

(2019) 03 P&H CK 0303

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2688, 2190 Of 2002 (O&M), Civil Revision No.2142 Of 1987 (O&M)

Madhu Chaudhry And Others

APPELLANT

Vs

Rajinder Kumar And Another

RESPONDENT

Date of Decision : 12-03-2019

Acts Referred:

Indian Succession Act, 1925 — Section 372
Hindu Marriage Act, 1955 — Section 13

Citation : (2020) 1 RCR (Civil) 8

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : B.R. Gupta, Sandeep Singh Ghangas, C.B. Goel

Final Decision : Dismissed

Judgement

Anil Kshetarpal, J

By this judgment, RSA Nos.2190 and 2688 of 2002 and CR No.2142 of 1987 shall stand disposed of.

Two Regular Second Appeals are arising from two suits one filed by Nikhil Kumar Chaudhary and second filed by late Sh. Shiv Lal and others

challenging judgment and decree dated 24.04.1981 allegedly suffered by Sushil Kumar in favour of Rajinder Kumar in Civil Suit No.226 of 1981.

Both the suits were consolidated and disposed of by the trial Court through a common judgment. There were four first appeals which were also

disposed of by a common judgment. Counsel for the parties are also agreed that all these three cases can be conveniently disposed of by a common

judgment.

At the time of admission of the appeals, following questions of law were framed:-

1. Whether in the facts and circumstances of the present case, the marriage of a Roman Catholic (Christian) with a Hindu is valid under the

Hindu Marriage Act, 1955?

2. Whether in the facts and circumstances of the case the first appellate court was right in holding the alleged marriage of Rekha and Sushil as valid

and Nikhil being their legitimate son in view of the judgment Ex.D2 of this Court and also there being already pending a Civil Revision No.2142 of

1987 about the same very dispute?

3. Whether in facts and circumstances of the case the judgment and decree of the courts below is based on mis-reading and mis-appreciation of oral

and documentary evidence led by the parties?

Inter se relationship between the parties can be understood from pedigree table which is drawn as under:-

Shiv Lal

/

/-----Basant Bala

/

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Suresh Shobha Neelam Madhu Sushil Chaudhary Meena

Chaudhary /

/-----Rekha

/

/

Nikhil

Although, Sushil Kumar had suffered a decree through his attorney Musaddi Lal who was brother of Shiv Lal in favour of Rajinder Kumar son of

Musaddi Lal dated 24.04.1981 but Rajinder Kumar has not chosen to challenge the judgments and decrees passed by the Courts below. Hence, the

validity of the decree dated 24.04.1981 is not in issue before this Court.

Only issue on which the counsels have addressed detailed arguments is whether the marriage between Sushil Chaudhary and Rekha Chaudhary was

valid and in accordance with provisions of Hindu Marriage Act, 1955. It may be noted that late Sh. Sushil Chaudhary was working as a Lecturer in

Government college. It is the case of Nikhil Chaudhary, son, that his parents were husband and wife and he was born from the wedlock on

11.08.1975.

Learned trial Court, on appreciation of evidence, held that the marriage between Sushil Chaudhary and Smt. Rekha Chaudhary was not valid as there

is no cogent evidence that Smt. Rekha Chaudhary who was Roman Catholic (Christian) had embraced Hinduism before solemnizing marriage.

However, learned First Appellate Court on re-appreciation of the evidence has reversed the aforesaid finding. In any case, Nikhil Chaudhary is son of

Sushil Chaudhary and Rekha Chaudhary.

Learned counsel appearing for the appellants has submitted that the finding of the learned First Appellate Court with respect to Rekha Chaudhary

having embraced Hinduism before solemnizing marriage is incorrect. He submitted that the findings of the learned First Appellate Court are incorrect.

He further submitted that there is no evidence of a legal hindu marriage having been solemnized between late Sh. Sushil Chaudhary and Rekha

Chaudhary.

This Court has considered the submissions and with able assistance of learned counsels gone through the judgments passed by the Courts below and

the record.

Rekha Chaudhary was a Christian before marriage is not in dispute. She has appeared as PW3 and stated that she had embraced Hinduism before

marrying with late Sh. Sushil Chaudhary. She has stated that marriage between herself and late Sh. Sushil Chaudhary took place on 02.06.1973 and a

son Nikhil Chaudhary was born. It has come in evidence that Sushil Chaudhary was a bachelor when he joined service as a Lecturer. Thereafter, he

changed his nomination and nominated that his entire retiral benefits would go to his son Nikhil Chaudhary. It has also come in evidence that Rekha

Chaudhary and late Sh. Sushil Chaudhary cohabited as husband and wife. Still further, it has come in evidence that Panditji before starting the

ceremonies of marriage performed all rites and ceremonies for change of religion and Smt. Rekha Chaudhary embraced Hinduism. It has come in

evidence that she was given holly water of Ganga River and was also given tulsi leaves and she recited certain mantras of religious ceremonies

regarding conversion. It has also come in evidence that she even visited

alongwith her husband to Vaishno Devi, a Hindu religious place and in the village, she also got constructed a temple.

In view of the overwhelming evidence, contention of learned counsel for the appellants that marriage between late Sh. Sushil Chaudhary and Rekha

Chaudhary was not valid, does not have substance.

Learned counsel for the appellants, although made sincere attempt, however, could not point out any substantive error in the judgment passed by the

learned First Appellate Court on the aspect of a valid marriage between late Sh. Sushil Chaudhary and Smt. Rekha Chaudhary.

In view of the aforesaid conclusion, question No.1 is answered against the appellants. Question No.2 is also answered against the appellants. With

regard to question No.3, it may be noted that learned counsel appearing on behalf of the appellants could not point out as to how the judgment of the

First Appellate Court is based on mis-reading or mis-appreciation of oral or documentary evidence.

As regards Civil Revision, the same is arising from proceedings initiated under Section 372 of the Indian Succession Act, 1925 for grant of succession

certificate. In the aforesaid case, issue with regard to validity of marriage between Rekha Chaudhary and late Sh. Sushil Chaudhary was also framed.

Learned First Appellate Court in the aforesaid civil revision has held that there is no valid marriage. It may be noted that proceedings under Section

372 of the Indian Succession Act, 1925 are summary in nature and, therefore, the finding arrived at in a regular suit is binding on the Court deciding

validity of the succession certificate.

In view of the detailed reasons recorded by the learned First Appellate Court upheld by this Court in view of foregoing discussion, the judgment

passed by the learned First Appellate Court in the revision petition with regard to validity of the marriage is liable to be reversed, hence, set aside. It

has come in evidence that Smt. Rekha filed a petition for seeking divorce under Section 13 of the Hindu Marriage Act from late Sh. Sushil Chaudhary

and the aforesaid petition was decreed on 22.03.1978 Ex.A12. However, First Appellate Court has correctly held that Nikhil Chaudhary shall be

entitled to 7/16th share in the moveable property whereas remaining heirs would get 5/12th share. Learned counsels could not point out any error in

the aforesaid manner of distribution of moveable property between various heirs.

In view of the aforesaid, both the Regular Second Appeals as well as Civil Revision are dismissed. However, the findings of the First Appellate Court

in the proceedings for issuance of succession certificate with respect to validity of the marriage is set aside.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.