

Madan Mohan Singh & Ors vs Rajni Kant & Anr on 13 August, 2010

Equivalent citations: AIR 2010 SUPREME COURT 2933, 2010 (9) SCC 209, 2010 AIR SCW 4932, 2010 (5) ALL LJ 611, 2010 (8) SCALE 406, (2010) 4 MH LJ (CRI) 409, (2010) 2 CLR 660 (SC), (2010) 6 ANDHLD 178, (2010) 4 CAL HN 366, (2010) 6 ALL WC 5637, (2010) 9 ADJ 263 (SC), (2010) 7 MAD LJ 706, (2011) 1 WLC(SC)CVL 696, (2010) 4 CIVILCOURTC 347, (2011) 2 MARRILJ 398, (2011) 112 REVDEC 63, (2010) 3 CGLJ 48, (2011) 1 ICC 448, (2011) 1 UC 771, (2011) 1 HINDULR 100, (2011) 1 RECCIVR 152, (2010) 8 SCALE 406

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Bench: P. Sathasivam, B.S. Chauhan

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 6466 of 2004

Madan Mohan Singh & Ors.

..Appellants

Versus

Rajni Kant & Anr.

..Respondents

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order dated 14.8.2003 in Civil Misc. Writ Petition No.19334 of 2003 passed by the High Court of Judicature at Allahabad by which the High Court dismissed the writ petition of the appellants in view of the concurrent findings recorded by the three statutory authorities under the Statute.

2. Facts and circumstances giving rise to this case are that one Chandra Deo Singh was recorded as the khatedar of Khata Nos.485, 620, 146 and 66 of Village Bhojapur and Khata No.21 of Village Kanshari. The respondents in appeal, Rajni Kant and Anjani Kumar claimed themselves to be the

sons of said Chandra Deo Singh and filed objections under Section 9-A(2) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as 'Consolidation Act') and they asked for inclusion of their names as his heirs. Another objection was filed by the appellants in the disputed khata submitting that the said respondents had no right or interest in the suit land, not being the sons of late Chandra Deo Singh and the appellants were his only legal heirs. The Consolidation Officer having framed large number of issues and having provided full opportunity of hearing to both the parties to lead evidence and make submissions, passed an order dated 8.11.2000, allowing the objections filed by the respondents and further directing to record their names. Being aggrieved, the appellants preferred the appeal before the Settlement Officer which had been dismissed vide judgment and order dated 16.2.2001. Being aggrieved, the appellants preferred Revision No.958 under Section 48 of the Consolidation Act which also stood dismissed vide judgment and order dated 15.3.2003.

3. The appellants further agitated the issue, challenging the said judgments and orders by filing Writ Petition No.19334/2003 which has also been dismissed vide judgment and order dated 14.8.2003. Hence, this appeal.

4. Shri Mahabir Singh, Ld. Senior counsel, appearing for the appellants, has submitted that mother of the appellants, Smt. Sonbarsa died in 1945. Chandra Deo Singh, father of the appellants remained in Jail as a Freedom Fighter from 1945-47. There is nothing on record to show that appellants' father got married with the mother of the respondents Smt. Shakuntala in accordance with law. At the most she could be concubine of Chandra Deo Singh and being illegitimate children, the respondents have no right to inherit any share in the suit land. More so, the respondents were born prior to having started live-in-relationship between Chandra Deo Singh and said Smt. Shakuntala as is evident from the School Register and School leaving certificate produced by the appellants before the statutory authorities as well as before the High Court and this Court. The said documents had not been properly appreciated by any of the authorities. The findings of facts recorded by the statutory authorities are perverse being contrary to evidence on record produced by the appellants. The High Court did not make any attempt to appreciate the evidence at all. Findings so recorded, are perverse, being contrary to the evidence on record. The appeal has merit and thus, deserves to be allowed.

5. Per contra, Shri Abhay Kumar, Ld. Counsel appearing for the respondents has submitted that three statutory authorities under the Consolidation Act have recorded the concurrent finding of fact that Chandra Deo Singh and Smt. Shakuntala were living together for a long time. Their relationship as husband and wife had been accepted by the Society as well as the family members. In many official documents, name of Chandra Deo Singh has been shown as the father of the respondents. In the beginning, Chandra Deo Singh did not disclose the relationship with Smt. Shakuntala because of social conditions that the Society may not accept their relationship even after the death of his wife Smt. Sonbarsa. Both the respondents were born out of their relationship. Appeal lacks merits and is liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

In fact, statutory authorities under the Consolidation Act enjoys the powers of the Civil Court as well as the Revenue Court as all matters pending before the Civil Court stand abated once a notification of initiation of proceedings under the Consolidation Act is issued. Authorities under the Consolidation Act have been conferred powers of the Civil Court to adjudicate upon any matter of title or right to inherit the property etc. Undoubtedly, there are concurrent findings of facts recorded by three authorities under the Consolidation Act after appreciating the entire evidence on record. The authorities have recorded following findings of facts:-

(I) Chandra Deo Singh was having relationship with Smt. Shakuntala for long time;

(II) After the death of his wife Sonbarsa in 1945, Chandra Deo Singh had live-in-relationship with Smt. Shakuntala and started living as husband and wife;

(III) Chandra Deo Singh started living with Smt. Shakuntala in a different village namely, Murdah in 1960-1961.

(IV) Their relationship continued till the death of Chandra Deo Singh on 31.12.1979 and therefore, they lived together as husband and wife for a long period;

(V) The respondents and other four daughters were born out of this relationship between Chandra Deo Singh and Smt. Shakuntala; and (VI) Their relationship as husband and wife had been accepted not only by the Society but also by the family members.

7. The aforesaid concurrent findings of facts recorded by the authorities under the Consolidation Act have been affirmed by the High Court though without having full-fledged appreciation of evidence. The High Court reached the conclusion that findings of facts recorded by three courts below did not require re-appreciation of evidence and further that no interference was required with same in exercise of writ jurisdiction.

8. Shri Mahabir Singh, learned Senior counsel appearing for the appellants persuaded us to have recourse to the unusual procedure submitting that in spite of concurrent findings of facts by courts below, this Court must appreciate the evidence itself for the reason that findings of facts so recorded are perverse. He has placed a very heavy reliance on the documents the appellants have submitted and contended that the said documents are admissible under Section 35 of the Indian Evidence Act, 1872 (hereinafter called the 'Evidence Act') and mere reading of those documents would not leave any doubt that the findings recorded by the courts- below are contrary to the evidence on record. In order to substantiate his submission, he has placed reliance on large number of judgments of this Court.

However, before entering into any law, we would like to examine the documents which are so heavily relied by learned Senior counsel. The documents so placed on record are basically School Leaving Certificates, School Registers, Voter Lists and other documents prepared by the authorised persons in exercise of their official duty. Annexure P-1(Colly) is the copy of Electoral Rolls for

Legislative Assembly of the three consecutive elections. The particulars of Smt. Shakuntala had been shown therein as under:-

Electoral S.No. House Name & Father/ Male/Female Age Rolls for
Husband/Mother's year of No. Name 1975 128 20 Smt. Shakuntala- Female 34
Saraswati 1979 138 20 Smt. Shakuntala- Female 36 Saraswati 1980 157 20 Smt.
Shakuntala- Female 41 Saraswati

9. These entries are very relevant to determine the controversy regarding the date of birth of the respondents and other family members. As per the first document in Annex.P-1 (Colly), Smt. Shakuntala should have been born in 1941 as she was 34 years of age in 1975. As per the 2nd list she should have been born in 1943 as she was 36 years of age in 1979. Immediately, after one year in 1980 she became 41 years of age and according to this document she should have been born in 1939.

There is so much inconsistency that these documents cannot be read together for the reason that in 1979 if Smt. Shakuntala was 36 years of age, in 1980 she had been shown 41 years of age. So, after expiry of one year, her age had gone up by 5 years.

10. Annexure P-3 has been filed as the copy of the report prepared by the Tahsildar in view of the order passed by the competent court dated 31.7.1984. According to that Asha Devi, daughter of Smt. Shakuntala and sister of respondents was born on 7.7.1951. Therefore, if Smt. Shakuntala as per the first document was born in 1941, question of giving birth to Asha could not arise at the age of 10 years. If we go by the second document of 1979, Smt. Shakuntala was born in 1943 and she could not have given birth to Asha in 1951 at the age of 8 years. According to the third document, Smt. Shakuntala was 41 years of age in 1980. So, at the time of birth of Asha, Smt. Shakuntala was 12 years of age. Same is the position in respect of Savitri, another daughter of Smt. Shakuntala. As per Annexure P-4, School Leaving Certificate, her date of birth has been recorded as 1.9.1949. If this document is taken to be true and age of Smt. Shankutala is taken from Annex.P-1 (Colly), we will have to record a finding of fact that Smt. Shakuntala gave birth to Savitri at the age of 6 years.

11. Now we come to the most material evidence (Annex. P-8) submitted by the appellants in respect of age of Rajni Kant, respondent No.1. The said document is a Certificate for practicing Unani medicine and therein his date of birth has been shown as 15.7.1940. If this document is taken to be true and compared with the document contained in Annexure P-1 (Colly) wherein Smt. Shakuntala had been shown 34 years of age in 1975 and 36 years of age in 1979, it becomes arithmetically clear that Smt. Shakuntala had given birth to him even prior to her own birth.

12. The aforesaid documents placed on record by the appellants and so heavily relied upon by them, if taken into consideration, they would simply lead not only to improbabilities and impossibilities but absurdity also. It is most unfortunate that none of the courts below had analysed these documents in this manner while taking them into consideration and none of the lawyers have thought it proper to bring these most glaring facts to the notice of and of the courts.

13. In *State of Bihar & Ors. Vs. Radha Krishna Singh & Ors.* AIR 1983 SC 684, this Court dealt with a similar contention and held as under:-

"Admissibility of a document is one thing and its probative value quite another - these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.

Where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has "a statutory flavour in that it is given not merely by an administrative officer but under the authority of a Statute, its probative value would indeed be very high so as to be entitled to great weight.

The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little."

14. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in *Ram Prasad Sharma Vs. State of Bihar* AIR 1970 SC 326; *Ram Murti Vs. State of Haryana* AIR 1970 SC 1029; *Dayaram & Ors. Vs. Dawalatshah & Anr.* AIR 1971 SC 681; *Harpal Singh & Anr. Vs. State of Himachal Pradesh* AIR 1981 SC 361; *Ravinder Singh Gorkhi Vs. State of U.P.* (2006) 5 SCC 584; *Babloo Pasi Vs. State of Jharkhand & Anr.* (2008) 13 SCC 133; *Desh Raj Vs. Bodh Raj* AIR 2008 SC 632; and *Ram Suresh Singh Vs. Prabhat Singh @Chhotu Singh & Anr.* (2009) 6 SCC 681. In these cases, it has been held that even if the entry was made in an official record by the concerned official in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases.

15. Such entries may be in any public document, i.e. school register, voter list or family register prepared under the Rules and Regulations etc. in force, and may be admissible under Section 35 of the Evidence Act as held in *Mohd. Ikram Hussain Vs. The State of U.P. & Ors.* AIR 1964 SC 1625; and *Santenu Mitra Vs. State of West Bengal* AIR 1999 SC 1587.

16. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entry in School Register/School Leaving Certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

17. For determining the age of a person, the best evidence is of his/her parents, if it is supported by un-impeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the un-impeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc, the entry in the school register is to be discarded. (Vide: Brij Mohan Singh Vs. Priya Brat Narain Sinha & Ors. AIR 1965 SC 282; Birad Mal Singhvi Vs. Anand Purohit AIR 1988 SC 1796; Vishnu Vs. State of Maharashtra (2006) 1 SCC 283; and Satpal Singh Vs. State of Haryana JT 2010 (7) SC 500).

18. If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 & 61 etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time etc. mentioned therein. (Vide:

Updesh Kumar & Ors. Vs. Prithvi Singh & Ors., (2001) 2 SCC 524;

and State of Punjab Vs. Mohinder Singh, AIR 2005 SC 1868).

19. In S. Khushboo Vs. Kanniammal & Anr. (2010) 5 SCC 600, this Court, placing reliance upon its earlier decision in Lata Singh Vs. State of U.P. & Anr. AIR 2006 SC 2522, held that live-in-relationship is permissible only in unmarried major persons of heterogeneous sex.

20. In S.P.S. Balasubramanyam Vs. Suruttayan @ Andali Padayachi & Ors. AIR 1992 SC 756, this Court held that if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under Section 114 of the Evidence Act, that they live as husband and wife and the children born to them will not be illegitimate.

21. 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 a number of years. However, such presumption can be rebutted by leading unimpeachable evidence. (Vide: Mohabbat Ali Khan Vs. Mohd. Ibrahim Khan, AIR 1929 PC 135; Gokalchand Vs.. Parvin Kumar, 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 681; and Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy & Ors., (2005) 2 SCC 244).

22. In view of the above, the kind of material placed by the appellants on record cannot be termed enough to disbelieve the claim of the respondents. The findings of facts recorded by the courts below cannot be disturbed on this material. The appellants' case has been that the respondents were born prior to 1960 i.e. prior to the year Chandra Deo Singh started living with Smt. Shakuntala. As per the Annexure P1 (Colly), Smt. Shakuntala was born near about 1941. If the documents filed by the appellants are taken to be true, we will have to record a finding of fact that Smt. Shakuntala gave birth to her two daughters, namely, Asha and Savitri, when she was only 5-6 years of age and in case, the Certificate of Rajni Kant-respondent no.1, contained in Annexure P8 is taken to be true and is considered in the light of the documents contained in Annexure P1 (Colly), it could be arithmetically clear that Smt. Shakuntala had given birth to Rajni Kant, respondent No. 1 on

15.7.1940, i.e., even prior to her own birth in 1941. If all the said documents are accepted, they would simply lead not only to improbabilities and impossibilities but absurdity also. It is most unfortunate that none of the courts below had analysed documents in correct perspective. The live-in-relationship if continued for such a long time, cannot be termed in as "walk in and walk out" relationship and there is a presumption of marriage between them which the appellants failed to rebut.

23. In view of the above, the appeal does not present special facts and circumstances which may warrant further re-appreciation of the evidence as the appeal is based on totally unreliable/contradicting documents and not worth placing any reliance. It is accordingly dismissed. No cost.

.....J. (P. SATHASIVAM)

.....J.
New Delhi,
August 13, 2010

(Dr. B.S. CHAUHAN)