

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-150-1992 (O&M)****Reserved on: 24.02.2025****Pronounced on: 11.03.2025****SMT. BOHTI AND OTHERS**

. . . .APPELLANTS

Vs.

SMT. RAM DHAKELI

. . . . RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued by:- Mr. Saurabh Bajaj, Advocate, for the appellant.

Mr. Bhag Singh, Advocate, for the respondent.

**DEEPAK GUPTA, J.**

Suit for declaration with consequential relief of joint possession, regarding the property in dispute, filed by plaintiff Smt. Ram Dhakeli (*respondent herein*) was decreed by the trial Court of Id. Sub Judge, 1<sup>st</sup> Class, Palwal, vide judgment dated 18.05.1990. Appeal filed by defendants Smt. Bohti etc. (*appellants herein*) was dismissed by the First Appellate Court of Id. Additional District Judge, Faridabad vide judgment dated 04.10.1991. Against these concurrent findings, defendants of the case have approached this Court.

2. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

3. Dispute pertains to the estate of Bidhu s/o Chhajju, resident of village Kalsara, who had expired in 1982. Admittedly, defendant No.1- Smt. Bohti is the widow of Bidhu, whereas defendants No.2 to 4 i.e. Beer Singh, Mahavir and Nirottam are the sons of Bidhu.

4. According to plaintiff-Smt. Ram Dhakeli, she is also the daughter of Bidhu, but born to him and Ram Piari, with whom he had

performed karewa marriage after the death of her husband Chet Ram. As per plaintiff, Bidhu was Hindu Jat and owner of the suit land. He left behind properties in village Gelab and Kalsara. Earlier he was residing in Gelab, but for the last about 25 years, he had shifted to Kalsara. Plaintiff was born to him on 25.07.1937 in village Gelab, after karewa of Ram Piari & Bidhu performed about 55-56 years ago and that her (plaintiff) marriage was also performed by Bidhu about 30 years ago, when she was 20 years old. Plaintiff challenged mutations regarding suit property, sanctioned in favour of defendants, to be wrong & illegal and claimed that she is also entitled to succeed the estate of Bidhu to the extent of 1/5<sup>th</sup> share and so, entitled to the declaration and joint possession, as claimed by her.

5. Defendants in their written statement challenged the locus standi of the plaintiff. They claimed that married daughter has no right in the dwelling house. They further claimed that Ram Piari was initially married to Chet Ram and had a son namely Raja Ram, and after the death of said Chet Ram, Ram Piari had entered into karewa with one Hukmi and from that wedlock, their daughter Nathiya was born. Defendants denied Ram Dhakeli (*plaintiff*) to be the daughter of Bidhu or that she was married off by Bidhu. They alleged the birth certificate relied by the plaintiff to be false and that plaintiff was daughter of Ram Piari, but not from Bidhu and rather, from Hukmi. Defendants further alleged that suit had been got filed by Raja Ram.

6. Necessary issues were framed. Evidence produced by the parties was taken on record. After appreciating the evidence produced by parties, trial Court came to the conclusion that plaintiff Smt. Ram Dhakeli was the daughter of Bidhu and as such, she was entitled to inherit his estate to the extent of 1/5<sup>th</sup> share.

7. The appeal filed by the defendants was dismissed and the findings of the trial Court were upheld.

8. Assailing the aforesaid concurrent findings of the Courts below, it is contended by Id. counsel for the appellants-defendants that

Courts below have failed to appreciate the evidence in right prospective and that the birth certificate (Ex.P1) relied by the plaintiff has been procured by her, showing her to be the daughter of Bidhu. In fact, she was daughter of Ram Piari born from the loins of Hukmi, with whom Ram Piari had performed Kareva marriage after the death of her previous husband Chet Ram. It is also contended that the witnesses examined by the plaintiff are interested and so, are not reliable.

9. On the other hand, Id. counsel for the respondent-plaintiff submits that there is no scope for interference in the concurrent findings of the facts as recorded by the Courts below, as the entire evidence has been thoroughly thrashed by the First Appellate Court, after its appreciation by the trial Court.

10. This Court has considered submissions of both the sides and has appraised the record carefully.

11. After perusing the trial Court record as well as the judgments passed by the Courts below, this Court finds that the evidence produced on file was initially appreciated by the trial Court and thereafter, it has been thrashed at length by Id. First Appellate Court.

12. Referring to statement of PW4 Munshi, resident of Village Kalsara, it is observed by courts below that Karewa of Ram Piari with Bidhu was performed in his presence. Earlier Ram Piari was married to Chet Ram, father of PW2-Raja Ram. Ram Dhakeli was born on 25.7.1937, as per certified copy of birth entry Ex.P.1. Courts below further referred to statement of PW2-Raja Ram, who stated that Ram Dhakeli was daughter of Bidhu, who called her as his daughter and she called him father and Ram Piari as mother. Similarly, PW3 Khachera testified that Ram Piari was married to Chet Ram and on his death, performed karewa with Bidhu and they gave birth to Ram Dhakeli and there was relationship of father and daughter between them and that he (Bidhu) also performed her marriage about 50 years ago, when she was aged 20 years. This witness was related in the family and was uncle of Ram Dhakeli. PW1- Ram Dhakeli stated

about her relationship with Bidhu as father and Ram Piari as mother and that her marriage was performed by Bidhu. Raja Ram was earlier born to Smt. Ram Piari from Chet Ram. Ram Piari was not heard of for last 20 years. As per PW1, she was married with Bhup Ram resident of Village Aherwan and was also called Nathiya at her in-laws' house.

13. Apart from above oral evidence, courts below relied Birth Entry Ex. P1 prepared by public servant much before the controversy arose, recording that Bidhu son of Chhajju had given birth to a daughter named Ram Dhakeli on 25.7.1937.

14. The Courts below further referred to the evidence, which was produced by the defendants i.e. *appellants herein*. DW1-Deep Chand, resident of Village Gehlab, DW6- Harchandi Lal, resident of Village Beda, were examined to support the statement of one of the defendants- Nirottam, who had appeared in the witness box as DW7 so as to prove that plaintiff-Ram Dhakeli was not the daughter of Ram Piari from the loins of Bidhu; and rather; she was the daughter of Ram Piari from the loins of Hukmi resident of Village Mandkola and that her name was Nathiya, who was married on Bhup Ram resident of village Aherwan.

15. The Courts below noticed that it was not in dispute that plaintiff was married in Village Aherwan with Bhup Ram and that at the place of her in-laws, she was known by the name of Nathiya. However, it was noticed further that in ration card Ex.DW2/1, pertaining to the family of Bhup Ram, name of his wife was recorded as Nathiya. In the voter list (Ex.D1) also, Nathiya was recorded to be wife of Bhup Ram. As per death certificate Ex.D2, Ram Piari wife of Hukmi, resident of village Mandkola, had died on 23.01.1990 and mutation of inheritance was entered in the name of her sons Tokam, Sukhram and daughters Nathiya and Bhagwati. Earlier, the mutation of inheritance of Hukmi was sanctioned on 16.07.1981 in favour of his widow Ram Piari, besides sons Tokam and Sukh Ram and daughters Nathiya and Bhagwati.

16. It was found that although it was not disputed that one Nathiya was the daughter of Hukmi from the loins of Ram Piari, who had also succeeded to the property firstly left by her father Hukmi and then the property left by her mother Ram Piari along with her brothers, but the documents produced by the defendants in this regard did not at all connect the plaintiff to show that she had succeeded to the aforesaid properties or that in fact, she was the daughter of Smt. Ram Piari from the loins of Hukmi.

17. Discarding the testimony of DW1-Deep Chand, it was noticed that though he was Lambardar of village Gehlab but he had admitted that he was not on visiting terms with Hukmi. He also stated that he was resident of Village Bhanguri and neither of Village Gehlab nor of Kalsara. In these circumstances, he was found to have no personal knowledge about relationship of the plaintiff with Smt. Ram Piari and Bidhu. His testimony was accordingly held to be not reliable so as to prove or disprove the relationship of Bidhu with Ram Piari, as he had neither any relationship with Chet Ram or Bidhu, nor he belonged to their *Kumba*. So much so, he had not even attended the cremation ceremony of Chet Ram.

18. Courts below have also referred to the testimony of DW2-Mangat Ram, who was examined to prove that Nathiya daughter of Hukmi had received compensation about the crops damaged by hailstorm and had thumb-marked the entries in the register. However, the Courts below noticed that defendants did not examine any document expert so as to prove that thumb-impression on the entry in the Register against the name of Nathiya d/o Hukmi was that of the plaintiff-Smt. Ram Dhakeli. This would have clinched the matter.

19. It is clear from the observations that the Courts below have not only relied upon the birth entry Ex.P1 showing the plaintiff to be the daughter of Bidhu, they have also referred to the evidence of the witnesses. Not only that plaintiff examined herself as PW1 supported her case, it was found by the Courts below that PW2-Raja Ram is the

step-brother of plaintiff and fully supported the case of the plaintiff. PW3-Khachera belongs to village Gelab, where the plaintiff was born and where Bidhu initially resided. He is also the uncle of Smt. Ram Dhakeli and as such, had got special means of knowledge about relationship. PW4-Munshi Ram belongs to village Kalsara, where later on, Bidhu had lived and even karewa of Smt. Ram Piari with Bidhu had taken place in his presence. He is also the uncle of plaintiff. It is, thus, clear that these witnesses had got special means of knowledge to know the relationship of plaintiff with Smt. Ram Piari and Bidhu. The evidence about the conduct *inter se* of the persons with whom the relationship is in dispute is certainly admissible in evidence under Section 50 of the Evidence Act.

20. Based upon the aforesaid evidence, it has been found by the Courts below that it is the evidence produced by the plaintiff-respondent herein, which was reliable inasmuch as the witnesses examined by her were related to the family and their testimony found support from birth entry Ex.P1 prepared by a public servant much before the controversy had arisen, inasmuch as the birth certificate revealed that wife of Bidhu son of Chajju had given birth to the daughter named Smt. Ram Dhakeli on 25.07.1937. On the other hand, the evidence produced by the defendants has been found to be absolutely not reliable, as the witnesses examined were not connected with the plaintiff-respondent. The attempts made by the defendants i.e. appellants herein so as to connect plaintiff with Hukmi of village Mandkola have utterly failed.

21. It is thus clear that birth of Plaintiff to Bidhu was proved; their relationship as father and daughter also stood proved; Karewa of Ram Piari with Bidhu was witnessed by two of the witnesses, and no evidence was produced from the family of Hukmi to establish any relationship of Plaintiff with their family, nor any evidence was produced to establish that the Plaintiff Ram Dhakeli, who was called Nathiya in her in-laws, or that Plaintiff Ram Dhakeli were different persons.

22. After appreciating the entire record, this Court does not find any ground whatsoever to disturb the well-reasoned concurrent findings of facts as recorded by the Courts below, as the same are found to be based upon proper appreciation of evidence. There is neither any misreading nor non-reading of any material evidence. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

**11.03.2025**

*Vivek*

**(DEEPAK GUPTA)  
JUDGE**

*Whether speaking/reasoned?*

*Yes*

*Whether reportable?*

*No*