

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.3382 of 2018 (O&M)

Date of decision: 20.09.2019

Sunita Rathore

... Appellant

Versus

Harshwardhan and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjiv Gupta, Advocate
for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit filed by the respondents/plaintiffs for declaration and permanent injunction was partly decreed by the trial Court vide judgment and decree dated 19.02.2016. The appeal preferred by unsuccessful defendant was dismissed by the Additional District Judge, Fatehabad.

The present *lis* pertains to inheritance to estate of Sh. Karni Singh Rathore who died on 28.03.2011 at Bombay. The respondents/plaintiffs claimed inheritance to Sh. Karni Singh on the allegations that Sh. Karni Singh Rathore performed marriage with plaintiff No.2 on 22.07.1996 and out of their wedlock, Harshwardhan Rathore plaintiff No.1 was born on 24.10.1997. The appellant/defendant is stated to be keep of Karni Singh Rathore, therefore, is not entitle to inheritance to

Sh. Karni Singh Rathore. It is averred by the plaintiffs that they approached the patwari halka to get mutation of inheritance entered and sanctioned in their favour. Mutation No.9179 was entered but later appellant/defendant filed objections before Assistant Collector 2nd Grade, Bhattu Kalan. She (appellant) claimed herself as the only legal heir and representative of deceased Karni Singh Rathore. The mutation was declared disputed and referred to SDO Civil, Fatehabad. The SDO Civil sanctioned the mutation in favour of appellant/defendant. The respondents/plaintiffs filed an appeal before the District Collector, Fatehabad. Vide order dated 23.10.2013, the matter was adjourned sine die and parties were directed to get the matter of inheritance decided from Civil Court. The defendant is bent upon to interfere into peaceful possession of plaintiffs over the property of deceased Karni Singh Rathore. Hence the suit.

The appellant/defendant filed the written statement and, in turn, controverted entitlement of the respondents/plaintiffs to inherit to property of Karni Singh Rathore. She had submitted that her marriage was solemnized with Karni Singh @ Kinti Singh on 19.02.1992 at village Kohar, Tehsil and District Bhiwani according to Hindu rites and ceremonies. The marriage was consummated but no child was born out of the wedlock. Her husband died on 28.03.2011. The plaintiff being Muslim could not perform marriage with Karni Singh Rathore. Karni Singh Rathore never performed marriage with any other woman except the appellant. The plaintiff prepared false documents in collusion with Ajay and Mahender

who wanted to grab property of her husband. The plaintiffs never resided at village Bhatu Kalan and question of their possession of property in question does not arise. She also raised preliminary objections regarding cause of action, maintainability, non-joinder of necessary parties and concealment of true and material facts etc.

The trial Court framed issues, detailed in paras 3 and 4 of judgment of the said Court. The parties were permitted to adduce evidence noticed in paras 5 and 6 of the judgment of trial Court.

The trial Court accepted claim of the appellant that she performed marriage with Karni Singh Rathore on 19.02.1992 as per Hindu rites and ceremonies. The Court rejected plea of plaintiff No.2 that she is the legally wedded wife of Sh. Karni Singh Rathore with the observations that Karni Singh Rathore is not proved to have converted to Islam and as such, he could not perform marriage with plaintiff No.2, in accordance with Muslim law. Eventually, the appellant-defendant was held entitle to half share in the suit property being widow of Sh. Karni Singh Rathore and remaining half share by Harshwardhan Rathore born out of relationship between plaintiff No.2 and Sh. Karni Singh Rathore, therefore, being an illegitimate child is entitle to inherit to Sh. Karni Singh Rathore in view of the provisions of Hindu Marriage Act, 1956.

Against the judgment and decree passed by the trial Court, only one appeal was filed at the behest of appellant/defendant Sunita Rathore to challenge entitlement of plaintiff No.1 Harshwardhan Rathore to

the property of Sh. Karni Singh Rathore to the extent of ½ share.

Counsel for the appellant would argue that the Courts have failed to appreciate the document Ex.P8, memorandum of marriage of plaintiff No.2 and late Karni Singh Rathore, in right perspective, thus, fallen into error by concluding that since Karni Singh Rathore is not proved to have converted to Islam, therefore, he could not perform marriage with plaintiff No.2, admittedly a Muslim and as such, plaintiff No.2 can neither claim herself to be widow of Karni Singh Rathore nor can assert her right to succeed to Sh. Karni Singh Rathore. It is further argued that since Karni Singh Rathore converted to Islam for performing marriage with plaintiff No.2, a Muslim, Courts have committed a gross mistake rather perversity by attracting the provisions of Hindu Marriage Act, 1956 to hold that Harshwardhan Rathore being born out of physical relationship of plaintiff No.2 and Karni Singh Rathore is entitle to inherit self acquired property of Sh. Karni Singh Rathore. सत्यमेव जयते

Counsel for the appellant has not disputed that the appellant raised a plea in her written statement that plaintiff No.2 being Muslim could not perform marriage with Karni Singh Rathore, nor he ever performed marriage with plaintiff No.2 and plaintiffs prepared false document in collusion with Ajay and Mahender who wanted to grab property of Karni Singh Rathore. However, he would argue that even if the appellant has raised these averments in her defence, she cannot be denied benefit of a document, relied upon by the respondents/plaintiffs. If plea of

appellant is accepted that Karni Singh Rathore converted to Islam for performing marriage with plaintiff No.2, a Muslim women and in absence of any plea or evidence on record that he re-converted to Hindu before his death on 28.03.2011, the necessary consequence is that Karni Singh Rathore was a Muslim at the time of his death.

This Court, vide order dated 27.02.2019 called upon counsel for the appellant to address that if a Hindu converts to Islam and previously had a Hindu wife, what are rights of that Hindu wife in the self acquired property of her husband before or after his death. Counsel for the appellants has cited judgment of Guahati High Court **Smt. Krishna Das Choudhury and ors. Vs. Parbin Rahman Hazarika (Musstt.) and ors., 2016 AIR (Gauhati) 19**. Counsel would argue that in view of the provisions of Section 26 of the Hindu Succession Act, 1956 (in short 'the Act'), the appellant being widow of deceased Karni Singh Rathore cannot be denied right to inheritance to the exclusion of others.

A relevant extract from para 33 of the judgment, reads thus:-

Section 26 of the Hindu Succession Act, 1956 casts some light in matter involving conversion from Hinduism to another religion. It provides that children born to a Hindu converted to any other religion after his conversion shall be disqualified from inheriting properties of any Hindu relative unless such children or descendants are Hindus at the time succession opens. The indication is clear that to inherit properties of a Hindu, one must be a Hindu when succession opens. The example of a Hindu son embracing Islam during life time of his father is only taken to test as to whether a

Muslim son of a Hindu on apostasy from Islam can inherit share from his deceased Hindu father.

I have considered the provisions of Section 26 of the Act but find it difficult to comprehend as to how the provisions of Section 26 of the Act can be invoked to decide rights of succession of a Hindu wife to self acquired property of her husband who had converted to Islam. In the given circumstances, neither the provisions of Section 26 of the Act nor the judgment cited by counsel for the appellant answers query raised by the Court vide order dated 27.02.2019. Counsel for the appellant has fairly informed that despite his best efforts, he is unable to lay his hands on any text much less authoritative either under Hindu law or Muslim law that lays down something to support contention of the appellant that even if her husband has converted to Islam, the Hindu wife is entitle to inherit his estate to the exclusion of others. Examined from another angle, if contention of the appellant is accepted that Karni Singh Rathore converted to Islam for performing marriage with a Muslim woman, he ceased to be Hindu from the date of conversion. Counsel for the appellant has failed to cite any provision in Muslim law of succession that entitles a Hindu wife to inherit to the estate of her husband who converted to Islam and was a Muslim at the time of death. If the appellant being a Hindu wife prior to conversion of Karni Singh Rathore to Islam is not entitle to inherit to estate of Sh. Karni Singh Rathore, in my considered opinion, she is not competent to challenge the right of any third person to inherit to the estate of deceased Karni Singh Rathore.

Another plea raised by the appellant in grounds of appeal is that property inherited by Karni Singh from his father would revert back, the moment he converted to Islam. He has failed to cite any statutory provision or precedent in support thereto. Even if this plea is accepted, it would not entitle the appellant to assert her claim to the suit property.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

Before parting with this order, it is pertinent to note that the appellant has been held entitle to $\frac{1}{2}$ share in suit property by the Court holding that Karni Singh Rathore never converted to Islam. The respondents/plaintiffs appear to have not challenged findings of the Courts that Karni Singh Rathore did not convert to Islam nor with regard to entitlement of the appellant to $\frac{1}{2}$ share in the suit property, so this Court has not adverted to non entitlement of appellant to any share in suit property even though she has sought to contend that Karni Singh converted to Islam as per document relied upon by the respondents/plaintiffs.

20.09.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No