

\*\*\*\*\* Vs. General Public

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Court : Punjab and Haryana

Decided On : May-24-2014

Appellant : \*\*\*\*\*

Respondent : General Public

Judgement :

Rs.No.3451 of 2012 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH \*\*\*\*\* Rs.No.3451 of 2012 (O&M) Date of Decision: 27.05.2014  
\*\*\*\*\* Bedo .

.Appellant Versus General Public .

Respondent \*\*\*\*\* CORAM: HONBLE MR.JUSTICE RAKESH KUMAR JAIN \*\*\*\*\*  
Present: Mr.S.K.Verma, Advocate, for the appellant.

\*\*\*\*\* RAKESH KUMAR JAIN, J.

The plaintiff has filed this appeal along with an application for condonation of delay of 244 days in filing of the appeal.

The plaintiff filed suit for declaration that her son Ramesh Kumar be declared dead as his whereabouts are not known to her from the last 8 years and she be declared owner of the land owned by Ramesh Kumar as his legal heir.

The suit was against the general public.

The defendant was proceeded against ex parte on 22.7.2010.

In her ex parte evidence, the plaintiff examined herself as PW1 and Ramphal as PW2.

She also tendered copy of the jamabandi for the year 2004-2005 (Ex.P1).copy of the jamabandi for the year 2004-2005 (Ex.P2).copy of the jamabandi for the year 2008- 2009 (Ex.P3).Copy of FIR No.10 dated 15.1.2002 (Ex.P4).Pahwa Vivek 2014.06.02 12:50 I attest to the accuracy and integrity of this document Rs.No.3451 of 2012 -2- Copy of order dated 17.11.2004 (Ex.P5).copy of order dated 25.4.2009 (Ed.P6).cutting of newspaper (Ex.P7).copy of DDR (Ex.P8).copy of letter regarding appointment of receiver (Ex.P9) and copy of order dated 25.4.2009 (Ex.P10).The trial Court dismissed the suit of the plaintiff observing that there is non-compliance of Section 108 of the Indian Evidence Act, 1872 [for short the Act].because the question whether the man is alive or dead is to be decided with the proof that he has not been heard for 7 years by those who would have naturally heard of him if he had been alive and the burden of proving that he is alive then shifts to the person, who affirms that he is alive.

It has been held that DDR is of dated 7.3.2010 and the publication in the Newspaper is of dated 12.3.2010 whereas the suit has been filed on 8.5.2010.

Moreover, receiver was appointed qua the immoveable property of Ramesh Kumar when he was declared proclaimed offender on 17.11.2004.

Thus, the plaintiff has failed to prove that Ramesh Kumar has not been heard from the last seven years before the filing of the suit.

Similar observation has been made by the Appellate Court while dismissing the suit of the plaintiff as it has been observed that Ramesh Kumar was declared proclaimed offender on 17.11.2004 in a case registered under NDPS Act, whereas the present suit has been filed on 8.5.2010 within a period of seven yeaRs.Pahwa Vivek 2014.06.02 12:50 I attest to the accuracy and integrity of this document Rs.No.3451 of 2012 -3- Learned counsel for the appellant has argued that in the

DDR dated 7.3.2010, the plaintiff had categorically recorded that her son Ramesh Kumar has been missing from the year 2003 and by the time she had filed the suit, seven years had already expired and was thus entitled to the decree for declaration as prayed for.

I have heard learned counsel for the plaintiff/appellant and of the considered opinion that there is no error in the judgment and decree of both the Courts below while dismissing the suit because the plaintiff being the mother of Ramesh Kumar should have made a police report in the year 2003 itself when Ramesh Kumar had left his home instead of registering the DDR on 7.3.2010 and giving advertisement in the Newspaper on 12.3.2010.

It appears that the DDR and publication in the Newspaper in the month of March 2010, just two months prior to the filing of the suit is to make a ground for maintaining the suit otherwise as per the natural human conduct the plaintiff, who being the mother would have made all her efforts in searching the whereabouts of her son besides this Ramesh Kumar was declared a proclaimed offender on 17.11.2004 and if his whereabouts are presumed to be unknown, from that date, the suit filed on 8.5.2010 is not complying with the mandatory provisions of Section 108 of the Act.

Pahwa Vivek 2014.06.02 12:50 I attest to the accuracy and integrity of this document Rs.No.3451 of 2012 -4- Thus, looking from any angle, I do not find any error in the judgment and decree of both the Courts below in dismissing the suit of the plaintiff.

No question of law is found to be involved in this appeal.

Hence, the same is hereby dismissed.

(RAKESH KUMAR JAIN) 27.05.2014 JUDGE Vivek Pahwa Vivek 2014.06.02 12:50 I attest to the accuracy and integrity of this document

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