

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RSA No. 157 of 2005**  
**Reserved on: 03.12.2018**

**Date of decision: 07.12.2018.**

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**Inder Pal & ors.** **Versus** **.....Appellants/plaintiffs**  
**Smt. Dhani** **.....Respondent/ defendant**

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***Coram***

**The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.**

***Whether approved for reporting?***<sup>21</sup> **No.**

**For the Appellant:** **Mr. G. R. Palsra, Advocate.**

**For the Respondent:** **Mr. Bhupender Gupta, Sr. Advocate, with Ms. Rinki Kashmiri, Advocate, for the respondent.**

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**Tarlok Singh Chauhan, Judge**

The plaintiffs are the appellants, who filed a suit for declaration and injunction, which was allowed by the learned trial Court, however, the said judgment and decree was reversed by the learned appellate Court, constraining them to file the instant appeal. (Parties hereinafter referred to as the 'Plaintiffs' and 'Defendant').

2. The plaintiffs filed a suit for declaration and injunction as a consequential relief with the allegations that the defendant Smt. Dhani Devi was not the widow of late Swaru, son

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<sup>1</sup>***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

of Sewak, and therefore, the mutation No. 405, dated 08.08.1994 had wrongly been attested in her favour whereby the share of deceased Swaru in land bearing Khata Khatauni No. 98/178 and 179, Kitta 28, measuring 8-3-11 bigha and the land comprised in khata/khatauni No. 99/180, kitta 2, measuring 0-11-13 bigha situated in village Dari/47, Illaka Kohalu, Tehsil Chachiot, District Mandi, had been entered in her favour. It was averred that deceased Raud was the real brother of deceased Swaru, the father of the plaintiffs and, therefore, the mutation ought to have been entered in the name of Raud.

3. The defendant filed written statement wherein it was alleged that the plaintiffs were not the legal heirs of Swaru as it was the defendant who was his legally wedded wife. The trial Court on 23.05.1995, framed the following issues:-

- “1. Whether the plaintiff is the real brother of Swaru as alleged?OPP*
- 2. Whether the defendant is the widow of Gangu as alleged? OPP*
- 3. Whether the revenue entries showing the defendant as owner in possession of the suit land is wrong and illegal as alleged? OPP*
- 4. Whether the plaintiff has no locus standi to file the present suit?OPD*
- 5. Whether the defendant is widow of Swaru alias Sher Singh?OPD*
- 6. Whether the plaintiff is owner in possession of the suit land? OPD*
- 7. Relief.”*

4. After recording evidence and evaluating the same, the learned trial Court decreed the suit, constraining the defendant to file appeal before the learned first appellate Court, which came to be allowed vide judgment and decree dated 21.03.2005.

5. Aggrieved by the judgment and decree passed by the learned first appellate Court, the plaintiffs have filed the present appeal, which came to be formally admitted by this Court on 29.11.2018, on the following substantial questions of law:-

*"1. Whether the learned first appellate Court has mis-read, mis-construed and mis-interpreted the oral as well as documentary evidence, especially Ex.P1,PA, PB and statement of PW3 & PW4, which has materially prejudiced the case of the Appellants?"*

*2. Whether adverse inference can be drawn against the respondent/defendant by not producing the entry of her marriage with Swaru as alleged by her?"*

I have heard learned counsel for the parties and have gone through the records of the case.

**Substantial Question No. 1**

6. In order to answer this question, it would be necessary to refer to the oral evidence that has come on record.

7. PW1 Sudan Ram was the Secretary, Gram Panchayat Bassa and had produced copies of Pariwar Register Ext. PA & Ext. PB.

8. PW2 Inder Pal stated that Swaru was real brother of his father Raud and he died issueless about 7-8 years ago and had left no wife behind him. He claimed that defendant Dhani, in fact was the wife of one Gangu and she has no right and interest in the estate of Swaru. He denied that the Swaru was also known by name of Sher Singh.

9. PW3 Saraji stated that Swaru was brother of Raud and defendant was his wife. He denied that the defendant was the wife of one Gangu. He admitted that Swaru another name was Sher Singh and his marriage was solemnised with defendant Dhani in Shimla in the year, 1963. He further stated that after the marriage at Shimla, Dhani came back to the village Dari where they lived together with Raud uptill 1965 and thereafter Swaru went towards Kullu whereas defendant Dhani went to her parental house. He further stated that, it was he who inherited the estate of Gangu.

10. PW4 Kalu stated that Swaru was brother of Raud who died without leaving behind any wife. He also stated that defendant was the wife of one Gangu and he had seen them together for 6-7 months. He denied that Swaru another name is

Sher Singh and was married to defendant Dhani. Phagnu Ram son of Ratku was examined in rebuttal by the plaintiff and stated that Dhani was the wife of one Gangu and lived together for about 15-16 years.

11. The defendant in support of her case examined five witnesses. DW1 Inder Singh is Election Kanungo and produced on record Ext.DA, which is the copy of voter list of Dari Election Centre of Nachan constituency. According to this witness, the name of defendant as wife of Swaru appeared only in the supplementary list and did not find mention in the original list.

12. DW2 Dhani herself stated that Sher Singh another name was Swaru and their marriage was solemnized at Shimla at Dhali Kothi. After living together for some years at Shimla they came back to village Dari and they started living with Raud. She further stated that she alongwith her husband used to cultivate the suit land. However, later on the behaviour of Raud towards her and her husband was not good and he used to give beating to them, constraining Sher Singh to leave the home. Sher Singh went to Kullu while she came back to her parental house. In cross-examination defendant stated that their marriage was got registered in Dhali Kothi Panchayat and for registration of the same she alongwith Sher Singh and Raud had gone to the Panchayat and some documents were also signed by them there.

She further stated that she was not aware of the date and year of the death of Swaru. She denied that she was wife of Gangu son of Jhalu.

13. The statement of the defendant is fully corroborated by DW3 Hiru, DW4 Smt. Angani Devi mother of the defendant, DW5 Beli Ram and DW6 Kaul Ram. All these witnesses have stated that defendant is the wife of Swaru and her marriage was solemnised in Shimla. Defendant and Swaru lived together firstly at Shimla and thereafter Swaru left for Kullu and defendant started living in her parental house. All of them specifically stated that marriage of the defendant with Gangu was never solemnized.

14. At this stage, it may be noted that it has come in the cross-examination of DWs 3, 4 and 5 that the defendant and Gangu lived together for some time but the fact nonetheless remain that the defendant had solemnised marriage with Swaru and, therefore, even if it is assumed that Gangu and Dhani resided together for some time will not in any manner prove that the defendant is the wife of Gangu.

15. Adverting to the documentary evidence, it would be noticed that the plaintiff had placed on record copy of Pariwar Register Ext.PA wherein the defendant is recorded as widow of Gangu and had further placed on record Pariwar Register Ext.PB

pertaining to the family of Raud (the original plaintiff) wherein no person named Sher Singh is recorded in his family. Even though Ext.PA and Ext.PB did corroborate the plea of the plaintiffs, however, it is to be noted that PW1 in his cross-examination has categorically admitted that in the original Pariwar Register brought by him, Sher Singh was recorded as husband of Dhani and brother of Raud. He further stated that Dhani is registered as the wife of Sher Singh.

16. Now, in case, Ext. DA is perused, it would be evident that the defendant is recorded to be the wife of Sher Singh and Sher Singh is recorded in the Pariwar Register of the deceased plaintiff Raud. It stands established on record that Sher Singh is the brother of the deceased plaintiff Raud and defendant is recorded as the wife of Sher Singh.

17. Notably, the learned trial Court has discarded the statements of DW3, DW4, DW5 and DW6 by holding that all of them were related to the defendant and there were certain minor discrepancies in the statements recorded regarding the place at Shimla where the marriage of defendant with Swaru was solemnized. However, nonetheless, once the plea of the defendant that her marriage with Swaru was solemnized at Shimla in the year, 1963, which otherwise stands duly corroborated by the testimony of PW3.

18. Apart from the aforesaid witnesses, minor contradictions themselves would not be sufficient to disbelieve the version put-forth by the defendant. That apart, DW1 Inder Singh has categorically stated that the defendant is recorded as the wife of Swaru in the voter list and the defendant has also examined Paras Ram to prove that an inquiry was conducted by him in the capacity of Inspector in the office of B.D.O. wherein the defendant was found to be the widow of Swaru and not of Gangu. No doubt, this inquiry was conducted behind the back of the plaintiffs but the said inquiry can definitely be relied upon to see the correctness and veracity of the statement of the defendant.

19. As mentioned above, PW3, who is the brother of Gangu, instead of supporting the case of the plaintiffs has corroborated the plea of the defendant by stating that Swaru was also called by the name of Sher Singh and the defendant was the widow of Swaru and their marriage was solemnised in the year, 1963 and they lived together till 1965 with Raud and thereafter due to some dispute, Swaru left to Kullu whereas defendant left to her parental house. He has specifically denied that the marriage of the defendant with Gangu was solemnised and stated that defendant resided with Gangu for about 5-6 months.



20. As regards the testimony of PW4 Kalu, no doubt he has stated that Swaru was brother of Raud and died as a bachelor, however, in his cross-examination he has feigned ignorance qua the fact that the defendant alongwith Swaru and Raud used to live together and cultivate the suit land jointly. He further admitted that defendant lived in the house of Gangu for some period as labourer but then he feigned ignorance that the defendant was the widow of Swaru, which clearly establishes that this witness had no knowledge that the defendant used to live with Swaru as his wife alongwith Raud in his house and cultivate the land jointly alongwith Raud and Swaru. Therefore, the first appellate Court was absolutely correct in concluding that statement of PW4 is of no help for the plaintiffs to establish the plea that the defendant was never married to Swaru.

In view of the aforesaid discussion, this question of law is answered against the appellants.

**Question No. 2.**

21. It is vehemently argued by Shri G. R. Palsra, Advocate, that even though it was the specific case of the defendant that she had solemnized her marriage with Swaru and such marriage was duly registered, however, having failed to produce any document with regard to entry to her marriage an adverse inference was required to be drawn by the learned first

appellate Court. In support of his contention, he has relied upon the following judgments:

1. Ramrati Kuer vs. Dwarika Prasad Singh and others, AIR 1967 SCC 1134
2. Khushalbai Mahijibhai Patel vs. A firm of Mohamadhussain Rahimbux, AIR 1981 SC 977
3. Ajay Kumar D. Amin vs. Air France, 2016 (12) SCC 566

22. Undoubtedly, the case set up by the defendant was to the effect that she had solemnised marriage with Swaru alias Sher Singh in the year, 1963 at Shimla and the said marriage was duly registered but the mere fact that the entry of marriage has not been produced on record in itself cannot be a ground to disbelieve his version put-forth by the defendant, especially, in view of the overwhelming evidence that has come on record. Not only the defendant and her witnesses have supported the plea of marriage raised by the defendant but even the plaintiff's own witness, more particularly, PW3 has also fully supported the plea of marriage. In such circumstances, the mere non-production of the entry of marriage cannot in itself be a circumstance to disbelieve the case set up by the defendant, more particularly, when it has duly come on record that the defendant after solemnizing her marriage with Swaru in the year, 1963 had lived with them till 1965.

23. It is more than settled that where a man and woman continues cohabitation for a number of years, there is

presumption under Section 114 of the Evidence Act that they lived as husband and wife. The question, in which circumstances, the Court can draw presumption as to legality of the marriage was succinctly explained by Mulla Book on Hindu Law 22<sup>nd</sup> Edition, Article 435, page 645 under heading "*Presumption as to legality of marriage*" in the following words:-

*"435 Presumption as to legality of marriage - Where it is proved that a marriage was performed in fact, the court will presume that it is valid in law, and that the necessary ceremonies have been performed. A Hindu marriage is recognised as a valid marriage in English law.*

*Presumption as to marriage and legitimacy - there is an extremely strong presumption in favour of the validity of a marriage and the legitimacy of its offspring, if from the time of the alleged marriage, the parties are recognised by all persons concerned as man and wife and are so described in important documents and on important occasions. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. Similarly, the fact that a woman was living under the control and protection of a man, who generally lived with her and acknowledged her children, raises a strong presumption that she is the wife of that man. However, this presumption may be rebutted by proof of facts showing that no marriage could have taken place."*

24. In ***Gokal Chand vs. Parvin Kumari, AIR 1952 SC 231***, the question before the Hon'ble Supreme Court was whether the fact / evidence come on record about the existence of lawful marriage between the parties and if so what should be

the principles to be applied while deciding such question and it was held:-

*"It seems to us that the question as to how far the evidence of those particular witnesses is relevant under Section 50 is academic, because it is well settled that continuous cohabitation for a number of years may raise the presumption of marriage. In the present case, it seems clear that the plaintiff and Ram Piari lived and were treated as husband and wife for a number of years, and, in the absence of any material pointing to the contrary conclusion, a presumption might have been drawn that they were lawfully married. But the presumption which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy that presumption, the Court cannot ignore them."*

25. In **Madan Mohan Singh and others vs. Rajni Kant and another, 2010 (9) SCC 209**, after relying upon the aforesaid principle of law, the Hon'ble Supreme Court reiterated the same principle on the following words:-

"24. The courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for years. However, such presumption can be rebutted by leading unimpeachable evidence. (vide *Mohabbat Ali Khan v. Mohd. Ibrahim Khan*, AIR 1929 PC 135, *Gokal chand v. Parvin Kumari*, AIR 1952 SC 231, *S.P.S. Balasubramanyam vs. Suruttayan*, 1994 (1) SCC 460, *Ranganath Parmeshwar Panditrao Mali vs. Eknath Gajanan Kulkarni*, 1996 (7) SCC 981 and *Sobha Hymavathi Devi vs. Setti Gangadhara Swamy*, 2005 (2) SCC 244.)

26. Similar reiteration of law can be found in the judgment rendered by this Court in ***Dilu vs. Dhani Ram, 1992 (1) SLC 356 and Netar Singh and others vs. Lajya Devi and others, 2011 (2) SLC 229.***

This substantial question of law is answered against the appellants.

27. In view of the aforesaid discussion, there is no merit in this appeal and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.

**7<sup>th</sup> December, 2018.**  
(sanjeev)

**(Tarlok Singh Chauhan)**  
**Judge**

High Court of HP