

(2012) 03 SHI CK 0221

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 54 of 2003

Smt. Kamlesh Lata, Master Ashok alias Surinder Kumar and
Kumari Lajwanti (minor appellants No. 2 and 3 through their
mother and natural guardian Smt. Kamlesh Lata) **APPELLANT**

Vs

Smt. Prem Lata alias Lata Devi, Kumari Sangeeta, Kumari
Suneeta and Gram Panchayat Bishladhar **RESPONDENT**

Date of Decision : 12-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2012) 03 SHI CK 0221

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : R. K. Sharma and Ms. Vidushi Sharma, for the Appellant; Lalit K. Sharma, Advocate, for respondents No. 1 to 3, for the Respondent

Judgement

Justice Sanjay Karol, J.—This is an appeal filed u/s 100 of the Code of Civil Procedure. Plaintiff Smt. Prem Lata along with Kumari Sangeeta (plaintiff No. 2) and Kumari Sunita (plaintiff No. 3) filed a civil suit against defendants Smt. Kamlesh Lata (defendant No. 1), Master Ashok (defendant No. 2), Kumari Jajwanti (defendant No. 3) and Gram Panchayat Bishladhar (defendant No. 4) seeking declaration that plaintiff No. 1 is the legally wedded wife of Sh. Karam Singh son of late Sh. Mangal Chand and plaintiffs No. 2 and 3 are daughters born to plaintiff No. 1 through said Sh. Karam Singh. Plaintiffs admitted that defendant No. 1 is also the legally wedded wife of Sh. Karam Singh and defendants No. 2 and 3 are children born to defendant No. 1 through him. Plaintiffs claim right of inheritance in the estate, including pensionary benefits, of late Sh. Karam Singh.

2. The trial Court dismissed the plaintiffs' suit in terms of judgment and decree dated 1.6.2002 passed in Case No. 28-1 of 2000, titled as Prem Lata and others Vs. Smt. Kamlesh Lata and others. However, District Judge, Kinnaur Civil Division at Rampur Bushahr, in the plaintiffs' Civil Appeal No. 17 of 2002, titled as Prem

Lata and others vs. Smt. Kamlesh Lata and others, reversed such findings of fact, judgment and decree and decreed the plaintiffs' suit, in terms of its judgment and decree dated 28.12.2002, to the following effect:-

In view of my findings on point No. 1 above, the appeal is partly allowed and partly dismissed and I hold that Kumari Sangeeta, plaintiff No. 2 and Kumari Sunita, plaintiff No. 3 minors are daughters of deceased Karam Singh and they are legally entitled for the retirement benefits of late Sh. Karam Singh as per their shares along with defendants No. 1 to 3, namely Smt. Kamlesh Lata, Master Ashok alias Surinder Kumar and Kumari Lajwanti. I also hold that plaintiff No. 1 Smt. Prem Lata is not legally wedded wife of deceased Karam Singh and I also hold that she is not entitled to any benefit arising from the service of late Sh. Karam Singh. A decree of mandatory injunction is also passed and defendant No. 4 is directed to enter names of plaintiffs No. 2 and 3, namely, Kumari Sangeeta and Kumari Sunita as daughters of deceased Karam Singh in the register of Gram Panchayat Bishladhar and a decree for prohibitory injunction is also granted in favour of plaintiffs No. 2 and 3 against the defendants No. 1 to 3 from receiving service benefits exclusively on the accidental death of late Sh. Karam Singh. I hold that service benefits on the accidental death of late Sh. Karam Singh shall be received by Kumari Sangeeta, plaintiff No. 2, Kumari Sunita, plaintiff No. 3 and Smt. Kamlesh Lata, widow of late Sh. Karam Singh, Master Ashok alias Surinder Kumar, son of late Sh. Karam Singh and Kumari Lajwanti, daughter of late Sh. Karam Singh as per their shares and entitlement and strictly as per provisions of law being L.Rs of deceased Karam Singh. The judgment and decree of the learned trial Court are modified to this extent. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. Decree sheet be drawn up accordingly. The record of the learned trial Court, along with copies of the judgment and decree sheet, be sent back and file of this Court, after due completion, be consigned to records.

[Emphasis supplied]

3. I have heard Sh. R. K. Sharma, learned Senior Counsel duly assisted by Ms. Vidushi Sharma, learned counsel for the appellants/ defendants No. 1 to 3 and Dr. Lalit K. Sharma, learned counsel for the plaintiffs/respondents No. 1 to 3.

4. The fact that deceased Sh. Karam Singh, during subsistence of his first marriage with appellant Smt. Kamlesh Lata, married Smt. Prem Lata is not in dispute. It is also not in dispute that Kumari Sangeeta and Kumari Sunita are children of Sh. Karam Singh born from Smt. Prem Lata.

5. Law with regard to inheritance of children born from null/void marriage is now well settled. In this regard note can be taken of various decision rendered by the Apex Court in Rameshwari Devi Vs. State of Bihar and others, ; Jinia Keotin and Others Vs. Kumar Sitaram Manjhi and Others, Revanasiddappa and Another Vs. Mallikarjun and Others, and by this Court in Ajay Singh (since deceased) through his Ajay Singh (Since Deceased) through his Lrs. Meenakshi Singh and Others

Vs. Tikka Brijendra Singh and Others,

6. The only remaining question to be considered in this appeal is as to whether plaintiffs No. 2 and 3 are entitled to the share in the family pension, being the retiral benefits accruing to the family members of deceased Sh. Karam Singh by virtue of his service rendered to the State. Rule 54 of the Central Civil Services (Pension) Rules, 1972 is evidently clear in this regard. It prescribes that family pension shall become payable to the widow or widower, failing which, to the eligible children. As such, decree in favour of plaintiffs No. 2 and 3 to the extent that they are entitled to the share in the family pension along with Smt. Kamlesh Lata is thus unsustainable in law. Findings returned by the lower appellate Court to this extent needs to be set aside. The appeal is thus partly allowed and the impugned judgment and decree dated 28.12.2002, passed in Civil Appeal No. 17 of 2002, titled as Prem Lata and others versus Smt. Kamlesh Lata and others, is thus partly modified to the aforesaid extent. Questions of law are answered accordingly.

Appeal stands disposed of, so also the pending application(s), if any.