

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

1. RSA No.39 of 2011 (O&M)
Date of decision : 17.03.2016

Rajinder Singh ...Appellant

Versus

Manjit Kaur and another ...Respondents

2. RSA No.1076 of 2011 (O&M)
Date of decision : 17.03.2016

Rajinder Singh ...Appellant

Versus

Punjab State Electricity Board, Patiala and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. B.S. Sidhu, Advocate for the appellant.
(In both appeals)

Mr. Sandeep Khunger, Advocate for the respondent Nos.1 & 2.
(In RSA No.39 of 2011)
for respondent No.4
(In RSA No.1076 of 2011)

Mr. A.S. Chaudhary, Advocate for respondent Nos.1 to 3
(In RSA No.1076 of 2011)

AMIT RAWAL, J. (Oral)

CM No.131-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 8 days in refiling the appeal is condoned.

Application is allowed.

Main Case

This order of mine shall dispose of two RSAs bearing No. 39 of 2011 titled as Rajinder Singh Vs. Manjit Kaur and another and RSA No.1076 of 2011 titled as Rajinder Singh Vs. Punjab State Electricity Board, Patiala and others.

Judgment and decree of both the Courts below are being challenged in the Regular Second Appeal filed at the instance of the appellant-plaintiff whereby suit for declaration and permanent injunction, has been dismissed.

Mr. B.S Sidhu, learned counsel appearing on behalf of appellant submits that declaration was sought as he is adopted son of Baldev Singh and in this regard, documentary evidence i.e. matric certificate, school leaving certificate, even statement of natural biological father as PW9 and even primary school certificate has been brought on record but there is no reference by the lower Appellate Court being last court of fact and law, much less, passing of the statement of biological father PW9. Thus, there is illegality and perversity and urges this Court to formulate following substantial question of law:-

1. Whether the judgment and decree of the lower Appellate Court being last Court of facts and law are perverse or not?

Mr. Sandeep Khunger, learned counsel appearing on behalf of the respondents submits that concurrent findings of fact has been rendered by both the Court below, much less, qua adoption and, therefore cannot be interfered with under Section 100 of the Code of Civil Procedure. In this regard, he has referred to the judgment rendered by this Court in *Chand*

Ram Vs. Rajinder Parshad, 2010 (1) RCR (Civil) 228.

I have heard learned counsel for the parties and appraised the paper book and as well as judgment and decree of the lower Appellate Court and of the view that statement of PW9 has not been referred to, who in my, prima facie, view has deposed the provision of Sub-section 6(i) of Section 11 of the Hindu Adoption and Maintenance Act, 1956, thus, in such situation, matter is required to remit back to the lower Appellate Court in order to enable it to re-appreciate the evidence, much less, being last Court of the facts and law.

Accordingly impugned judgment and decree of the lower Appellate are set aside and matter is remitted back to the lower Appellate Court for deciding the same afresh within a period of six months on receipt of certified copy of the order.

Liberty is also granted to the appellant to move an application for additional evidence which has been sought to be produced in this Court.

Record be also sent back.

Parties through their counsel are directed to present before the lower Appellate Court on 11.04.2016.

Both appeals stands disposed of in the aforementioned terms.

17.03.2016

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**(AMIT RAWAL)
JUDGE**