



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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Date of decision: 28.07.2025

RSA-4667-2018(O&M)

Jagmal Singh @ Phool Singh

...Appellant(s)

Vs.

Sita Ram (deceased) through his LRs & Others

...Respondent(s)

RSA-4134-2018(O&M)

Somawati

...Appellant(s)

Vs.

Sita Ram (deceased) through his LRs & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sachin Mittal, Advocate
 Mr. Parth Sharma, Advocate
 Mr. Arnav Mittal, Advocate
 for the appellant.

NIDHI GUPTA, J.

Both the present appeals are being disposed of by this common order as both arise from common judgment and decree dated 16.09.2017 passed by learned Additional District Judge, Karnal; whereby the Civil Appeals filed by the second appellants herein, have been dismissed. For the sake of convenience, the facts are being drawn from RSA-4667-2018 filed by



the appellant/plaintiff titled as “Jagmal Singh @ Phool Singh Vs. Sita Ram (deceased) through his LRs & Others”.

2. Brief facts are that the plaintiff had filed the instant suit for declaration with consequential relief of permanent injunction on the ground that Ram Sarup father of the plaintiff was owner in possession of the suit land as detailed in Para 1 of the plaint. Ram Sarup was married to Somwati/defendant No.2. Out of the said wedlock of Ram Sarup with Somwati, plaintiff was born on 25.11.1961. When the plaintiff was about 2-3 years old, Ram Sarup had left the village and could not be found for 10-12 years. Accordingly, during this time Somwati had solemnized Karewa marriage with defendant No.1 namely Sita Ram observing Ram Sarup to be dead. When Ram Sarup was eventually brought back to the village, he was not mentally sound and had started living in the Ashram; and had eventually died in 1992. After the death of Ram Sarup, mutation of his inheritance was entered at serial No.385 on 16.06.1992 in favour of the plaintiff. Due to objections raised by Sita Ram, mutation was contested before the A.C. First Grade. It was further averred that Defendants No.3 to 6 were born out of the wedlock of Sita Ram-defendant No.1 and Somwati-defendant No.2. It was pleaded that with mala fide intention, they have fabricated revenue record alleging defendants No.3 and 4 to be sons of Ram Sarup. It was contended that the said defendants are not entitled to property of Ram Sarup as plaintiff



is the sole legal heir of Ram Sarup and has inherited the entire property owned by him. With these pleadings, present suit was filed on 22.12.2006.

3. Upon notice, defendants had appeared and filed separate written statements. Defendant No.1(i) to (v) filed written statement resisting the suit on various grounds admitting that Ram Sarup was owner in possession of the suit land, and that he was married to Somwati. It was however pleaded that out of the wedlock of Ram Sarup and Somwati, 3 sons namely Jagmal (plaintiff), Ramesh (defendant No.3) and Surinder @ Satinder (defendant No.4) and 2 daughters namely Santosh and Neelam (defendants No.5 and 6 respectively) were born. It was further pleaded that Somwati had not performed Karewa marriage with Sita Ram as Luxmi, legally wedded wife of Sita Ram had died only on 15.10.2007 and therefore, there could not have been Karewa Marriage between Sita Ram and Somwati. It was pleaded that plaintiff and Somwati were bent upon creating unnecessary hinderance in sanctioning mutation of inheritance of Sita Ram as per registered Will in favour of the answering defendants and their real brother Suresh Kumar. Accordingly, dismissal of the suit was prayed for.

4. Defendant No.2-Somwati had filed a separate written statement supporting the case of the plaintiff and pleading therein that Ram Sarup was owner of land measuring 29 kanal 14 marla along with a house and Bara; and was co-sharer in Shamlat Deh also. It was pleaded that Ram Sarup had left the house in 1964-65 and was not heard of thereafter. Accordingly, Somwati



had solemnized Karewa Marriage with Sita Ram. It was averred that defendants No.3 to 6 were born out of her wedlock with Sita Ram.

5. Defendants No.3 and 4 did not file separate written statement, however, had adopted the written statement filed on behalf of the defendants No.1(i) to (v) vide order dated 12.12.2011.

6. Replication was not filed.

7. From the pleadings of the parties, following issues were framed vide order dated 27.05.2008:-

“1. Whether the plaintiff is owner in possession of the land measuring 29K-14M fully detailed in para no.1 of the plaint?OPP?OPP.

2. If issue no.1 is proved whether the plaintiff is entitled to the relief of permanent injunction restraining the defendants from taking/dispossessing/ousting the plaintiff from the suit land?OPP

3. Whether the present suit is not maintainable in the present form?OPD

4. Whether the plaintiff has no locus-standi to file and maintain the present suit?OPD

5. Whether the plaintiff has suppressed true and material facts from the court?OPD

6. Whether the present suit is bad for mis-joinder and non-joinder of necessary parties?OPD

7. Relief.”

8. On the basis of pleadings and oral & documentary evidence adduced by the parties, learned trial Court vide judgment and decree dated



31.08.2013 had dismissed the suit of the plaintiff with costs. Against the above-said judgment and decree dated 31.08.2013, two appeals were filed, the same being Civil Appeal No.1958 dated 20.09.2013 filed by the plaintiff/present appellant titled as “Jagmal Singh @ Phool Singh Vs. Sita Ram & Others”; and the second appeal being Civil Appeal No.1921 dated 01.10.2013 filed by the defendant no.2 titled as “Somawati Vs. Sita Ram & Others”. Vide judgment and decree dated 16.09.2017, Id. Additional District Judge, Karnal dismissed both the said appeals filed by the appellants holding thereby that the learned trial Court had rightly dismissed the suit of the plaintiff. Hence, present second appeal by the plaintiff; and the defendant No.2.

9. It is inter alia submitted by learned counsel for the appellant/plaintiff that the learned Courts below were in patent error in non-suiting the plaintiff as they failed to appreciate that according to Section 50 of the Indian Evidence Act, 1872, the Court has to form an opinion as to relationship of one person to another. It is submitted that the opinion expressed by conduct or as to the existence of such relationship or any person who as member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact. It is submitted that accordingly, the appellant had filed an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence in the form of DNA test of defendants No.1 to 6. Learned counsel submits that in order to decide the main controversy between the parties, it was imperative to establish whether



defendants No.4 to 6 were born from the loins of Ram Sarup or Sita Ram, which could only be resolved by way of paternity test. Learned counsel submits that however, the said application has been dismissed by the learned Additional District Judge without application of mind and without appreciation of the fact that the said controversy was at the core of the dispute between the parties.

10. It is submitted that it was clear and categorical assertion of the plaintiff that Somwati had contracted Karewa Marriage with Sita Ram-defendant No.1. However, the defendants No.1(i) to (v) have simply denied the factum of their Karewa Marriage; while simultaneously, not specifically denying that Ram Sarup had left the village and had remained missing for 10-11 years and his whereabouts were not known. Learned counsel contends that therefore, there is a presumption that the facts not specifically denied are deemed to be admitted. As such, the factum of missing whereabouts of Ram Sarup stands proved; and therefore, during the period of absence of Ram Sarup, Somwati had contracted Karewa Marriage with Sita Ram which is permissible between the parties being agriculturists.

11. Learned counsel further submits that though it is not admitted but for the sake of argument, even if it is assumed that there had been no Karewa Marriage between Somwati and Sita Ram, even then the children born out from the womb of Somwati out of the loins of Sita Ram are only illegitimate children of Sita Ram and can therefore, not be considered as



Class-I Legal Heirs of Ram Sarup. Therefore, they are not entitled to any of his estate. It is submitted that however, the learned Courts below have failed to appreciate these facts; and therefore, prays that the present appeal be allowed and the impugned judgments and decrees be set aside.

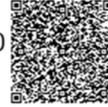
12. No other argument is made on behalf of the appellant.

13. I have heard learned counsel and perused the case file in detail.

14. At the very outset, it may be pointed out that present appeals are of the year 2018, however, notice has not yet been issued in the same. A perusal of order sheets reveals that the matter has been adjourned either at request or due to non-appearance of Id. counsel for the appellant.

15. I find no merit in the submissions made on behalf of the appellant/plaintiff and appellant/defendant No.2.

16. It has been irrevocably proven on record that the plaintiff failed to place on file any documentary evidence on the basis of which it could be inferred that before performing the alleged Karewa Marriage, defendant No.2 had obtained any declaration from any Court regarding death of Ram Sarup. Besides the above, it is admitted fact on record that at the time of alleged Karewa Mariage between Somwati and Sita Ram, wife of Sita Ram namely Laxmi was still alive; and that she had expired only on 15.10.2007. Needless to say, it is settled law that second marriage, during subsistence of first marriage, is null and void.



17. Furthermore, the plaintiff was required to prove that he is the only son of Ram Sarup; and that the defendants No.3 to 6 were children of Sita Ram. However, admittedly, the plaintiff had failed to lead any evidence in this regard before the learned trial Court. It is only before the learned lower Appellate Court that the plaintiff had filed an application for additional evidence under Order 41 Rule 27 CPC to produce additional evidence by way of DNA test to establish paternity of the defendants No.3 to 6. Perusal of record shows that the said application has been dismissed by the learned First Appellate Court on cogent grounds holding that the plaintiff had moved the said application only on 16.03.2017 i.e. three-and-a-half years after initiation of appeal. The learned First Appellate Court further correctly observed that the plaintiff had failed to explain as to why the said application for producing evidence in question was not moved during trial; and why the said evidence was not produced before the learned trial Court. Needless to say, the said facts were in the knowledge of the plaintiff during trial. However, he failed to exercise due diligence. From the above facts, the only inference that can be drawn is that the plaintiff had filed the application for additional evidence at belated stage only with the mala fide intent of delaying the proceedings in the appeal. As such, I find no error in the dismissal of the said application of the plaintiff under Order 41 Rule 27 CPC by the learned Lower Appellate Court.



18. On the other hand, the defendants had led sufficient documentary evidence in the form of Ex.D2 to Ex.D9 which are their Ration Cards; Residential Certificate and Voter Cards, from which it stood proved that they are children of Ram Sarup.

19. Furthermore, the plaintiff has failed to explain as to how Somwati could be legally married to Sita Ram when his own wife was alive. Even no details have been given of the alleged Karewa Marriage between Somwati and Sita Ram. No date, month, year, time, place of the said Karewa Marriage has been mentioned anywhere. Rather, on Ex.D7/Voter ID Card of defendant No.2, name of husband of Somwati is mentioned as Ram Sarup. Even as per the Domicile Certificates of defendants No.3 and 4 (Ex.D6 and Ex.DW9/A respectively) name of their father is mentioned as Ram Sarup. The Backward Class Certificate of defendant No.4 issued by SDO (Civil), Karnal shows that his father's name is mentioned as Ram Sarup. Similarly, there is extensive other documentary evidence on record showing that name of father of defendants is mentioned as Ram Sarup.

20. It had further been pleaded by the plaintiff that at the time of solemnizing Karewa Marriage, the Numberdar of the village was present. However, said Numberdar has not been examined by the plaintiff. On the contrary, said Numberdar was examined by the defendant as DW2 who had tendered his affidavit in evidence; categorically stating therein that Somwati is wife of Ram Sarup; and that defendants No.3 to 6 were born from the loins



of Ram Sarup. The plaintiff had produced only oral evidence alleging disappearance of Ram Sarup which was rebutted by the oral evidence of the defendants. Thus, there is nothing on record to remotely suggest that Ram Sarup did not have access to Somwati during the alleged years of disappearance. Presumption under Section 112 of the Indian Evidence Act can only be displaced by strong preponderance of evidence and not by some balance of probabilities. As such, the plaintiff had failed to lead any cogent evidence. In view of the above, I find no error in the impugned judgments and decrees of the learned Courts below. Present appeals accordingly stand **dismissed.**

21. Pending application(s) if any also stand(s) disposed of.

28.07.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No