



RSA-741-1991(O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-741-1991(O&M)
Reserved on : 17.12.2024
Date of decision: 14.01.2025**

Pirithi

..Appellant

Versus

Darka and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Mani Ram Verma, Advocate
for the appellant
Mr. Surinder Gandhi, Advocate for respondent no.1 and 2
Mr. Mohit Nehra, Advocate for respondent no.3

ANIL KSHETARPAL, JUDGE

1. Brief facts of the case:-

1.1 This is defendant no.1's Regular Second Appeal against the concurrent findings of facts arrived at by the courts below while decreeing the plaintiff's suit for the grant of decree of declaration that the plaintiffs are entitled to succeed to the property of late Sh.Bagha son of Sh.Mansukh and exclusively entitled to inherit the property of late Sh.Bagha.

1.2 In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

1.3 The dispute in the present case is whether Sh.Bagha entered into Karewa marriage with Naraini which resulted in giving birth of Misro.

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Sh.Bagha was married to Darka (plaintiff no.1) who gave birth to two daughters namely Sarbati and Parti from the lions of Bagha (plaintiffs). Naraini and Misro are defendants no.2 and 3 but they chose not to contest the case. Pirthi (defendant no.1) appellant herein is stated to be son of Shimbhu, who was the brother of Bagha. It is the case of Pirthi (appellant) that Naraini was previously married to Mam Chand, who was mother's brother's son of Bagha. In other words, Bagha and Mam Chand were cousins.

1.4 Sh. Bagha died on 23.11.1979. Mutation with regard to his inheritance was sanctioned after a period of four years from 04.07.1984 in favour of Darka, Sarbati, Parti, Naraini and Misro. Immediately, defendant no.1 Pirthi filed a suit against Naraini and Misro, which resulted in consent decree as Naraini and Misro admitted Prithi's claim. Thus, property came to the share of Pirthi.

1.5 The trial court decreed the plaintiff's suit and held that Karewa marriage (customary marriage) of Naraini with Bagha is not proved. Thus, the suit filed by the plaintiffs was dereed. The First Appellate Court held that Prithi has failed to prove that Bagha contracted Karewa marriage ceremony with Naraini. Moreover, when Mam Chand, the previous husband of Naraini died, Bagha had a wife and two daughters. Hence, he could not enter into Karewa marriage. Moreover, once Bagha deserted Darka and his both daughters, he lost his right and interest in the property.

1.6 During the pendency of the first appeal, an application for additional evidence was filed, which was dismissed, however, the High Court vide a detailed order passed on 03.04.2018 allowed the application for

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additional evidence and directed the court below to record evidence. Pursuant thereto, report has been submitted after allowing the parties to lead evidence. Deposition of Satish Kumar AW1 election Kanungoo from the office of District Election Officer, Bhiwani has been recorded. Pirthi has also produced voter list of Village Barsi, mutation no.1747 and 555, pedigree table of village Bhagot, Bahi writing A6, death certificate of Bagha A7, voter list of village Bagot of Bagha A8, Sajra Nas of owners A9, mutation no.555 urdu A10, jamabandi for 1982-83 urdu A11, copy of plaint Ex.A12, copy of written statement A13, certified of Naraini and Misro A14 and A15 and judgment passed by the court on 24.09.1984 Ex.A18 and decree sheet.

2. Analysis and Discussion:-

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

2.2 Learned counsel representing the appellant has also filed his written submissions.

2.3 Though, this Court is of the considered view that the reasons recorded by the First Appellate Court are not correct, however, it is not considered appropriate to remit the matter back to the First Appellate Court to decide the first appeal again after a passage of nearly 34 years. The additional evidence has already been recorded and the record of the courts below has been received. Hence, this Court has proceeded to decide the appeal on merits.

2.4 Learned counsel representing the appellant, while highlighting the observation of the First Appellate Court, contends that there was no

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prohibition in contracting Karewa by Bagha with Naraini during the lifetime of his wife Darka. He submits that Bagha died at village Bagot where Smt. Naraini was residing whereas Bagha was the resident of village Sangwan where his first wife and daughters were residing and his property was situated. It is further submitted that there was no prohibition in entering Karewa marriage with widow of his cousin Mam Chand. He further submitted that there is no provision in any law that divests Bagha from his ownership merely on contracting Karewa marriage during the lifetime of his wife Darka without divorcing her.

2.5 Per contra, learned counsel representing the respondents has asserted that the judgment of the courts below are well reasoned and fair.

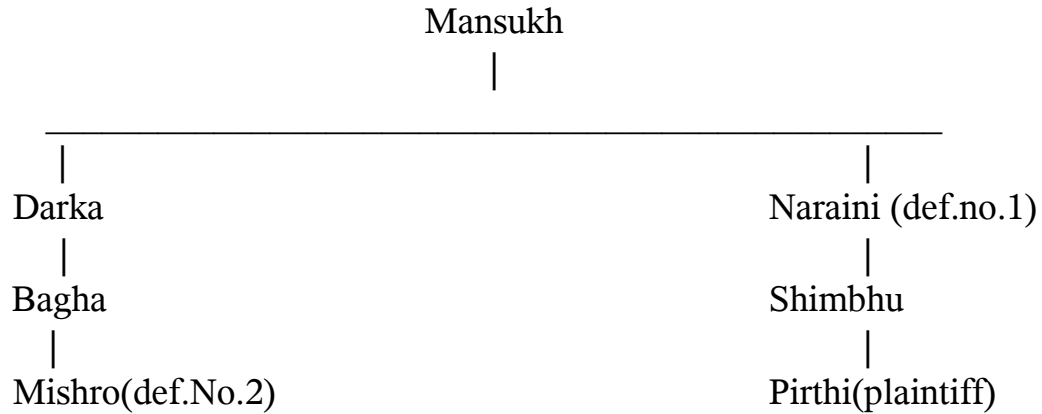
2.6 In this case, the pivotal question that requires adjudication is whether Naraini contracted Karewa marriage with Bagha and Misro was born from their co-habitation. As already noticed, Naraini has chosen not to contest the suit. It is surprising that Naraini after having suffered a decree in favour of Prithi on 24.09.1984 chose not to contest the present suit which was filed on 20.04.1985.

2.7 Furthermore, Prithi-appellant was to produce cogent evidence to prove that Bagha and Naraini did marry and for their co-habitation Misro was born, however, he failed to prove the same in accordance with Section 50 of the Evidence Act, 1872. Misro, the alleged daughter of Bagha from Naraini has not stepped into the witness box to prove her case. Furthermore, it is evident from the perusal of the plaint in C.S. No. 1131 of 27.09.1989 that Prithi made total mis-statement. In para 1 of the plaint, he claimed that



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he is near relation of defendants. He also produced a copy of pedigree table (family tree) which is extracted as under:-



2.8 It is evident that Darka was widow of Bagha and not mother of Bagha. Moreover, Darka has given birth to two daughters namely Sarbati and Parti from the loins of Bagha. Hence, the entire pedigree table produced by Prithi is incorrect.

2.9 Furthermore, it is evident that Bagha died on 23.11.1979 whereas the mutation of his property was sanctioned only after a period of nearly 5 years at the behest of Pirithi. Thus, the trial court has correctly held that Pirithi was trying to usurp the property. Upon appreciation of evidence, the trial court correctly recorded finding of fact that marriage between Naraini and Bagha is not proved. Even birth certificate of Misro has not been produced to prove that Bagha was her father.

2.10 Despite an opportunity to lead additional evidence, defendant-Pirithi has failed to prove any cogent evidence to prove that Bagha contracted Karewa with Naraini. No reliable witness from Village Barot or Village Sangwan has been produced. The onus to prove that Bagha contracted Karewa marriage with Naraini has not been discharged.

3. Decision:-

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3.1 Keeping in view the aforesaid discussion, this Court does not find it appropriate to interfere. Hence, appeal is dismissed.

3.2 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

14 .01. 2025

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No