

Before M.M. Kumar, J

HAZURA SINGH,—Appellant/Plaintiff

versus

TEJ KAUR & OTHERS,—Respondents/Defendant

R.S.A. No. 2774 of 1979

20th August, 2001

Hindu Women's Rights to Property Act, 1937—S.3—Evidence Act 1872—S.50—Suit for possession—Defendant taking forcible possession of land claiming herself to be the widow of deceased—Documentary evidence showing that she was living with another person during life time of the deceased and also had children from the loins of such person—Not entitled to possession of land as she lost status of widow of the deceased—Principles of Hindu law also disqualify a woman living in adultery from succession to her husband's estate—Appeal allowed while setting aside the judgment & decree of the Ist Appellate Court holding the widow entitled to inherit the property.

Held, that there is overwhelming evidence of long cohabitation between Tej Kaur and Ram Singh even before the commencement of the Hindu Marriage Act, 1956. Even the children were born out of the wedlock as proved by Exs.P5 and P6 dated 24th September, 1958 and 10th December, 1962. This documentary piece of evidence shows that Tej Kaur had left the company of Gangan Singh and had started living as wife of Ram Singh. Long cohabitation and birth of many children from the loins of Ram Singh is good enough to conclude that Tej Kaur lost the status of being the wife of Gangan Singh during his life time and her status was that of wife of Ram Singh. Moreso, she was seen in the company of Ram Singh since 1947 by Kishan Singh who is brother of Ram Singh.

(Para 15)

Further held, that presuming that the status of Tej Kaur at the time of death of Gangan Singh was that of wife who started living with Ram Singh adultery, then the principles of Hindu Law concerning

succession would frown at such an unchaste wife. According to well settled principles of Hindu Law, a married woman living in adultery at the time of her husband's death is disqualified by reason of her unchastity from succeeding to his estate in joint family property.

(Para 18)

Tribhuvan Singla, Advocate, *for the appellant.*

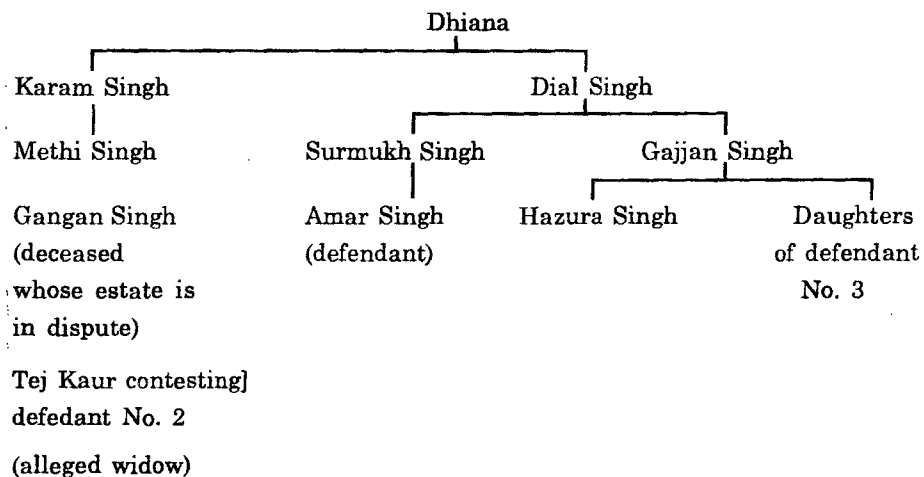
Avnish Mittal, Advocate, *for respondent No. 1*

JUDGMENT

M.M. Kumar, J

(1) This is plaintiff—appellant's appeal against the judgment of the Additional District Judge, Bhatinda, dated 26th March, 1979. The learned Additional District Judge, partially reversed the findings returned by the trial Court,—*vide* its judgment dated 21st September, 1976.

(2) Brief facts of the case are that the appellant Hazura Singh filed a suit on 13th October, 1971 for possession in respect of land measuring 55 kanals 19 marlas situated at village Kanak Wal Chehlan. The case set up before the Courts below is that one Gangan Singh was owner in possession of the suit land who died on 12th September, 1966. Surmukh Singh father of Amar Singh (Respondent No. 1) died during the life time of Gangan Singh. The appellant set up a Will alleged to have been executed on 10th September, 1966 by Gangan Singh. The plaintiff Appellants produced pedigree table which reads as under :—



(3) The appellant made further averment that Tej Kaur, Respondent No. 1, claimed herself to be the widow of Gangan Singh took forcible possession of the land without any right. It was alleged that Tej Kaur was not the widow of Gangan Singh and she was never married to him and infact she was wife of one Ram Singh son of Hira Singh and had given birth to 5/6 children from the loins of Ram Singh. Tej Kaur, respondent No. 1, alone contested the suit and the Court proceeded *ex-parte* agaisnt rest of the respondents. She strongly denied the validity of any will infavour of the appellant—plaintiff. It was further alleged that Gangan Singh died on 9th September, 1966 and not on 12th September, 1966. This fact alone would make a huge difference because the Will is alleged to be executed on 10th September, 1966. She also strongly controverted the averment of the appellant—plaintiff that he is the legal heir of Gangan Singh deceased.

(4) Both the Courts below returned a firm finding of fact that the Will could not have been executed on 10th September, 1966 when the Testator himself had died on 9th September, 1966. The learned Additional District Judge while affirming the finding of the trial Court categorically concluded that from the evidence on record it would be safe to come to the finding that the propounder of the Will was unable to explain the suspicious circumstances appearing in the evidence to the satisfaction of the Court and the finding of the trial Court was fully justified to discard the Will. Even before me, the learned counsel for the appellant Shri Tribhuvan Singla has not assailed the finding of the courts below on this issue. Moreover, in my considered opinion, no question of law with regard to discarding of Will could be framed warranting any interference by this Court on this issue in the second appeal.

(5) The only question of law which arises for the consideration of this Court as claimed by the Appellant is under :—

“Whether cohabitation between man and woman for a long period and from whose loins children are born could lead to the presumption that relationship between the two was that of a husband and wife?”

(6) The trial Court after detailed examination of the overwhelming oral as well as documentary evidence produced by the appellant—plaintiff came to the conclusion that respondent No. 1,

Tej Kaur, was the wife of one Ram Singh and was no more widow of Gangan Singh. On this issue, it is worthwhile to quote paragraphs 16, 17 and 18 of the trial Court judgement which are as under :—

“There is abundant evidence on the file produced by the plaintiff to show that Tej Kaur had ceased to be wife of Gangan Singh and she had in fact re-married one Ram Singh. There is documentary evidence to prove that she is now the wife of Ram Singh. Ex.P5 is the birth certificate of a child of Tej Kaur and the child is described as son of Ram Singh. Similarly, the birth certificate Ex.P6 is also of one of the children of Tej Kaur and Ram Singh. Ex.PX is the copy of the Voters List in which Tej Kaur is described as wife of Ram Singh. These documents definitely proved that Tej Kaur is presently wife of Ram Singh and therefrom the presumption under law is drawn that it was after the death of Gangan Singh that she married Ram Singh. A long period of co-habitation by Tej Kaur with Ram Singh will raise a presumption of marriage in my opinion. Besides this documentary evidence there is oral evidence also comprising (sic) by Kishan Singh who is the relation of Ram Singh, as the grand daughter of his uncle is married to Jang Singh who is brother of Ram Singh. He deposes that he has been seeing Tej Kaur with Ram Singh since 1947. PW 7 also deposes and identifies Tej Kaur who was present in the Court that she is the wife of Ram Singh. In the cross-examination he has given the description of the house of Ram Singh, where it is located.

From, the above evidence and from the discussion made I come to the conclusion that Tej Kaur is now no more widow of Gangan Singh as she has adopted Ram Singh as her husband and has children from him. She has ceased to be the widow of Gangan Singh. Issue Nos. 2 and 3 are decided accordingly in favour of the plaintiff.”

(7) On appeal to the learned Additional District Judge, Bhatinda, finding on this issue was reversed and it was held that Tej Kaur, respondent No. 1, did not cease to be legally wedded wife of Gangan

Singh merely because she started cohabiting and living with Ram Singh. This fact also, accordingly to the learned Additional District Judge, does not make any difference that she had given birth to children from the loins of Ram Singh. Cohabitation of Tej Kaur with Ram Singh would not snap her status of wife of Gangan Singh and she continues to be the widow of Gangan Singh. The finding returned by the learned Additional District Judge in paragraphs 12 and 13 are as under :—

“The learned counsel for the appellant has vehemently contended that the finding of the trial court that Tej Kaur ceased to be the wife of Gangan Singh in his life time having remarried Ram Singh of V.Borawal as recorded under issue No. 3 is not sustainable in view of the evidence on record. According to him, *there is no evidence regarding the remarriage of Tej Kaur with Ram Singh. According to him, evidence, if any, is of long cohabitation of Tej Kaur with Ram Singh.* According to him, the learned Sub Judge was not justified to hold that by mere long cohabitation Tej Kaur ceased to be the wife of Gangan Singh. There appears to be a good deal of force in this contention. Once it is proved that Tej Kaur was lawfully married to Gangan Singh, then in the absence of legal dissolution of the marriage, she cannot by going through a form of marriage second time, in the life time of his previous husband, makes this second marriage a valid one in the eyes of law. I am satisfied from the evidence on record that Tej Kaur is living with Ram Sngh of village Borawal and has also given birth to some children from his loins during the life time of Gangan Singh. But the question, which falls for determination, is whether by living with Ram Singh during the life time of Gangan Singh, she ceased to be the wife of him. Here, I am of the considered view that the learned Sub Judge fell in error. Under Hindu Law, once marriage is established, then evidence of divorce should be there to nullify the previous marriage. The learned counsel for the appellant has referred to para 74 at page 878 of the Ratigan’s Digest, which lays down that “until the former marriage is

validly set aside, a woman cannot marry a second husband in the life time of her first husband". At the most, it can be said that Tej Kaur started living as a keep or concubine of Ram Singh in the life time of Gangan Singh, but in the eyes of law, she will remain to be a lawful wife of Gangan Singh and she did not cease to be the wife of said Gangan Singh in his life time. Thus, I am of the considered view that the finding of the trial Court on issue No. 3 is erroneous and cannot be sustained. The same is set aside and the issue is decided against the plaintiff-respondent Hazura Singh.

Since Tej Kaur is found to be the widow of Gangan Singh and being as such is entitled to inherit the property in suit as his heir, the plaintiff and defendant No. 3 are not the legal heirs of Gangan Singh deceased as held by the trial Court. Consequently, the finding on issue No. 4 as recorded by the trial Court is also set aside and the issue is decided against the plaintiff."

(8) Consequently, the learned Additional District Judge partially allowed the appeal of respondent No. 1 and held her entitled to inherit the property in suit as heir of deceased Gangan Singh. As a result of the findings given by the learned Additional District Judge, the suit of the appellant was dismissed. He has now approached the High Court by way of second appeal.

(9) I have heard Shri Tribhuvan Singla, Advocate, learned counsel for the appellant Hazura Singh and Shri Avnish Mittal, Advocate, learned counsel appearing for respondent No. 1 i.e. Tej Kaur and have with their assistance perused the record.

(10) Shri Tribhuvan Singla, Advocate, learned counsel for the appellant argued that under Section 50 of the Evidence Act, 1872, (for short 'the Act') opinion with regard to the relationship of one person to another is expressed either by the conduct as to the existence of such relationship or by a person who as a member of the family or otherwise, has special means of knowledge of such relationship. Section 50 of the Act is reproduced hereunder for facility of reference :—

"Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of

one person to another, the opinion expressed by conduct, as to the existence of such relationship, of any person who as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact :

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act (IV of 1869) or in prosecutions under Sections 494, 495, 497 or 498 of the Indian Penal Code (XLV of 1860). Illustrations.

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.”

(11) He further argued that under Section 114 of the Act, presumption can be raised from the act and conduct of the parties that they were married.

(12) The further submission of Shri Singla is that the parties are Carpenter by caste and there is a custom amongst the Carpenters that if the wife is asked to leave the house, this act is enough evidence of divorce and such a woman is free to marry another man. Moreover, he submitted that there is abundant evidence on record to show that she is married to one Ram Singh. Ex. P5, dated 24th September, 1958 and Ex. P6 dated 10th December, 1962 are the birth certificates of the children born to Tej Kaur out of the loins of Ram Singh and Ex. PX is the Voters List in which Tej Kaur is described as wife of Ram Singh. The statement of Chanan Singh PW 5 and also that of Kishan Singh, PW6, who are close relation of Ram Singh have deposed that they had seen Tej Kaur living with Ram Singh since 1947. The witness who appeared as PW7 also identifies Tej Kaur who was present in the Court to say that she was the wife of Ram Singh. It was on the basis of this overwhelming evidence that the learned trial

Court concluded that the status of Tej Kaur as wife of Gangan Singh ceased and her present status determined is that she has been living as wife of Ram Singh as she have children from him and she has been treated as such by all and sundry. Moreover, there is evidence on record that she was seen in the company of Ram Singh as his wife since 1947 by none else than brother of Ram Singh i.e. Kishan Singh PW6. Therefore, on that basis, it was concluded on issue Nos. 3 and 4 that the plaintiff—appellant alongwith his sisters would inherit the suit property belonging to Gangan Singh.

(13) On the contrary Shri Avnish Mittal, Advocate, learned counsel appearing for respodnent No. 1 Tej Kaur has urged that the appellant has admitted in paragraph 4 of the memorandum of appeal that she re-married Ram Singh after the death of Gangan Singh. Paragraph 4 of the memorandum of appeal reads as under :—

“That the lower appellate court has failed to appreciate the documentary evidence in the form of Ex.P.5 and Ex.P.6 which categorically shows that the birth of the respect(?) sons wherein they have been described as sons of Ram Singh. Apart from this Exhibit PX is a copy of the Voters List. From all these documents it is clear and there is a strong presumption of law that after the death of Gangan Singh she had re-married with Ram Singh and they were living as husband and wife.”

(14) Mr. Avnish Mittal, learned counsel for respondent No. 1 further argued that the birth certificates Exs.P5 and P6 are dated 24th September, 1958 and 10th December, 1962 respectively and the Voters List Ex.PX do not lead to the conclusion that Tej Kaur, respondent No. 1 had abandoned her husband Gangan Singh during his life time and had adopted Ram Singh as her husband. Long cohabitation with Ram Singh during the subsisting marriage with Gangan Singh, according to the learned counsel, would not lead to the inference that Tej Kaur had become the wife of Ram Singh.

(15) I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and feel unable to agree with the learned counsel for respondent No. 1. There is overwhelming evidence of long cohabitation between Tej Kaur and Ram Singh even before the commencement of the Hindu Marriage

Act, 1956. Even the children were born out of the wedlock as proved by Exs.P5 and P6, dated 24th September, 1958 and 10th December, 1962. This documentary piece of evidence alongwith Ex.PX conclusively shows that Tej Kaur had left the company of Gangan Singh and had started living as wife of Ram Singh. To my mind, long cohabitation and birth of many children from the loins of Ram Singh is good enough to conclude that Tej Kaur lost the status of being the wife of Gangan Singh during his life time and her status was that of wife of Ram Singh. Moreso, she was seen in the company of Ram Singh since 1947 by one Kishan Singh DW6 who is brother of Ram Singh. In view of this, the question posed at the outset is answered in affirmative.

(16) The matter is not *res integra*. Their Lordships of the Supreme Court in the case of *Gokal Chand vs. Parvin Kumari* (1) held that continuous cohabitation of man and woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage. On this issue, the views of their Lordships as expressed in para 10 are as under :—

“As to the evidence of the 4 persons who claim to have been present at the plaintiff’s marriage, we find ourselves in agreement with the view taken by the High Court. The evidence of the other witnesses undoubtedly establishes the fact that for some years the plaintiff and Ram Piari lived together as husband and wife and were treated as such, that Paras Ram brother of Ram Piari, addressed the plaintiff as ‘jija’ (common name for sister’s husband), and that the plaintiff acted as Paras Ram’s guardian when the latter was admitted to D.A.V. School and was described as his brother-in-law in some of the entries in the school register. The learned Judges of the High Court considered that the evidence of certain witnesses who deposed to some of the facts on which the lower Court believed, did not strictly comply with the requirement of S.50 of the Indian Evidence Act, firstly because the witnesses had no special means of knowledge on the subject of relationship between the plaintiff and Ram Piari, and secondly because what S.50 made

(1) AIR 1952 SC 231

relevant was not mere opinion but opinion 'expressed by conduct' of persons who as members of the family or otherwise, had special means of knowledge. It seems to us that the question as to how far the evidence of those particular witnesses is relevant under S.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. We agree with the learned Judges of the High Court that in the present case, such circumstances are not wanting and their cumulative effect warrants the conclusion that plaintiff has failed to prove the factum of his marriage with Ram Piari. In the first place, the plaintiff has not examined any of his near relations such as his brother, or collaterals living in Ajnaha, or any co-villagers, whose presence at the marriage would have been far more probable than the presence of the witnesses examined by him. He has also not examined any of the witnesses residing in or round about Holta estate in spite of the fact that his own case is that the marriage was celebrated with great pomp and show. It was suggested in the Courts below that since defendant No. 2 is an influential person, no local witnesses would be available to support the plaintiff's case, but the High Court has very fully dealt with this aspect and pointed out firstly that Raj Kumari had litigation with a number of persons belonging to Palampur and such persons would not be under her influence, and secondly that no good reason has been shown by Raj Kumari who is alleged to have brought about the marriage between the plaintiff and Ram Piari, should take a completely hostile attitude towards him.

Then again, neither the parents nor any of the relations of Ram Piari have been examined to support the plaintiff. On the other hand, Ram Piari's own mother, Ganga has deposed that the former was never married to the plaintiff, and the statement made by Ram Piari in her will, which is a very valuable piece of evidence, is to the same effect. It is also incredible that inspite of the love which Ram Piari is said to have had for the plaintiff, she left him and went away to live with Raj Kumari, and that during the long period when Ram Piari was away, the plaintiff should never have visited her or made enquiries about her and his alleged daughter, Parvin Kumari. This is all the more strange, since it is stated by the plaintiff that Ram Piari continued to love him and that she and Raj Kumari inwardly hated each other. Parvin Kumari says in her deposition that she had never seen her father and that when she reached the age of discretion she found herself living at Palampur. The conduct of the plaintiff in showing such complete indifference to his wife and daughter as is disclosed in his evidence is most unnatural, and no less unnatural is his conduct in instituting a suit to deprive her of properties which had come into her hands not by reason of anything done by him but as a result of the generosity shown towards her by a stranger. The plaintiff's case that the properties in dispute were acquired by Ram Piari with the aid of his money is wholly untrue and it has been rightly found by both the Courts that they were acquired for her by Raj Kumari. The plaintiff's witnesses have tried to exaggerate his means to support his case, but the truth appears to be that he had hardly any means of his own beyond the some what meagre salary which he used to draw as a Court typist."

(17) Similarly, in the case of *Badri Parsad vs. Deputy Director Consolidation* (2), their Lordships of the Supreme Court took the view that if a man and woman have been living as husband and wife for long years a strong presumption arises in favour of wed-lock. In such circumstances, there is no necessity to prove the factum of marriage

by examining priest and other witnesses. This short judgment is worthwhile to refer, which reads as under :—

“For around 50 years, a man and a woman, as the facts in this case, unfold, lived as husband and wife. An adventurist challenge to the factum of marriage between the two, by the petitioner in this special leave petition, has been negatived by the High Court. A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. In this view, the contention of Shri Garg, for the petitioner, that long after the alleged marriage, evidence has not been produced to sustain its ceremonial process by examining the priest or other witnesses, deserves no consideration. If man and woman who lives as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married, few will succeed. The contention deserves to be negatived and we do so without hesitation. The special leave petitions are dismissed.”

(18) Presuming that the status of Tej Kaur at the time of death of Gangan Singh was that of wife who started living with Ram Singh in adultery, then the principles of Hindu law concerning succession would frown at such an unchaste wife. According to the well settled principles of Hindu law, a married woman living in adultery at the time of her husband's death is disqualified by reason of her unchastity from succeeding to his estate in joint family property. After detailed consideration of the effect of Section 3 of the Hindu Women's Rights to Property Act, 1937 on the right of succession of Hindu married woman living in adultery at the time of her husband's death, a Full Bench of the Madras High Court in the case of *Ramaiya vs. Mottayya* (3) held that such a wife would be disqualified by reason of her unchastity from succeeding to his interest. The Full Bench held as under :—

“12. It is well settled rule of Hindu law—a rule that is in conformity with popular sentiment—that unchastity

disqualifies a widow from succession to her husband's estate. The textual authorities on this point will be found assembled in the judgment in *Kery Kolutany vs. Moneeram Kolita* 13 Beng. L.R.1. The text requires that the widow must be chaste not only when the inheritance of her deceased husband opens but also thereafter.....”

“15. It is said that the disqualification of a Hindu widow to inherit her husband's estate arising from her unchastity is a rule of Hindu Law which stands abrogated as a result of S.2, I cannot agree. The rule of Hindu law to the contrary', referred to in S.2 is the rule of Hindu Law excluding a widow from succession to her husband's estate if he had left a son, grandson or great grandson, or if he had died as a member of a joint Hindu family leaving his coparceners. It is this rule of Hindu law that was superseded by S.3 of the Act. To this extent, but no further, S.3 is contrary to and, therefore, supersedes the rule of Hindu Law. The significance of the words “to the contrary” following the words “Notwithstanding any rule of Hindu Law” in S.2 is that it is only such rules of Hindu law as are contrary to the provisions of S.3 of the Act that stand abrogated. The disqualification of a Hindu widow from succession to her husband's estate based on her unchastity was not even touched upon by the Act and there is nothing in S.3 prescribing a rule contrary to the well established rule of Hindu law that the chastity of a widow is a condition precedent to her inheriting her husband's estate”.

(19) For the foregoing reasons, this Regular Second Appeal succeeds. As a consequence, the judgment and decree passed by the learned trial Court is restored and judgment and decree of the Additional District Judge, Bhatinda dated 26th March, 1979 is set aside.

R.N.R.