



CR-5226-2024 (O&M)

[134] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5226-2024 (O&M)
Date of Decision : 24.02.2025

Mehar Chand ...Petitioner

versus

Ram Kali (since deceased)
through LRs and others ...Respondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Harsh Mehla, Advocate for the petitioner.
Mr. R.S. Mamli, Advocate for the respondents.

PANKAJ JAIN, J. (ORAL)

[1] The instant revision petition is directed against Order dated 25.05.2023 passed by the learned Civil Judge (Senior Division), Yamuna Nagar at Jagadhri, disposing off application filed by plaintiff-petitioner for framing of additional issues.

[2] Suit was filed by the plaintiffs, claiming that they along with defendant Nos.9 to 23 are Class II heirs of Rati Ram being brothers' sons, sisters' sons, brothers' daughters and sisters' daughters. They being entitled to succeed to the estate left by Rati Ram are entitled to a decree of declaration to the effect that they are owners in possession in equal share of land left by Rati Ram. Further challenge was to mutation as well as sale deeds executed by defendant No.1 and further sale deeds.

[3] Defendant No.1 contested suit claiming herself to be widow of Rati Ram.

[4] Learned Trial Court vide order dated 29.01.2020 framed following issues:-

"1. *Whether the plaintiff is entitled to a decree of declaration, as prayed for? OPP.*



2. *Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD.*
3. *Whether the suit is not maintainable? OPD.*
4. *Whether the Civil Court has no jurisdiction to entertain and try the present suit? OPD.*
5. *Whether the plaintiff has concealed the true and material facts from the court? OPD.*
6. *Whether the plaintiff is estopped from filing the present suit by his own acts and conduct? OPD.*
7. *Relief. ”*

[5] Plaintiffs filed present application under Order 14 Rule 5 CPC seeking framing of additional issues. In the application, following three issues were proposed to be framed:-

- “1) *Whether the plaintiffs and defendants No.9 to 23 are entitled to succeed the suit land being natural heirs of Rati Ram and if so then what will be the share of the plaintiffs and defendants No.9 to 23? OPP.*
- 2) *Whether there is a valid divorce between Ram Kali and her husband 19797 Prem Chand on 20.09.1979? OPD1*
- 3) *Whether Ram Kali entered into Kareva marriage with Rati Ram? OPD1. ”*

[6] The aforesaid application has been disposed off by the learned Trial Court, framing following additional issues:-

- “1-A *Whether the plaintiffs are entitled to a consequential relief of permanent injunction, restraining the defendants no.1 to 8 from alienating, transferring or otherwise creating any charge over the suit land (as detailed and described in the head note of the plaint) and also from interfering in the possession of plaintiff over the land measuring 9 kanal 3 marla (as detailed in the head note of the plaint), as prayed for? OPP.*
- 6-A *Whether the plaint is liable to be rejected under Order 7 Rule 11 CPC? OPD.*
- 6-B *Whether the present suit has not been properly valued for the purposes of court fee and jurisdiction? OPD.*



6-C *Whether the suit of plaintiff is liable to be rejected under Order 7 Rule 1 (j) CPC? OPD. ”*

[7] Counsel for the petitioner has drawn attention of this Court to the pleadings raised by the parties and submits that the issue in the *lis* is *qua* entitlement to succeed estate of Rati Ram. Plaintiffs claimed themselves to be Class II heirs of late Rati Ram being children of his brothers and sisters. Defendant No.1-Ram Kali in her written statement claims to be widow of Rati Ram, alleging that she performed *kareva* marriage with Rati Ram after getting divorce from Prem Chand. Thus, the fate of the *lis* hinges on the issue whether Ram Kali is widow of Rati Ram.

[8] *Per contra*, Mr. Mamli, counsel for the respondents, submits that plaintiffs have not challenged the marriage of Ram Kali with Rati Ram and there is no pleading of any divorce etc. Once, there is no such pleading, no issue is required to be framed *qua* relationship between Ram Kali and Rati Ram.

[9] I have heard counsel for the parties and have carefully gone through the records of the case.

[10] This Court finds that the learned Trial Court erred in ignoring the vital pleadings. Plaintiffs in para Nos.9 & 10 in the plaint raised specific plea to the following effect:-

“9. *That Ram Kali was not wife of Rati Ram as no marriage ever took place between them.*

10. *That in fact Ram Kali was wife of Prem Chand son of Garibu and Ram Kali had seven children from that wedlock with Prem Chand who are Rinku, Malkeet and Roshan as defendants no.9 to 11 and smt. Veena Devi, Sulochna, Tarawati and Mamta Devi as defendants no.12 to 15 in this suit.*



11. *That marriage between Prem Chand and Ram Kali was never dissolved and Ram Kali being wife of Prem Chand had no relation with Rati Ram.*
12. *That besides this Rati Ram was also married with Kamla Devi daughter of Kalu Ram of village Chhappar and that marriage was never dissolved as per provisions of Hindu Marriage Act, 1955. So there could not be any marriage between Rati Ram and Ram Kali defendant no.1 during subsistence of marriage between Rati Ram and Kamla Devi.*
13. *That fact is that there was no relationship between Rati Ram and Ram Kali as husband and wife and they never cohabited as such and Rati Ram expired without leaving behind any natural heir as Kamla Devi had also entered into second marriage without any divorce from Rati Ram. So she had also lost right in the estate of Rati Ram after entering into second marriage with a resident of Kallar Majra. ”*

[11] Defendant No.1-Ram Kali in her written statement responded thereto as under:-

- “9. *That Para no.9 of the plaint is wrong and hence denied. It is only Ram Kali being the widow of Rati Ram is the sole owner of the property and prior to sale she was owner in possession of the same.*
10. *That Para no.10 of the plaint is wrong and hence denied. As stated above previously Ram Kali was married with Prem Chand and out of wedlock of Ram Kali and Prem Chand, the defendant no.10,11, 13 to 15 being sons and daughters were born out and then Prem Chand entered into Kareva marriage with Prema and defendant no.9 and 12 were born out of the wedlock of Prem Chand and Premi and Ram Kali entered into kareva marriage with Rati Ram as such facts stated in this Para are totally wrong and hence denied.*
11. *That Para no.11 of the plaint is wrong and hence denied. The marriage between Prem Chand and Ram kali has been dissolved by divorce as per custom and after divorce, Prem Chand has entered into a Karewa marriage with Premi Devi.*



12. *That Para no.12 of the plaint is admitted to the extent that Rati Ram was previously married with Kamla Devi. Rest of the Para is wrong and hence denied. The marriage with Kamla Devi was dissolved by divorce as per custom. However for the sake of arguments if this plea is taken to be correct that marriage between Rati Ram and Kamla was not dissolved, in that case also the present suit is liable to be dismissed on this score alone.*
13. *That Para no.13 of the plaint is wrong and hence denied. Ram Kali was legally wedded wife of Rati Ram and Rati Ram and Ram Kali defendant no.1 were residing jointly as husband and wife for last many years. The allegations and averments made in this Para are wrong, illegal, false and frivolous. ”*

[12] In view thereof, this Court finds that the impugned order dated 29.01.2020 needs to be modified.

[13] Keeping in view the nature of controversy, impugned order dated 29.01.2020 is *modified* by framing an additional issue, which reads as under:-

“Whether Ram Kali effected Kareva marriage with Rati Ram after getting divorce from Prem Chand?”OPD

[14] With the aforesaid modification, the present revision petition is **disposed off.**

[15] All pending miscellaneous application(s), if any, stands *disposed off.*

(PANKAJ JAIN)
JUDGE

24.02.2025
'R. Sharma'

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No