
(2010) 07 SHI CK 0156
In the High Court Of Himachal Pradesh

Shashi Bala Bhalaik and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1963 — Article 58

Citation : (2010) 07 SHI CK 0156

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—This regular second appeal by the legal representatives of Devi Singh, original plaintiff, is directed against the judgment and decree dated 28.4.1999, of learned Additional District Judge, whereby, dismissing the appeal of appellants-plaintiffs, decree dated 22.6.1994 of learned trial Court, dismissing appellants' suit, has been upheld.

2. Appeal was admitted on the following substantial questions of law:

1. Whether the courts below have erred in holding that the suit of the appellants-plaintiffs is barred by limitation?

2. Whether the courts below have mis-read and misinterpreted the pleadings, evidence and more specially the documentary evidence Ex.P-3, Ex. P-5 and Ex.P-6 to come to the conclusion that defendant No. 4 is the son of deceased - plaintiff Devi Singh?

3. Facts, giving rise to the appeal and relevant for its disposal, may be noticed. Late Shri Devi Singh (hereinafter referred to as plaintiff) filed a suit for declaration that respondent No. 4, Rajesh Kumar, was not his son and that entries, showing him as his son, in his educational qualification certificates, were illegal, wrong and of no consequence qua him. By way of further relief, decree of permanent prohibitory injunction, restraining respondents - defendants No. 4 and

5, from claiming that respondent No. 4 was son of the plaintiff, was sought.

4. It was pleaded that respondent No. 5 Kaushalya Devi, was married to one Rama Nand, who died in the year 1944. Said Rama Nand was a uterine brother of the plaintiff. Soon after the death of Rama Nand, plaintiff got employment in a government office and remained posted at Rampur up to 1947 and thereafter, he was posted in the Secretariat at Shimla. In the year 1964, respondent No. 4, Rajesh Kumar, was born to respondent No. 5 Kaushalya Devi. She was a widow at that time. She manipulated to get Rajesh Kumar entered as son of the plaintiff in the record maintained by Panchayat. On coming to know about the wrong entry, plaintiff wrote to Director, Health Services and a direction was issued by the Director, Health Services to Chief Medical Officer, Shimla, to correct entries, so as not to show plaintiff Devi Singh, as father of respondent No. 4. This order was passed in the year 1974.

5. In 1987 or 1988, when plaintiff came to know that in school records and in the University records, respondent No. 4 was being recorded as his son, he made representation to the Secretary (Education), with a copy among others, to the Registrar, H.P. University, requesting for correction of entries in the educational qualification certificates of respondent No. 4, so as to delete his name, as father of respondent No. 4. When no action was taken, he served a notice u/s 80 CPC, copy Ex.P-3, and filed a suit, on expiry of two months period. Relief claimed against respondent-defendant No. 1, State of H.P., respondent No. 2, Registrar, H.P. University and respondent No. 3, Board of School of Education, is that a decree of mandatory injunction be passed, directing them to correct entries in the school and University certificates of respondent No. 4, so that name of plaintiff, as father of respondent No. 4, is deleted.

6. Suit was contested by defendants Nos. 1, 4 and 5. It was stated that the suit was barred by limitation. On merits, it was stated that on the death of Rama Nand, husband of respondent No. 5, Kaushalya Devi, according to custom of the area, started living with plaintiff, as his wife, along with other wife of plaintiff, and both of them lived under the same roof with plaintiff Devi Singh, and respondent No. 4 was born, as a result of coitus between the plaintiff and respondent No. 5. It was stated that entry in Panchayat record, showing respondent No. 4, as son of plaintiff had been got incorporated, with plaintiff's consent and similarly, in the school and other educational institutions records, plaintiff's name was recorded as father of respondent No. 4, with his consent. Plea of non joinder of necessary parties was also raised.

7. Trial Court framed the following issues, on the pleadings of the parties:

1. Whether the plaintiff is entitled for relief of declaration as prayed? OPP.
2. Whether the plaintiff is entitled for relief of mandatory injunction as prayed? OPP.
3. Whether the suit is time barred? OPD.

4. Whether the suit is bad for non joinder of necessary parties? OPD.

5. Relief.

8. Trial Court returned findings that the suit was not bad for non joinder of necessary parties, but it was barred by limitation and that evidence on record proved that respondent No. 4 was the son of the plaintiff. Consequently the suit was decreed.

9. Appeal was filed by the plaintiff against the judgment and decree of dismissal of his suit in the Court of District Judge. The same was dismissed, vide impugned judgment and decree.

10. I have heard the Counsel for the parties and perused the record.

11. Learned Counsel, representing the respondents-defendants argued that plaintiff himself, in para 10 of the plaint, stated very categorically, that cause of action accrued for the first time in the year 1974 and if it is so, the suit, which was filed in the year 1989, was barred, in view of the provisions of Article 58 of Limitation Act, 1963.

12. It is true that in the opening part of para 10, plaintiff has stated that cause of action accrued first in the year 1974, but this part of para 10 is not to be read in isolation. If the contents of this para are read in whole, there remains no doubt that cause of action did not accrue in the year 1974, because it is stated in this very para that in the year 1974, on plaintiff's request, entry in the Panchayat record, showing him as father of respondent No. 4, had been ordered to be corrected by Director, Health Services. That means, his grievance, as regards entry in the Panchayat record, was redressed and, therefore, it cannot be said that cause of action accrued to the plaintiff in that year.

13. It is stated in para 10 itself, that later on, plaintiff came to know about the fact that in the school and educational institutions records, attended by respondent No. 4, his name was being reflected, as father of said respondent, and then he served a notice, dated 15.5.1989, upon defendants 1 and 2 and when no action was taken by said defendants, he filed the suit. It is true that in para 10, it is not stated as to when the plaintiff came to know about his name being reflected as father of respondent No. 4, in his educational qualification certificates, but evidence is there on record, in the form of representation, which the plaintiff made to the Secretary of Education, for deletion of his name from the educational qualification certificates of respondent No. 4. Representation is Ex.P-7, dated 18.7.1988. It suggests that plaintiff came to know about his name being reflected in educational qualification certificates of respondent No. 4, in the year, 1988.

14. Learned Counsel for the respondents submits that it is not specifically stated in the plaint that plaintiff came to know about his name being shown in the educational qualification certificates as father of respondent No. 4 in the year 1988 and, therefore, evidence led during trial, to the effect that he came to know

about the same in or around the year 1988, cannot be looked into. Argument has been stated only to be rejected. When issue pertaining to limitation had been framed and parties went to trial, the fact that it was not categorically stated that the plaintiff came to know about his name being shown in the educational qualification certificates of respondent No. 4, in or around the year 1988, becomes insignificant.

15. Another submission made by learned Counsel for the respondents was that none of the documents, submitted by the plaintiff, was per se admissible and, therefore, they cannot be looked into. It is true that documents were tendered in evidence by the plaintiff himself, while appearing as his own witness and the same are not public documents, but then the defendants raised no objection when these documents were tendered in evidence. It is quite likely that had any objection been raised during the course of trial, plaintiff might have examined the relevant witnesses to prove the documents. Not only that no objection was raised, but no cross examination was directed qua these documents, when plaintiff was in the witness box as PW-2.

16. In view of the above stated position, it is held that suit of the plaintiff, which was instituted in the year 1989, was within time, as the cause of action accrued, in or around the year 1988, when he came to know that in the educational qualification certificates of respondent No. 4, his name was being recorded as the father of said respondent. Question is answered accordingly.

17. It was further submitted by Counsel for the respondents that substantial question of law No. 2, as framed by this Court, is not founded on the grounds of appeal and so, on the basis of this question, evidence cannot be re-appreciated. In support of argument, he has placed reliance upon a judgment of the Supreme Court in Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., . The judgment nowhere lays down that questions are to be founded on the grounds of appeal. In para 14 of the judgment, it is very categorically declared that to be a question of law "involved in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. Pleadings mean plaint, written statement and replication and not the grounds of appeal. Therefore, submission made on behalf of the respondents is without merit and hence rejected.

18. Coming to the question itself, admitted facts are that Kaushalya, respondent No. 5, mother of respondent No. 4, became widow in the year 1944. Her husband was uterine brother of the plaintiff. Plaintiff was married to a lady by the name of Vidya Devi. Admittedly, no marriage between the plaintiff and respondent No. 5 had taken place. It was pleaded on behalf of respondents 4 and 5 that after the death of her husband, Kaushalya, respondent No. 5, according to the custom of the area, started living with deceased plaintiff, as his wife and respondent No. 4 was born out of that relationship. Allegation was denied categorically by plaintiff in his replication to the written statement.

19. Plaintiff himself appeared as PW-1 and testified, in no uncertain terms, that he did not have any sexual relationship with respondent No. 5 and, therefore, there was no question of his begetting respondent No. 4 from the womb of respondent No. 5. He stated that on coming to know in the year 1964 itself, when respondent No. 4 was born, that in the Panchayat record he had been recorded as his son, he applied for correction of entries in the record of Gram Panchayat, by making an application, copy Ex.P-3. Later on, he addressed one application to the Director, Health Services, who wrote to Chief Medical Officer, Shimla to correct entry in the Birth Register vide letter Ex. P-5.

20. Respondents - defendants led no evidence to controvert testimony of the plaintiff, who appeared as PW-2. As a matter of fact, it was for respondent No. 4 to have led positive evidence to prove the plea that he was son of the plaintiff, as entered in his educational qualification certificates, because, admittedly, his mother was not married wife of the plaintiff. No presumption, in law, could have been drawn in favour of respondent No. 4, as has been done by the two Courts below, when respondent No. 4's mother was not married to the plaintiff. Presumption of paternity arises only when the mother of the child is married to the man, who is alleged to be the father of the child. Therefore, it was required of respondents 4 and 5 to have led positive evidence to show that respondent No. 4 was the son of the plaintiff. Not only that they did not lead any affirmative evidence, but they also did not adduce any evidence even to controvert or rebut the evidence adduced by plaintiff, in the form of his own testimony, as PW-2 and entries in Panchayat record, showing that plaintiff was married to a lady by the name of Vidya Devi.

21. Rather, adverse inference was required to be drawn against respondents 4 and 5, on account of respondent No. 5, mother of respondent No. 4, not stepping into witness box, to testify that respondent No. 4 was fathered by plaintiff Devi Singh.

22. In view of the above discussed position, substantial question of law No. 2 is also answered in favour of the appellants-plaintiffs.

23. As a result of the above discussion and answers to substantial questions of law, appeal is accepted. Judgments and decrees of the two Courts below are set aside and the suit, as filed by deceased plaintiff Devi Singh, is decreed and it is hereby declared that respondent No. 4 is not the son of plaintiff, and he (respondent No. 4) is restrained from claiming himself to be the son of said Devi Singh.