as shown in the site plan annexed to the plaint.

2. Briefly, the facts, as pleaded before the learned Courts below, may be noticed, For the purpose of this appeal, the parties shall be referred to in their capacity in the trial Court.

3. The plaintiff, Sam Kaur @ Santo claims to be the widow of one Modan Singh son of Bishan Singh, resident of Nanak Nagri, Moga. Ajmer Singh, plaintiff No. 2, claims to be the son of Modan Singh is said to have died one year before the finding of the suit. He is alleged to be the owner of house situated on a part of the land belonging to Khewat No. 4229, Khatauni No. 4826, Khasra No. 73/157, measuring 2 Kanals 5

Marias, as entered in the jamabandi for the year 1969-70, in Moga. It was the case of the plaintiffs that they had become the owners of the house in dispute after the death of Modan Singh, being his only legal heirs. According to the plaintiffs, defendant No. 1, sister of the deceased, has got the mutation of inheritance of Modan Singh, sanctioned in her favour, in conspiracy with the revenue officials, the mutation, according to the plaintiffs, was not binding on them as the same was sanctioned without any notice being issued to them. Relying on that mutation, the defendants have taken unlawful and illegal possession of the house in question. It was further alleged that the defendant Nos. 2 and 3 have wrongly purchased half share of the house from defendant No. 1. Thus, the factum and validity of the sale deed was also not admitted by the plaintiffs.

4. Defendant No. 1 in her written statement denied the case put forward by the plaintiffs. She further stated that Modan Singh had sold 2 and half Marias of land out of Khasra No. 73/157 to defendant Nos. 2 and 3 about three years ago. It was defendant Nos. 2 & 3, who had built the house on the plot. It was her case that she was the only legal heir of Modan Singh, being the real sister. It was denied that plaintiff No. 1 had any relationship with deceased Modan Singh.

5. Defendant Nos. 2 and 3 in their separate written statement reiterated that they had purchased 2 and half Marias of land, out of Khasra No. 73/157 by a registered sale deed dated 16.05.1974. They also pleaded that the construction had been raised by them on the aforesaid land. They supported the plea of defendant No. 1 to the effect that she is the only legal heir of the deceased Modan Singh, being his sister.

6. On the pleadings of the parties, the learned trial Court framed the following issues:-

1. Whether the plaintiffs are the heirs of deceased Modan Singh and have locus-standi to bring this suit? OPP

2. Whether defendant No. 1 is the only legal heir of the deceased Modan Singh? OPD

3. Whether defendants No. 2 and 3 had purchased land measuring 2 and half marlas out of khasra Nos. 73/157 from Modan Singh deceased? OPD 2 and 3.

4. Whether construction of house was made by defendants No. 2 and 3? OPD 2 and 3.

5. Relief.

7. After going through the entire evidence, the teamed trial Court decided issue No. 1 in favour of the plaintiffs and held that the plaintiff No. 1 is the wife of Modan Singh deceased. In view of the findings on issue No. 1, issue No. 2 was decided against defendant No. 1 i.e. she had no right to any share in the property of the deceased. Issue Nos. 3 and 4 were decided in favour of defendant Nos. 2 and 3.

Hence, the suit has been decreed for possession of half share of the house in dispute towards the eastern side in the site plan annexed to the plaint, in favour of the plaintiffs No. 1 and against the defendants. Plaintiff No. 1 has been held to be the only legal heirs of the deceased Modan Singh, being his widow.

8. Aggrieved against the judgment and decree of the learned Trial Court, defendant No. 1 filed the appeal which has been decided by the learned Additional District Judge, Faridkot, on 24.01.1980, against which the present Regular Second Appeal has been directed.

9. The learned Lower Appellate Court after considering the entire evidence again has held that the findings of the learned trial Court on issue Nos. 1 and 2, are not correct and has reversed the same. It has been held that plaintiff No. 1 had no locus-standi to file the suit. Issue No. 2 has been decided in favour of defendant No. 1 by holding that she is the only legal heir of deceased Modan Singh.

10. At the admission stage, the learned counsel for the appellant had framed the following substantial questions of law for the consideration of this Court, which are as under:-

1. Whether an entry in the electoral roll showing the appellant Sant Kaur to be the wife of Modan Singh deceased is a relevant fact and so to be taken into consideration while deciding the question as to whether the appellant was the wife of the deceased-Modan Singh?

2. Whether once a marriage has been proved as a fact it will be incumbent on the opposite party who challenges the legality of the marriage to rebut the presumption as to whether the ceremonies necessary for the marriage were performed?

11. Mr. Alok Jain, learned counsel for the appellant has submitted that the learned Lower Appellate Court has reversed the findings of fact recorded by the learned trial Court without proper appreciation of the evidence. According to the learned counsel, since there was an entry in the electoral roll showing plaintiff No. 1 to be the wife of the deceased, Modan Singh, the learned trial Court had rightly come to the conclusion that the legality of the marriage between Sant Kaur and Modan Singh had been established. In view of the entry in the electoral roll, it had to be presumed that all the ceremonies necessary for a valid marriage had been performed. This presumption had to be negated by defendant No. 1 by leading evidence. In support of the submissions, learned counsel has relied on a judgment of the Orissa High Court in the case of [Linga Mallik Vs. Ajodhya Mallikani and Another](#), , and a Full Bench decision of Kirtan Sahu, after him [Kirtan Sahu after him Uma Sahuani and Others Vs. Thakur Sahu and Others](#), .

12. Mr. Vimal, learned counsel appearing for the respondents, has submitted that the present appeal does not raise any substantial question of law and is, therefore, liable to be dismissed. He submits that two questions of law which have been raised

are not disputed at all. The learned Lower Appellate Court, after appreciating the entire evidence, has come to the conclusion that plaintiff No. 1 has failed to prove the case put forward.

13. I have considered the submissions made by the learned counsel for the parties.

14. The learned trial Court had accepted the plea put forward by defendant Nos. 2 and 3 that they had purchased two and half Marias of land from deceased Modan Singh vide registered sale deed dated 16.05.1974. There was cogent documentary as well as oral evidence led by defendants Nos. 2 and 3 in support of their plea. The oral evidence with regard to the sale/purchase of the property given by DW4, Ajmer Singh, was supported by the evidence of DW5, Shiv Shankar, Document Writer. He had deposed on oath that the sale deed Ex.D2 was scribed by him at the instance of Modan Singh deceased in favour of Kehar Singh and Anker Singh sons of Pal Singh, defendant Nos. 2 and 3, respectively. These findings of fact have not been assailed by the appellant by filing an appeal against the judgment. In fact, a perusal of the judgment of the learned Lower Appellate Court shows that the hearings in the learned Lower Appellate Court proceeded on the basis that the only controversy between the parties was with regard to the eastern wing of the house in dispute. Therefore, the controversy was only with regard to the status of plaintiff No. 1 in relation to deceased Modan Singh. The only relevant question was as to whether she was the legally wedded wife of Modan Singh? The learned trial Court while discussing the evidence on issue Nos. 1 and 2 has relied solely on the entry in the electoral roll which has described plaintiff No. 1 as the wife of Modan Singh to hold that she was the wife of deceased Modan Singh. The learned trial Court took support from Linga Mallik's case (supra). Excepting this evidence, there is no other evidence to prove that plaintiff No. 1 was the legally wedded wife of deceased Modan Singh. In fact, in her cross-examination plaintiff No. 1, Sant Kaur, had admitted that one Ladha Singh was the father of plaintiff No. 2. Therefore, she had clearly told deliberate lies to the Court. The learned Lower Appellate Court in appreciating the evidence, has come to the conclusion that plaintiff No. 1 was not a reliable witness as she had no regard for the truth. It has also been held by the learned Lower Appellate Court that there is no reliable evidence to prove the marriage of plaintiff No. 1 with deceased. Modan Singh, The learned Lower Appellate Court has also correctly appreciated the ratio of law laid down in Linga Mallik's and Kirtan Sahu's cases (supra). In Linga Mallik's case (supra), it has been held that an entry in the electoral roll showing the plaintiff to be the wife of "S" is a relevant fact admissible in evidence. There is no dispute with the aforesaid proposition of law. Mere admissibility of the entry in evidence would not be irrebuttable proof of the marriage. The presumption is clearly rebuttable. The learned Lower Appellate Court, after discussing the entire evidence, has come to the conclusion that the presumption has been rebutted. In Kitran Sahu's case (supra), the Full Bench has held as under:-

"Electoral roll prepared under the Representation of the People Act is a public record within Section 35 and a Public document within Section 74(1)(iii) of the Act and is admissible in evidence as such and it is not necessary to call in evidence the author thereof or a person supplying the information to prove the roll as its genuineness will be presumed under this section when it is produced before the Court".

15. Again, there is no dispute with the aforesaid proposition of law. The learned Lower Appellate Court has rightly held that it was not necessary to call the author of the electoral roll to prove its genuineness. The learned Lower Appellate Court has concluded that plaintiff No. 2 is, admittedly, the son of Ladha Singh. However, the copy of the voters list Ex.P3 which was produced in Court shows Ladha Singh to be the son of Modan Singh. This clearly shows that the entry in Ex.P3 was not correct. The entry stands falsified from the admission of plaintiff No. 1 that Ladha Singh was the father of plaintiff No. 2. Further, this entry stands falsified by the testimony of PW2, Sarwan Singh, who had stated that only Ajmer Singh son of Modan Singh lived with Sant Kaur. This clearly goes to show that Butta Singh never lived with Sant Kaur in the house of Modan Singh as shown in entry Ex.P3. The plaintiff had also relied on the evidence of PW-3. Baldev Singh. He is a mason by profession. He had no special knowledge about the relationship of Sant Kaur with Modan Singh deceased. His evidence has been rightly rejected u/s 50 of the Indian Evidence Act. This witness had admitted in the examination-in-chief that he did not know that plaintiff No. 1 is the wife of Modan Singh deceased. He further stated that he did not know in which capacity she is residing with Modan Singh. In cross-examination, he stated that he did not know the name of village of Sant Kaur or that of Modan Singh. He did not see the house in which Modan Singh and Sant Kaur were residing. He could not see if they were residing in one room or in separate rooms. Even PW2, Sarwan Singh, in his cross-examination told outright lies. According to him, Sant Kaur was married to Modan Singh about 26 years ago. This is clearly belied by the evidence of Sant Kaur, PW1, herself as she has stated that Ajmer Singh was aged about 19 years on 01.12.1977 on which date her statement was recorded and that he was four years old when she came to Modan Singh. Thus, she became the wife of Modan Singh only 15 years ago and not 26 years back as projected by PW2, Sarwan Singh. There is absolutely no evidence with regard to the ceremony performed at the time of marriage. PW2 could not tell the name of the Granthi, who had performed the Anand Karaj ceremony. He did not know any of the relations either of Sant Kaur or Modan Singh. He was unable to say as to whether Ajmer Singh was the son of Modan Singh. On the other hand, it had been clearly admitted by Sant Kaur on oath that Ajmer Singh was the son of Ladha Singh and not Modan Singh. He feigned ignorance of the fact that Sant Kaur married to Ladha Singh, which was candidly admitted by Sant Kaur. The learned Lower Appellate Court has rightly ignored the evidence of PW2, Sarwan Singh. The learned Lower Appellate Court, thereafter, noticed that Hindu Marriage Act, 1955, came in force on 18.05.1955. According to

Section 7 of the Act, a Hindu Marriage can be solemnized by the performance of Shastric ceremonies and rites as prescribed by Hindu Law or the customary ceremonies and rites in substitution of shastric ceremonies, which prevail in the caste or community to which one of the parties, belong. The plaintiff have failed to lead any evidence about the performance of any shastric ceremony or customary ceremony. There is only the bald assertion of PW2 in cross-examination that the marriage of Sant Kaur with deceased Modan Singh had taken place by Anand Karaj ceremony. No foundation has been laid to show that the marriage of Modan Singh with Sant Kaur, as alleged would be governed by customary law.

16. In view of the aforesaid discussion, I am of the considered opinion that the judgment and decree of the learned Lower Appellate Court do not suffer from any legal inc firmity. No substantial question of law has been raised. Dismissed. No costs.