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SURJIT KAUR

v.

GARJA SINGH AND ORS.

OCTOBER 27, 1993

B [S. RATNAVAL PANDIAN AND S. MOHAN, JJ.]

Hindu Marriage Act, 1955: Section 7.

Suit—Claim for possession of property by heirs of a deceased—Counter
C *claim—Counter claimant stating that she was legally wedded wife of deceased who had contracted Karewa form of marriage—Essential ceremonies of marriage neither set out nor pleaded—Held mere living as husband and wife does not confer the status of wife and husband—Marriage held invalid—Counter claimant held not entitled to property.*

D **The respondents (plaintiffs) filed a suit for possession of the property of one 'G', since deceased, and for a permanent injunction restraining the appellant (first defendant), in whose favour the mutation of inheritance of deceased was sanctioned, from alienating the land in dispute. Their claim was that they are the nearest heirs of the deceased 'G' who had**
E **executed a will in their favour. The appellant (first defendant) contested the suit on the ground that she was the legally wedded wife of 'G' who had contracted Karewa form of marriage with her and that after the marriage both of them lived as husband and wife.**

The Trial Court dismissed the suit holding that the appellant was
F **the legally wedded wife of 'G' and that the will set up by the respondents was not valid. The judgment of the Trial Court was confirmed by the first Appellate Court.**

On second appeal the High Court found that (i) there was no
G **averment in the pleadings that the marriage of the appellant with 'G' was solemnised in accordance with customary rites and ceremonies; and (ii) the essential ceremonies for a valid marriage were not performed. Accordingly, it held that the appellant was not the wife/widow of 'G'. Further, accepting the respondents' claim that they are the nearest heirs of the deceased the High Court held that they would be entitled to succeed to the**
H **estate of 'G'.**

In appeal to this Court, it was contended on behalf of the appellant that (i) the High Court erred in holding that there was no averment in the written statement as to the marriage; (ii) the ceremonies of marriage were performed in the village and gur was distributed which would prove the marriage; and (iii) in view of the judgment in *Charan Singh, Harnam Singh & Anr.* v. *Gurdial Singh, Harnam Singh & Anr.*, A.I.R. (1961) Punjab 301, no ceremonies were essential to a widow's re-marriage. A B

Dismissing the appeal, this Court

HELD : The High Court is right in its conclusion, that the appellant was not the wife/widow of 'G'. No custom was pleaded at all. Even the evidence of the Appellant does not bring out as to what were the ceremonies performed. Mere distribution of gur will not constitute the necessary ceremony. This is not a case of widow's remarriage to the husband's brother. 'G' was a stranger. Mere living as husband and wife does not, at any rate, confer the status of wife and husband. Accordingly, there is no warrant for interference with the judgment of the High Court. C D

[432-D, E, 431-H, 432-F, 433-B]

***B.S. Lokhande & Anr.* v. *State of Maharashtra & Anr.*, [1965] 2 S.C.R. 837, relied on.**

***Charan Singh, Harnam Singh & Anr.* v. *Gurdial Singh, Harnam Singh & Anr.*, A.I.R. (1961) Punj. 301, held inapplicable.** E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 221 of 1991.

From the Judgment and order dated 11.10.90 of the Punjab and Haryana High Court in R.S.A. No. 1560/1978. F

J.S. Wasu and T.S. Arora for the Appellant.

P. Chidambaram, S. Ujjagar Singh, Surya Kant and Satish Vig for the Respondents. G

The Judgment of the Court was delivered by

MOHAN, J. The facts leading to this Civil Appeal are as under :

The suit property in question was originally owned by one Gulaba Singh. He died on September 5, 1969. The plaintiffs laid a suit No. 217/137 H

A in the court of Sub Judge, 1st Class, Dhuri on 18.6.1970 for possession of the suit property on the plea that they were the grand sons of the father's brother of the said Gulaba Singh. They also based their claim on the will stated to have been executed by Gulaba Singh in their favour on August 16, 1969. It was further averred in the plaint that the first defendant has
B no right, title or interest in the suit property. Her claim that she was validly married to Gulaba is baseless. The Karewa Nama dated October 28, 1965 alleged to have been executed between Gulaba Singh and the first defendant was a nominal transaction. In fact, the Karewa Nama recited that the first defendant was married to Bishan Singh who died about four years ago on April 22, 1964. The mutation of inheritance of the deceased was
C sanctioned in favour of the first defendant Surjit Kaur. Therefore, it had become necessary for the plaintiffs to file a suit for possession of the land and the house in question. An additional plea was made for permanent injunction restraining the first defendant from alienating the land in dispute.

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The first defendant contested the suit on the ground that she was the legally wedded wife of Gulaba Singh who had contracted Karewa form of marriage with her. In evidence whereof a Karewa Nama dated October 28, 1965 had been executed and the same has also been registered. After the marriage, both of them lived as husband and wife. Gulaba Singh had
E executed no will in favour of the plaintiffs. The plaintiffs could not lay their claim on the relationship with Gulaba Singh which is denied.

The second defendant Nachhattar Singh contested the suit contending that Gulaba Singh had executed a will in his favour on 1.9.1965 as a result of which he became the owner of the said property. It was also
F denied by him that the deceased had executed any valid will in favour of the plaintiffs or that the plaintiffs were related to Gulaba Singh.

On trial, it was held that the will set up by the plaintiffs was not valid. Surjit Kaur was the legally wedded wife of Gulaba Singh. Accordingly, the
G suit was dismissed.

Aggrieved by the dismissal of the said suit, the matter was taken up in appeal before the learned Additional District Judge, Sangrur in C.A. No. 10/1974. By judgment and decree dated 27.5.1978, it was dismissed.

H Thereupon, Regular Second Appeal No. 1560/1978 was preferred to

the High Court. The learned Single Judge of the High Court took the view that in the written statement, it had not been pleaded that marriage of appellant Surjit Kaur with Gulaba Singh was solemnised in accordance with the customary rights and ceremonies. Nor did she as DW4 state that the marriage was celebrated with customary ceremoneies in due from. Having regard to Section 17 of the Hindu Marriage Act, the essential ceremonies set out under the Act had not been conducted. Merely because, there was distribution of sugar or gur, that would not constitute a valid marriage. Surjit Kaur was in the habit of changing husbands frequently. Therefore, she is not the wife/widow of the deceased Gulaba Singh. The respondents having proved that they are the nearest heirs of the deceased would be entitled to succeed to the estate of the Gulaba Singh. In the result, the second appeal was allowed setting aside the concurrent findings.

Aggrieved by this, the present appeal has been filed.

The argument on behalf of the appellant is that the High Court erred in holding that there was no averment in the written statement as to the marriage of the appellant with Gulaba Singh. In fact, there is a mention in paragraphs 13 and 16 of the written statement, Ex. D4 that Karewa Nama also establishes the factum of marriage. DW1 speaks that the ceremonies of marriage were performed in the village and gur was distributed. That would be enough to prove marriage. It was this evidence which has come to be accepted by the trial court and the court of first appeal. Placing reliance on *Charan Singh, Harnam Singh & Anr.* v. *Gurdial Singh, Harnam Singh & Anr.*, AIR (1961) Punjab 301, it is argued that no ceremonies are essential to a widow's remarriage. Therefore, the judgment under appeal has to be set aside.

In opposition to this, the learned counsel for the respondents would urge that in the written statement, there was no plea as to the custom prevalent in the area which governs the parties. Further, the ingredients of the alleged custom and the essential ceremonies of the marriage were neither set out nor pleaded. Hence, the High Court was right in its conclusion. The custom must be proved to be ancient, certain and reasonable if the court of law were to accept the same. Merely because they lived as husband and wife, the status of wife is not conferred as laid down in *B.S. Lokhande & Anr.* v. *State of Maharashtra & Anr.*, [1965] 2 SCR 837. This is not a case of widow's remarriage to the husband's brother.

A Gulaba Singh was a stranger. Therefore, no exception could be taken to the judgment of the High Court.

We have given our careful consideration to the above arguments. In paragraphs 13 and 16 of the written statement, what is stated is reads as under :

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> "Para No. 13 that my marriage took place with Gulaba Singh and just because of that the agreement was executed on 28.10.1965 and that the marriage of the defendant with Gulaba Singh is right and justified. I the defendant have no business and link with Nagar Singh.
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> C
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> Para No. 16 is not admitted. I the defendant as were my own will married Gulaba Singh the deceased and remained as his wife in his house."

D Therefore, it is clear that no custom was pleaded at all. The High Court is right in its conclusion.

Even evidence of DW4 does not bring out as to what were the ceremonies performed. Mere distribution of gur will not constitute the necessary ceremony.

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Reliance placed on *Charan Singh's* case (supra) is not correct because that will apply only if the widow were to marry the brother of the husband. But, here Gulaba Singh is a stranger. As rightly contended by the respondent, mere living as husband and wife does not, at any rate, confer the status of wife and husband. In *B.S. Lokhande's* case (supra) it was laid F down that the bare fact that the man and woman living as husband and wife does not, at any rate, normally give them the status of husband and wife even though they may hold themselves out before the society as husband and wife and the society treats them as such. The following extract is useful for this purpose.

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> "*Prima facie,* the expression 'whoever..... marries' must mean 'whoever..... marries validly' or 'whoever .....marries and whose marriage is a valid one'. If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife
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> of the person marrying arises. If the marriage is not a valid

marriage, it is no marriage in the eye of law. The bare fact of a man and a woman living as hasband and wife does not, at any rate, normally give them the status of husband and wife even though they may hold themselves out before society as husband and wife and the society treats them as husband and wife." A

Accordingly, we find no warrant for interference with the judgment of the High Court. The Civil Appeal stands dismissed. There shall be no order as to costs. B

T.N.A. Appeal dismissed.