(2013) 05 P&H CK 0115

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2277 of 2011 (O and M)

Jalvir Singh Chahil	APPELLANT
Vs	
Baljit Kaur and Others	RESPONDENT

Date of Decision: May 1, 2013

Citation: (2013) 171 PLR 219

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

K. Kannan, J.

The appeal is posted for hearing before this Court on orders from the Chief Justice, when the appellant had not been ready at any hearing after the case was filed. I have examined the records and I proceed to pass the following order on merits. The suit was filed by the plaintiff for a declaration that the birth of defendants 2 and 3 showing the plaintiff as the father through the first defendant was void ab initio and also for mandatory injunction that the name of the plaintiff shall be removed from the birth register. The plaintiff was a non-resident Indian and the case had been filed through his power of attorney. Although the status of the first defendant as a wife as having been married lawfully to the plaintiff was an admitted fact, the birth of the two children on 15.02.1995 and 07.08.1996 through him was denied. It appears that there had been a dissolution of marriage between the plaintiff and the first defendant in a Court at United States of competent jurisdiction on 16.07.2002. He had filed the suit on a plea that the plaintiff came to know that his name has been wrongly entered as the father of the children on being informed by a third party. The children were not impleaded as parties. The father and brother of the ex-wife had been impleaded as persons who had brought about the wrong entries in the birth register. A written statement had been filed by the ex-wife denying the averments in the plaint but at the time of trial, the defendants had remained ex parte. The Court recorded evidence ex parte but still proceeded to dismiss the suit.

Even at the time of tendering evidence, the plaintiff did not appear but he had only offered evidence through his power of attorney.

2. While dismissing the suit, the trial Court found that a prayer for a declaration that the entries in the birth and death register were not correct and that they were void ab initio could not have been made in the absence of the State functionary which was responsible for making the entry. The Court also found that the status of the children as not born through the plaintiff could not have been granted in the absence of impleadment of the children themselves. The Court therefore found that although the defendants had remained ex parte, the plaintiff cannot obtain the decree in the manner sought for and dismissed the suit. It also found that the non examination of the plaintiff himself as most crucial and held that the evidence of merely a power of attorney to deny the status of the person stated to be the father must be taken as adverse to the plaintiff.

3. I agree with the reason given and even apart from above, there is also a statutory presumption conclusively availing to any child that may be born within a period of 210 days from the day of the marriage of a man and his wife. Admittedly, the children born were out of the loins of the first defendant. The first defendant''s status as a wife was not denied and the marriage itself was dissolved only on 16.07.2002. The children born during the subsistence of the marriage of man and the wife must be conclusively presumed to be the children of the mother through the man who was lawfully wedded to her. The statutory presumption cannot be displaced unless the plaintiff was able to be show non-access during the period of coverture. The suit was vexatious and correctly dismissed by both the Courts below. The second appeal is dismissed as devoid of merits.