

Mohinder Kaur Vs. General Public

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Court : Punjab and Haryana

Decided On : May-02-2014

Appellant : Mohinder Kaur

Respondent : General Public

Judgement :

-1- Rs.No.1248 of 2011 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Rs.No.1248 of 2011 (O&M) Date of decision: 02.05.2014 Mohinder KaurAppellant Versus General PublicRespondent CORAM: HON'BLE Mr.JUSTICE PARAMJEET SINGH1 Whether Reporters of the local papers may be allowed to see the judgment ?.

2) To be referred to the Reporters or not ?.

3) Whether the judgment should be reported in the Digest ?.

Present: - Mr.N.S.Swaich, Advocate, for the appellant.

PARAMJEET SINGH, J.

(ORAL) CM No.3451-C of 2011 For the reasons mentioned in the application, CM is allowed.

Delay of 175 days in re-filing the appeal is condoned.

CM No.3453-C of 2011 Allowed.

Applicant-appellant is allowed to make good the deficiency in court fee.

Rs.No.1248 of 2011 (O&M) This regular second appeal by plaintiff is directed against the judgment and decree dated 22.05.2009 passed by learned Civil Judge (Junior Division), Fatehgarh Sahib, whereby the suit for declaration to the effect that plaintiff is second widow of late Sepoy Pritam Singh, was dismissed as well as against the judgment and decree dated 24.02.2010 Singh Ravinder 2014.05.07 17:28 I attest to the accuracy and integrity of this document Chandigarh -2- Rs.No.1248 of 2011 passed by learned District Judge, Fatehgarh Sahib, whereby the appeal preferred by the appellant/plaintiff has been dismissed.

For convenience sake, reference to parties is being made as per their status in the civil suit.

The detailed facts of the case are already recapitulated in the judgments of the Courts below and are not required to be reproduced.

However, the facts relevant for disposal of this second appeal are to the effect that plaintiff filed a suit for declaration against the general public that plaintiff was married to Shamsheer Singh, who expired in the year 1981.

After the death of Shamsheer Singh, plaintiff got married to Sepoy Pritam Singh, real brother of Shamsheer Singh, on 20.06.1981 according to Sikh rites by chaddar ceremony.

Plaintiff married Pritam Singh during the lifetime of his earlier wife, namely, Kartar Kaur.

Kartar Kaur expired on 17.12.1999 and Pritam Singh expired on 05.01.2001.

It is further averred that no child was born to the plaintiff from the said wedlock.

Pritam Singh served in army and was getting pension from the army.

It is averred that after the death of Pritam Singh on 05.01.2001, plaintiff was entitled to grant of ordinary family pension as she was widow of Pritam Singh.

Hence, the suit was filed.

Despite service through publication in daily 'Desh Sewak', nobody appeared on behalf of the defendant - general public, as such defendant was proceeded against ex parte vide order dated 09.06.2007.

The Court of fiRs.instance, after appreciating evidence on record dismissed the suit of the plaintiff.

Against the judgment and Singh Ravinder 2014.05.07 17:28 I attest to the accuracy and integrity of this document Chandigarh -3- Rs.No.1248 of 2011 decree of the Court of fiRs.instance, appeal preferred by the appellant has also been dismissed and the judgment and decree of the Court of fiRs.instance has been affirmed by lower appellate Court.

Hence, this second appeal.

I have heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant referred to substantial questions of law formulated in the grounds of appeal, which read as under: - 1.

Whether the plaintiff/appellant is entitled to grant of family pension being second widow of Sepoy Pritam Singh on account of his death, who remained in service in Army from 24th June, 1944 to 8th August, 1949?.

2.

Whether the marriage of the plaintiff/appellant with Sepoy Pritam Singh with the ceremony of Chaddar Pauna during the life time of his fiRs.wife (Kartar Kaur) is valid one in the eyes of law as per the custom prevalent in the society?.

3.

Whether plaintiff/appellant supposed to be legal second wedded wife of Sepoy Pritam Singh as per the customary law, who got re-married with him with the ceremony of Chaddar Pauna after the death of fiRs.husband Shamsheer Singh real brother of said Pritam Singh?..

After appreciating evidence on record, both the Courts below have come to the conclusion that during the subsistence of marriage of Pritam Singh with Kartar Kaur, he could not have married the plaintiff as Singh Ravinder 2014.05.07 17:28 I attest to the accuracy and integrity of this document Chandigarh -4- Rs.No.1248 of 2011 according to the provisions of Hindu Marriage Act, 1955 a Hindu cannot enter into a second marriage during the lifetime of his fiRs.wife.

Bigamous marriage is prohibited under the law.

It has also been held that plaintiff failed to prove that there was any custom prevalent that marriage by way of Chaddar Pauna.

ceremony could be contracted with the brother of the deceased husband who was already married and his fiRs.wife was alive.

After appreciating evidence on record, both the Courts below have come to the conclusion that marriage of plaintiff with Pritam Singh is not a valid marriage.

These are essentially the findings of fact.

Learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or misappreciation of the material evidence on record.

There is also delay of 67 days in filing the appeal which has not been satisfactorily explained.

In view of concurrent findings of fact recorded by both the Courts below, no question of law, muchless substantial question of law, as alleged, arises in the present appeal.

Dismissed being devoid of merit as well as time-barred.

(Paramjeet Singh) Judge May 02, 2014 R.S.Singh Ravinder 2014.05.07 17:28 I
attest to the accuracy and integrity of this document Chandigarh

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