(1965) 07 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 681 of 1963

Khushal Chand and Others	APPELLANT
Vs	
Hardwari Lal	RESPONDENT

Date of Decision: July 16, 1965

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: Dua, J

Bench: Single Bench

Advocate: D.N. Aggarwal, for the Appellant; A.C. Hoshiarpuri, for the Respondent

Final Decision: Dismissed

Judgement

Dua, J.

This appeal is concluded by a dead finding of fact and it is impossible to build any sound argument in support of the appeal against the two concurrent judgments of the Courts below:

The short question on which rests the fate of this appeal is whether Smt. Lachmi had after the death of Atma Ram, her first husband, remarried, Jagat Ram and if Hardwari Lal, who was the plaintiff, had been born to Smt. Lachhmi from this marriage. The trial Court after considering the entire evidence came to the conclusion that the plaintiff''s mother was Smt. Lachhmi, who was a sister of Kishan Das deceased and as such the plaintiff was the heir to the estate of Kishan Dass. Exhibit P. 5 is the Matriculation certificate of Hardwari Lal in which his parentage is given and he is shown to be the son of Jagat Ram. It is also in evidence that Smt. Lachhmi died as the wife of Jagat Ram of village Chhaproh : see Exhibit P. 3 death entry. The evidence trying to show that Smt. Lachhmi never married Jagat Ram was positively disbelieved by the trial Court. In the end, the trial Court''s conclusion was expressed in the following words:

* * I am convinced of the fact that the plaintiff''s mother Mst. Lachhmi was sister of Kishan Dass deceased and as such the plaintiff is the heir to the estate of deceased as against the defendants.

2. On appeal, the learned Additional District Judge affirmed the conclusion of the Court of first instance. The Appellate Court has in the course of the judgment observed that in cases like the present, reliable evidence can only be of the relatives or the neighbours who had attended such marriages and had seen the parties living together. All such witnesses were unanimous on the point that Smt. Lachhmi, widow of Atma Ram, had married Jagat Ram. But even ignoring this evidence, according to the lower appellate Court, there was sufficient material on the record to establish marriage with Jagat Ram of Smt. Lachhmi, daughter of Dasondhi of Gagret. The Court then mentioned some of the witnesses who had deposed to this effect. The Court has also considered the evidence on the question of the plaintiff joining a school as Jagat Ram''s son. Reliance has further been placed on Exhibit P. 6, the plaintiff''s Matriculation certificate. This certificate is Ex. P. 5 and is erroneously described as P. 6. The witnesses for the defendants have again been disbelieved by the lower Appellate Court as well. Apparently, the conclusions of the Court of first appeal are based on evidence on the record and will thus be findings which are precluded from scrutiny on facts by the Court of second appeal.

3. The appellants'' learned counsel has very seriously attempted to take me through the evidence with the object of convincing me that the conclusion of the lower Appellate Court, though ostensibly one of fact, is tainted with and vitiated by, an error of law because evidence accepted by the Appellate Court below should not have been reasonably accepted. I am wholly unconvinced by the cogency of this submission and am, therefore, unable to sustain it. The Privy Council has undoubtedly in one case used language, which if literally construed, taken out of the context, may suggest to a superficial observer that if the High Court considers that evidence accepted by the Court of first appeal could not have been reasonably accepted by it, then the finding of fact based thereon can be lawfully interfered with on second appeal. But, in my opinion, the correct legal position is that if the evidence accepted is such that no reasonable person could have accepted it, then and then alone can interference on second appeal be justified. In such a contingency, the position can truly be described to be that there is no evidence to support the rinding, and such a ground would, in my opinion, indisputably be a good ground for sustaining a second appeal. That is not so in the case in hand.

4. The argument that it is just and equitable to reappraise the evidence is equally inadmissible and, therefore, futile. What is administered by our Courts is justice according to law, and if section 100, Code of Civil Procedure, contains an inhibition against interference on second appeal with questions of fact bassed on evidence which are not vitiated by error of law, as enumerated therein, then it is incumbent on this Court to keep itself within the limits prescribed by that section and to out

step them by interfering with conclusions of fact.

5. The finding of the Court below has not been shown to be open to challenge in law and is completely covered by the mandate contained in section 100 of the Code.

6. The result, therefore, is that this appeal must be dismissed with costs which I hereby do.