

Before D. S. Tewatia, J.

KARTAR SINGH,—Appellant.

versus

BAKSHISH KAUR *alias* KARTARI,—Respondent.

Regular Second Appeal No. 1293 of 1965

February 13, 1976.

Oaths Act (XLIV of 1969)—Section 10—Administration of special oath—Whether a discretionary power with the trial Court—Party agreeing to decision of the case on the basis of special oath to be administered to opposite party—Party resiling from such offer before administration of oath—No sufficient cause for resiling from such offer—Court deciding the case on merits—Such decision—Whether vitiated—Court—Whether bound to decide the case on the basis of such oath.

Held, that a perusal of section 10 of the Oaths Act, 1969 would show that it is the discretion of the Court to administer special oath or not. If the party making the offer to have the case decided on the basis of a special oath resiles from the offer even without sufficient cause, before administration of the oath, and the case has been decided in accordance with the evidence adduced by the parties, the judgment arrived at would not be vitiated.

(Para 10)

Regular Second appeal from the decree of the Court of Shri Kartar Singh, Additional District Judge, Jullundur, dated the 31st day of May, 1965 reversing that of Shri Gian Inder Singh, Sub-Judge, 1st Class, Nawanshahar, dated the 4th September, 1963, and dismissing the suit of the plaintiff with costs throughout.

P. S. Jain, Advocate, with C. B. Goel, Advocate, for the Appellant.

R. L. Aggarwal, Advocate, for the Respondent.

JUDGMENT

D. S. Tewatia, J.

(1) But for an ancillary question of law to be dealt with in the latter part of the judgment, the only question of law that arises for decision in this Regular Second Appeal is as to whether the evidence adduced on the record by Smt. Kartari defendant, to establish her relationship with Narain Singh, the last male-holder of the property, satisfied the requirement of the provisions of section 50 of the Indian Evidence Act.

(2) To appreciate the import of the question posed above, only a few relevant facts constituting the background of the case deserve to be noticed. One Narain Singh was the last male-holder of the property in dispute. He is alleged to have died sometime in the year 1962, and on his death, his estate including the property in dispute was mutated in equal shares in the name of plaintiff Kartar Singh and Smt. Bakshish Kaur alias Kartari defendant, they being his son and daughter, respectively.

(3) Kartar Singh filed the present suit against Smt. Bakshish Kaur alias Kartari defendant seeking therein the declaration that the mutation of inheritance regarding half of the property left by Narain Singh, deceased in the name of Smt. Kartari defendant was illegal inasmuch as he alone was entitled to succeed Narain Singh for Smt. Kartari was not the daughter of Narain Singh.

(4) The suit was contested by Smt. Kartari who alleged herself to be the daughter of Narain Singh and sister of Kartar Singh, plaintiff.

(5) When the suit reached the stage of evidence, and evidence of one Inder Singh, P.W. 1 had been recorded Smt. Kartari made the offer that if Inder Singh P.W. could take the special oath then she would abide by the same and the suit could be decided in accordance with his evidence. The offer was accepted and a local Commissioner Shri Iqbal Singh was appointed to administer the special oath but immediately thereafter Smt. Kartari resiled from the offer. The Court thereafter called upon the plaintiff to adduce rest of his evidence. An application was moved by the plaintiff that Smt. Kartari be held to her offer as there existed no sufficient cause for her for resiling from the same. Smt. Kartari resisted that application and stated that she made no such offer and, therefore, the question of resiling therefrom did not arise. The trial Court decreed the suit on merits and the aforesaid application filed by the plaintiff was dismissed with the observation in the main judgment itself that Smt. Kartari could resile from the offer. However, the trial Court did not give any finding as to whether Smt. Kartari had any sufficient cause for so resiling. The lack of such a finding prompted Mahajan, J., before whom this appeal came up for hearing in the first instance to call for the report of the trial Court as to whether any sufficient cause existed for Smt. Kartari to resile from the offer. The trial Court after obtaining evidence of both sides has

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reported by its report, dated the 13th August, 1973, that Smt. Kartari had no cogent reason to resile from the offer. As to what is the impact of this report constituted the aforesaid ancillary question of law to be answered in the latter part of the judgment.

(6) Smt. Kartari succeeded in her appeal before the first Appellate Court who dismissed the suit with the finding that Smt. Kartari who is the daughter of Narain Singh is entitled to succeed to half of his property, Kartar Singh plaintiff being entitled to the other half. This led to the filing of the present appeal in this Court.

(7) Before dealing with the question of law on merits, I may at this stage deal with the ancillary question as to whether the suit be not decided on the basis of the special oath, Smt. Kartari having no sufficient cause to resile from the offer. Mr. P. S. Jain, learned counsel for the appellant made reference to the decisions of various High Courts and in particular relied upon (1) *Allah Rakha v. Punnun*, (2) *B. Siya Ram Dass v. Jagannath and others*, (3) *Munshi Singh and another v. Ewaz Singh and others*, (4) *R. Chinnappa v. R. Arokiaswamy*, (5) *Kundan v. Kartara*, in support of his submission that unless a party which made the offer to have the case decided by a special oath, had sufficient reasons to resile therefrom he or she was bound by that oath and the decision of the case had to be in accordance with the special oath.

(8) Mr. Ram Lal Aggarwal, learned counsel for the defendant-respondent, contended that it being discretionary with the Court to administer special oath and in the present case it having proceeded to decide the case on merits on the basis of the evidence adduced by both sides, it must be held that the Court exercised its discretion to decide the case not in accordance with the special oath, which was never administered, but on the basis of the evidence adduced by both sides. In support of his submission that the Court has a direction in the matter he placed reliance on a Lahore decision reported in *Dula Singh v. Ghulam Mohammad and another* (6). Mr. Aggarwal further

(1) AIR 1941 Lahore 173.

(2) AIR 1933 Allahabad 463.

(3) AIR 1952 Allahabad 890.

(4) AIR 1959 Mysore 21.

(5) 1967 P.L.R. 651.

(6) 1936 PLR 1171.

contended, and rightly so in my opinion, that the ratio of all the rulings that the learned counsel for the appellant had referred to are distinguishable on facts in that none dealt with a case in which the special oath had not been administered and the case had been decided in accordance with the evidence adduced by the parties.

(9) It has been conceded before me by Mr. P. S. Jain, learned counsel for the appellant, that it was true that in the decisions on which he had placed reliance, the suit had not been decided on merits. He further stated that he had not been able to find a single decided case where in the suit having been decided on merit by the Court, the High Court had held that the party which had made the offer shall still have to abide by the offer.

(10) The provision of Oaths Act that is relevant is contained in section 10 which is in the following terms :—

“If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.”

A perusal of the aforesaid provision would show that it is the discretion of the Court to administer the special oath or not and this has been so held by Dalip Singh, J. in Dula Singh's case (supra) and the following observations can be noticed with advantage :—

“But it is contended before me that the Court has a discretion to administer the oath or not administer it even after the offer has been accepted by the opposite party. This contention appears to me to be correct but the trial Court had duly exercised that discretion and I am wholly unable to see why the Appellate Court interfered with that discretion.”

The trial Court thus having the discretion to administer or not to administer the special oath and it having exercised its discretion against the administration of special oath, then even if it is to be held that the exercise of the discretion was to some extent unwarranted in that it had appointed Local Commissioner to administer special oath which indicated that it had decided to administer the

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special oath in the first instance, the present is not the stage to set the clock back and take the parties to the stage of the appointment of Oath Commissioner to administer special oath when the two Courts below have decided the suit on merits. In view of the above, it is unnecessary to refer to the report of the trial Court in regard to the question as to whether Smt. Kartari had sufficient cause to resile from the offer to have the case decided in accordance with the special oath.

As to the criticism of the finding of the lower Appellate Court that the defendant-respondent has established herself to be the daughter of Narain Singh deceased, on the ground that the evidence in this regard did not comply with the requirement of section 50 of the Evidence Act, it may be observed that the testimony of Dharam Singh D.W. 1 as also that of Dharam Singh D.W. 3 and Shanker Singh D.W. 4, in all respects satisfied the requirements of section 50 of the Evidence Act. All these persons have deposed to the special means of their knowledge and to the conduct of Narain Singh towards Smt. Kartari, defendant. They have stated that Narain Singh treated Smt. Kartari as his daughter and that he performed her marriage. When all this was pointed out to him from the evidence, the learned counsel for the appellant was frankly answerless.

(11) Mr. P. S. Jain, learned counsel for the appellant, nevertheless urged that since the trial Court had rightly drawn an adverse inference from the circumstance of Smt. Kartari's resiling from her offer and the lower Appellate Court having not done so, the finding of the aforesaid lower Appellate Court to that extent stood vitiated.

(12) I do not think there is any merit in this contention. To put it at its worst, if she had not resiled from the offer, Inder Singh P.W. might have stated that she was not the daughter of Narain Singh. Such a statement of Inder Singh is already on the record on oath and whatever its worth, the lower Appellate Court had appreciated the same and after taking into consideration his testimony as also that of other plaintiff's witnesses, it had come to the conclusion that the defendant had succeeded in establishing her relationship with Narain Singh.

(13) For the reasons stated, I do not find any merit in this case and dismiss the same but in the circumstances of the case, leave the parties to bear their own costs.

H.S.B.