

(2012) 01 P&H CK 0333

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3993 of 2009 (O and M)

Smt. Sunehri Devi

APPELLANT

Vs

Krishan and others

RESPONDENT

Date of Decision: Jan. 6, 2012

Acts Referred:

- Constitution of India, 1950 - Article 136
- Evidence Act, 1872 - Section 114, 50
- Hindu Marriage Act, 1955 - Section 11, 5

Citation: (2012) 4 RCR(Civil) 178

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: Rakesh Gupta, for the Appellant; Sanjay Verma, Advocate For Respondent Nos. 1 to 6, for the Respondent

Final Decision: Allowed

Judgement

A.N. Jindal, J.

This is defendant's appeal against the judgment and decree dated 3.10.2009 passed by the Additional District Judge, Kaithal allowing the appeal of the plaintiffs/respondents (herein referred as the plaintiffs) and decreeing their suit for declaration and joint possession. For the convenience of the parties and to adjudicate the real question in controversy the pe-di-gree table of both the parties is required to be reproduced here:-

2. Herein legal heirs of Sarupi and Chander Bhan son of Sarian are the plaintiffs and Sunehri second wife of Telu is the defendant.

3. This suit has been filed by the plaintiffs Sarupi daughter and Chander Bhan daughter's son of Telu on 14.5.2002 challenging the mutation No. 1283 dated 14.11.1980 and also the status of Sunehri Devi to be that of wife of Telu Ram. It has

been alleged that Telu Ram was the son of Bishna and was married to Kauri who predeceased Telu. Telu had two daughters, namely Sarupi and Sarian from the loins of Telu and wedlock of Kauri. Sarian predeceased Telu leaving behind her son Chander Bhan. Telu died in the year 1978. On the death of Telu mutation No. 1283 dated 14.11.1980 was attested in the name of Sunehri Devi as widow, Chander Bhan (daughter's son) and Sarupi (daughter), in equal shares. It was also alleged that Telu was the owner in possession of 1/3rd share in 76 kanals 3 marlas as fully detailed in the heading of the plaint and on the death of Telu the mutation was sanctioned in favour of the aforesaid three persons.

4. While challenging mutation No. 1283 dated 14.11.1980 Sarupi and Chander Bhan averred that Sunehri Devi is not the widow of deceased Telu. She never performed Kareva with him but she was wrongly shown as widow of Telu vide mutation dated 14.11.1980. She was married to Surjan who was an employee of the Haryana Government and she is still drawing family pension which was permissible to her being widow of Surjan. Thus, while claiming ownership over 1/3rd share of Telu in the land as fully described in heading of the plaint, the plaintiffs challenged the mutation dated 14.11.1980.

5. Suit was contested by the defendant/appellant. Besides various pleas raised by her, she stated that the plaintiffs had suppressed the material facts from the court. Actually, Sunehri defendant was earlier married to Surjan. Out of that wedlock two daughters namely Shanti and Jarnalo were born. They are married. After the death of Kauri and Surjan Sunehri was married with Telu and Telu died in the year 1978. Kauri had died on 22.4.1968 and thereafter Telu contacted a kareva marriage with Sunehri. They had been living as wife and husband since long. Out of this wedlock one daughter namely Gardevi had born on 1.8.1969 who died at the age of 4-5 years. It was also contended that the plaintiffs did not raise any objection at the time of sanctioning of mutation and thereafter they had sold their share in the land. Now they have filed this suit out of greed.

6. Replication was also filed.

7. On the pleadings of the parties the trial court vide order dated 21.4.2003 framed the following issues :-

1. Whether the plaintiffs are entitled to a decree for declaration to the effect that mutation No. 1283 dated 14.11.1980 regarding 1/3rd share in the name of Smt. Sunehri and subsequent revenue entries are illegal, null and void and not binding on the rights of the plaintiffs? OPP

2. Whether the plaintiffs are entitled to a decree for joint possession as prayed for? OPP

3. Whether the plaintiffs have no locus standi to file the present suit? OPD

4. Whether the suit is time barred? OPD

5. Relief.

8. Both the parties led evidence. Learned trial court took up issues No. 1 and 2 together and concluded that mutation No. 1283 dated 14.11.1980 was rightly sanctioned while holding that the defendant/appellant is the widow of Telu, both the issues were decided against the plaintiffs. Issues Nos. 3 and 4 were taken up together and it was held that the suit was hopelessly time barred. Plaintiffs had no locus standi to file the suit. Consequently, the suit was dismissed.

9. However, in appeal first appellate court while holding that since alleged marriage of Telu with Sunehri had taken place during the life time of Kauri, therefore, the marriage was not valid as such the defendant/appellant could not claim any inheritance in the said land. It was further observed that the suit being of joint possession was not time barred. Thus, the first appellate court accepted the appeal and decreed the suit of the plaintiffs.

10. Following substantial questions of law arise in the present appeal for determination :

1. Whether Sunehri was the kareva wife of Telu?

2. Whether the plaintiffs having not objected the mutation No. 1283 dated 14.11.1980 rather while adopting the same have sold their shares in the property, could still come to claim their rights after 2 years of the mutation?

3. Whether the suit was time barred?

11. In order to settle the controversy with regard to relationship of Sunehri Devi as wife of Telu, though was decided by the trial court in her favour, yet the appellate court reversed the view taken by the trial court on the ground that since Sunehri Devi had married during the life time of the first wife of Telu namely Kauri, therefore, the same is void ab initio by virtue of Section 5 and 11 of the Hindu Marriage Act, 1955 having no legal consequences. The challenge to the aforesaid observations has been made before me by urging that no actual date of marriage between Telu and Sunehri Devi has come to the fore. It has also not come to light whether Kauri ever disputed the marriage of Sunehri Devi with Telu. There is also no evidence, if Kauri was legally wedded wife of Telu, and Sunehri Devi was not his legally wedded wife. It has also come in evidence that earlier Sunehri Devi was married to Surjan who happened to be the cousin of Telu and on the death of Surjan, she performed kareva marriage with Telu and she stayed with him as his wife and they were dealing with each other as husband and wife since then. She stayed with him till his death in the year 1978. Out of the wedlock of Telu and Sunehri Devi, a daughter was born on 9.8.1969 (Ex. D9). The civil court while deciding civil suit No. 113 of 1981 has also recognized her status as wife of Telu which judgment has become final between the parties. As such, he has contended that if Kareva marriage is denied by the court even then long living of Sunehri Devi

with Telu as husband and wife would certainly confer a status of wife upon Sunehri Devi, conferring all rights of inheritance of the assets of Telu.

12. To the contrary, learned counsel for the plaintiffs while assailing the arguments, have contended that since Sunehri Devi has herself accepted that she had entered into a kareva marriage with Telu during the life time of Kauri, therefore, the said marriage in violation of the provisions of Sections 5 and 11 of the Hindu Marriage Act, 1955 is void, consequently, she cannot attain the status of legally wedded wife.

13. Having heard the rival contentions, the status of Sunehri Devi does not rest only on the basis of the kareva marriage, but her marriage appears to have been recognized, accepted, acknowledged and remained unchallenged by Kauri. She had been continuously treated as wife of Telu and she continued claiming herself as such. It is not the case of the plaintiffs that she was living an adulterous life. First of all no date of marriage between Telu and Sunehri Devi has come to the light, but the evidence reveals that Kauri died on 22.4.1968 and thereafter daughter was born to Telu out of his loins and womb of Sunehri Devi on 9.8.1969 (Ex. D9), therefore, keeping in view the time gap, it cannot be said that she was married to Telu during the life time of Kauri. Actually, in order to prove that Sunehri Devi was married during the life time of Kauri, the plaintiffs bank upon a statement of Sunehri when she appeared as DW-4. Actually while appreciating the evidence, we are to consider the pleadings as well as the evidence as a whole and a state line made due to slip of tongue which is expected from a rustic, rural and illiterate old lady in the cross-examination is not sufficient to discard the whole testimony led by her. The appellant Sunehri Devi in her written statement as well as in her statement in the court has categorically stated that Kauri had died on 22.4.1968. Out of the said wedlock two daughters namely Sarupi plaintiff No. 1 and Sarian mother of the plaintiff No. 2 were born and after the death of Kauri, Telu had contracted the second marriage by way of kareva married and out of the said wedlock, one daughter namely Gurdevi was born on 9.8.1969 (Ex. D9). At that time, her husband Surjan was not alive.

14. In any case, the admission made by Sunehri Devi during cross examination is hardly sufficient to discard her marriage with Telu for two reasons. Firstly, that Kauri never challenged the marriage of Telu with Sunehri. Had Sunehri Devi been married to Telu during the life time of Kauri, then she would have raised objection and challenged the same. It would also be significant to mention here that in the absence of any evidence that the earlier marriage of Telu was legal and valid, the marriage of Sunehri Devi with Telu cannot be said to be invalid or void. Further more, there is lot of evidence that the heirs of Telu namely Chander Bhan recognized the marriage and admitted the share of Sunehri Devi. Telu died in the year 1978. The mutation of his assets was sanctioned on 14.7.1980 in favour of the heirs of Telu including Sunehri Devi and others. The said mutation was never challenged for 22 years before filing of the present suit on 14.5.2002. It is also in

evidence that out of the wedlock of Sunehri Devi and Telu a daughter was born on 9.8.1969, who survived for 4-5 years. Birth certificate of Gardevi daughter of Telu and Sunehri Devi has been proved as Ex. D9 on the record. Sunehri Devi had also filed a civil suit No. 113 dated 31.7.1979 against Didar and others, wherein the following issue was raised in this regard by the defendant:

Whether the plaintiff is legally wedded wife of Telu deceased and if so whether she is in possession of the suit land as tenant as alleged?

15. This issue was decided by the civil court on 16.11.1981 in favour of Sunehri Devi. This judgment having been passed regarding the relationship of Sunehri Devi would be deemed as precedent to recognize her relationship by law.

16. The other argument that Ex. D1 and Ex. D1/A, regarding the applying of the tube well connection with HUVPN also mentions the name of Telu as husband of Sunehri Devi. The record Ex. D3 of the Mini Bank Account again reveals that Sunehri Devi is shown to be the widow of Telu. To the same effect is the statement of DW-3 Satpal Clerk from Khurana Agricultural Cooperative Society, Khurana wherein the appellant Sunehri Devi is shown to be the widow of Telu. Sunehri Devi while appearing in the witness box also reiterated all the facts as referred to above. The first appellate court has over looked the aforesaid documents and the evidence and was only moved by the fact that since Sunehri Devi was married during the life time of Kauri, therefore, she cannot be conferred any right of inheritance being his illegal wife. Had Kauri been alive and challenged the marriage of Sunehri then some impact could be seen. But since it is proved that Telu had been dealing with her as wife and her marriage was recognized during the life time of Telu by the society and even after his death, it would be appropriate to hold that long stay of Sunehri Devi with Telu also proved her status as that of wife and entitles her to inherit the property of Telu.

17. Another significant factor which amounts to acquiescence on the part of the plaintiffs and recognition of her status as such. Though Telu died in the year 1978 and the mutation was sanctioned in the year 1980, yet the said mutation was never challenged by the plaintiffs for 22 years, rather the plaintiffs while treating the mutation of inheritance No. 1283 dated 14.11.1980 as true and correct, sold their rights to one Ram Phal and Fulia sons of Ranjit Singh, which indicates that they never agitated about the right and status of the defendant Sunehri Devi and the suit filed by them was misconceived. While going to the worst, even if it is observed that Kareva marriage of Sunehri Devi with the deceased Telu may not be treated as according to law for certain reasons, yet, it may be observed that since Sunehri Devi was residing as wife of Telu under a customary marriage, she was not living as adulterous life. The succession was not challenged by the plaintiffs for 22 years and she has been staying a wife of Telu for long years, acting as wife and being treated by the others as such, cannot be disentitled from the property for mere defect in ceremony of marriage.

18. The Apex Court in case [S.P.S. Balasubramanyam Vs. Suruttayan alias Andali Padayachi and others](#), observed as under:

3. The defendants resisted the suit out of which the present appeal arises, inter alia, contended that Ramaswamy was not the legitimate son of Chinnathambi and in any event Chinnathambi could not get absolute right in respect of his share of property given to him under Ex. B-32. The trial Court accepting the case of the defendants dismissed the suit. It was held that there was no evidence about the marriage of Chinnathambi with Pavayee No. 2. The appellate court however, held to the contrary. It held that since Chinnathambi and Pavayee No. 2 continuously lived under the same roof and cohabited for a number of years the law would raise presumption that they lived as husband and wife. There was no other evidence to destroy that presumption. So stating the plaintiffs suit was decreed. In the second appeal the High Court took a different view. It was held that presumption available in favour of Pavayee No. 2 by her continuous living with Chinnathambi has been destroyed by other circumstances in the case. The High Court relied upon three circumstances to rebut the presumption (i) Non-mentioning the name of Pavayee No. 2 in the Will Ex. B-1; (ii) Not referring the names of Pavayee No. 2 and her children by Chinnathambi in the compromise Ex. B-32; and (iii) the evidence of P.W. 6 and D.W. 4. We do not think that the circumstances relied upon by the High Court are not relevant to destroy the presumption which is otherwise available to recognize Pavayee No. 2 as the wife of Chinnathambi. The first two circumstances relied upon by the High Court are indeed neutral. The absence of any reference to Pavayee No. 2 in Ex. B-1 or in B-32 cannot be held against the legitimacy of the children of Pavayee No. 2 born to Chinnathambi. Equally, we do not find anything from the evidence of P.W. 6 and D.W. 4. Both these witnesses did not deny that Chinnathambi and Pavayee No. 2 were living together. It is not in dispute that children including Ramaswami were born to Chinnathambi. In our opinion, the circumstances and the evidence relied upon by the High Court are not relevant to destroy the presumption that Chinnathambi and Pavayee No. 2 lived together as husband and wife.

19. The Apex Court in case S.P.S. Bala Subramanyam's case (supra) while attaching presumption of husband and wife, who have been living together as such further observed as under :-

In order to overcome the difficulty it was vehemently argued by the learned counsel for respondent that even if it is assumed that Pavayee was living with Chinathambi since 1920 there being evidence on record to establish that her husband was alive when she came to live with Chinathambi, she was leading an adulterous life and no law recognizes such relationship as valid, consequently the presumption, if any, in favour of a legal marriage stood rebutted. Reliance has been placed on observations made in the judgments at various places and even the statement of Pavayee herself that she had left her husband and had come to live with Chinathambi. It appears

unnecessary to express any opinion as to whether the relationship between Chinathambi and Pavayee was adulterous and if it was sufficient to destroy the presumption in law as this plea does not appear to have been raised in the written statement nor any issue was framed on it nor any of the Courts have recorded any findings on it.

20. In the instant case also it is not the case of the plaintiffs that Sunehri Devi was leading adulterous life, therefore, no such presumption could be attached rather the evidence led in this case proves the fact that the defendant has been residing with Telu as his wife and she acted and was recognized as such by the society. She has been litigating in the courts and representing herself before the bank and electricity offices as widow of Telu, therefore, the mere fact that she was married to Telu during the lifetime of his first wife is not sufficient to deprive her of her status of being wife of Telu. It was also observed by this Court in case [Mal Singh and Another Vs. Ram Kaur](#), that where the parties lived as husband and wife for 25 years, then it amounts to sufficient evidence of marriage by habit and repute. Similar observations were made by the Apex Court in case [Ranganath Parmeshwar Panditrao Mali and another Vs. Eknath Gajanan Kulkarni and another](#), wherein it was observed as under :-

6 In view of the rival stand of the parties the first question that arises for consideration is whether merely because the factum of marriage has not been established, was it open for the lower appellate court as well as the High Court to set aside the finding of the trial Judge, which finding was based on not only arising out of the legality of a presumption from the fact of living together as husband and wife but also the admission of defendant No. 1 that Shevantabai was residing with Pandit in the Wada in village for long years and the plaintiff No. 1 is son of Shevantabai ? It is no doubt true that a finding arrived at on a question of fact by the lower appellate court for the High Court is not ordinarily interfered with by this Court under Article 136 of the Constitution. But if such finding is recorded by non consideration of some vital piece of evidence or admission of the adversary, then this Court will be fully justified in interfering with the finding in question. In the case in hand, the consistent evidence being that Panditrao and Shevantabai were living together for long years as husband and wife and plaintiff No. 1 is their son and the defendant also admitted the aforesaid fact but contended that there had been no valid marriage between Panditrao and Shevantabai, legal presumption does arise, though the presumption is rebuttable and this presumption has not been rebutted by the defendant. It has been held by this Court in the case of AIR 1994 133 (SC) , that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable. The High Court, committed an error of law in recording a finding that the presumption would arise only if the factum of marriage is proved. We are afraid if factum of marriage is proved, the question of raising presumption does not arise. The lower appellate court on the other hand has merely entered into

the arena of conjecture and surmises by interfering with the finding of the trial Judge without considering the relevant and material evidence on the point. In this view of the matter findings arrived at by the lower as well as by the High Court on the question of relationship of Panditrao and Shevantabai cannot be sustained in law. In our considered opinion a legal presumption arises on the admitted fact that they were living together as husband and wife and the said presumption has not been rebutted....

21. At this juncture, a reference can be made to Section 114 of the Indian Evidence Act (for short, "the Act"). The provisions refer to common course of natural events, human conduct and private business. The court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of Sections 50 and 114 of the Act together, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case. In the instant case, there is no denying a fact that Sunehri Devi lived with Telu as his wife and the only case of the plaintiff is that marriage was not valid but the said marriage has been recognized by the law, habit and repute by the relatives and, she had been dealing as such in the offices and claiming herself as such without any objection and the plaintiffs themselves also while recognizing her share in the property being the legal heir of Telu allowed the mutation to be sanctioned in her favour and thereafter sold their share in the property the Apex Court in case [Tulsa and Others Vs. Durghatiya and Others](#), also observed as under :-

10. A number of judicial pronouncements have been made on this aspect of the matter. The Privy Council, on two occasions, considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together. In first of them i.e. AIR 1927 185 (Privy Council) their Lordships of the Privy Council laid down the general proposition that:

where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubinage.

11. In AIR 1929 135 (Privy Council) their Lordships of the Privy Council once again laid down that

The law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.

12. It was held that such a presumption could be drawn u/s 114 of the Evidence Act.

13. Where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and

frowns upon bastardy. (See: [Badri Prasad Vs. Dy. Director of Consolidation and Others](#),

14. This Court in [Thakur Gokalchand Vs. Parvin Kumari](#), observed that continuous cohabitation of woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them.

15. As noted above, the continuous living together of Lolli and Radhika has been established. In fact the evidence of the witnesses examined by the plaintiff also established this fact. The conclusion of the first appellate court that they were living together when Mangal was alive has not been established. The evidence on record clearly shows that Lolli and Radhika were living together after the death of Mangal.

22. As regards the evidence with regard to relationship between Telu and Sunehri Devi, besides the documentary evidence as referred to above and evidence of Sunehri Devi even the plaintiff witness namely Ranjit Singh while appearing in the witness box as PW-2 has admitted that since the first husband of appellant namely Surjan was the cousin of Telu, as such, marriage of Sunehri Devi with Telu on the death of Surjan was recognized by custom. The plaintiff witnesses have also not denied if Sunehri Devi was not married to Telu and if they did not live as husband and wife.

23. Another significant factor which goes against the plaintiffs is that they are estopped to file the present suit for their act and conduct as Telu died in the year 1978, the mutation in favour of the defendant Sunehri Devi was sanctioned on 14.11.1980 which remained unchallenged for 22 years. The plaintiffs were in due knowledge of the said mutation, they did not raise any objection to it, rather while accepting the same, sold some part of the land and as such they are estopped to file the present suit for their act and conduct after 22 years of the sanction of the mutation. The suit also could be said to be time barred as they were not in exclusive possession of any portion of the suit land. The first appellate court while reversing the findings returned by the trial court on all the issues, have mis-appreciated the evidence and the law on the point which has resulted into perversity warranting interference by this Court.

24. Consequently, the substantial questions of law as referred to above are answered in favour of the appellant. Resultantly, this appeal is accepted, impugned judgment and decree are set aside and the judgment and decree passed by the trial court are restored.