

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

R.S.A.No.1652 of 2009 (O&M)

Date of Decision: October 08, 2015

Balwinder Singh alias Pammi

...Appellant

Versus

Swami

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr.Parminder Singh, Advocate,
for the appellant.**

None for the respondent.

AMIT RAWAL, J. (Oral)

Mr.Parminder Singh, learned counsel appearing on behalf of the appellant-plaintiff confines his prayer vis-a-vis the findings rendered in paragraph 12 of the judgment by the Lower Appellate Court, whereby it has been held that the appellant-plaintiff is not the adopted son of Som Nath. He further submits that his client is not staking any claim vis-a-vis the consent decree suffered by his grand-mother Maya Devi in favour of the defendant. Accordingly, the judgments and decrees of both the Courts below with regard to the challenge to the consent decree dated 2.6.1990 are upheld.

Learned counsel for the appellant-plaintiff has drawn the attention of this Court to the issues framed by the trial Court. On the basis of the issues, the onus to prove issue No.5 was upon the defendant, however, he did not press the aforementioned issue and despite that, the Lower Appellate Court rendered a finding on issue No.5 by holding that the appellant-plaintiff is not the adopted son of Som Nath. He further submits

that such finding is contrary to the issues, much less, there was no appeal or cross-appeal filed at the instance of the defendant. The obiter findings would come in his way in succeeding to the succession of the estate of his father, who had died and after his death, a mutation was effected, vide Ex.P6, in respect of the estate of his father in favour of his mother, grandmother and the plaintiff qua 1/3rd share each.

There is no representation on behalf of the respondent-defendant.

Since the respondent-defendant did not lead any evidence in support of issue No.5, I am of the view that the Lower Appellate Court could not have rendered a finding on such issue by holding that the appellant-plaintiff is not the adopted son of Som Nath. The stake of the appellant-plaintiff in the suit was to challenge the consent decree dated 2.6.1990 effected by Maya Devi, grand-mother, in favour of her son (Chacha of plaintiff). In the absence of any issue/controversy vis-a-vis the adoption of appellant-plaintiff, the findings rendered by the Lower Appellate Court qua issue No.5, in my view, are not sustainable and are hereby treated as obiter .

In view of what has been observed above, the impugned judgments and decrees of both the Courts below are upheld.

Accordingly, the appeal is dismissed.

October 08, 2015
ramesh

(AMIT RAWAL)
JUDGE