

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

120

Regular Second Appeal No.1975 of 2016 (O&M)
Date of Decision: April 26, 2016

Mohinder Singh (since deceased) now represented by his LRs

...Appellants

Versus

Mimla alias Bimla and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Parminder Singh, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 13.02.2014 passed by the Civil Judge (Junior Division), Karnal, whereby the suit for declaration preferred by appellant-plaintiff-Mahinder Singh against respondent-defendant Mimla alias Bimla that he being the adopted son of Shyogi son of Parsa by adoption deed dated 30.03.1973 Exhibit P-12, is entitled to declaration of the judgment and decree dated 04.04.2006 passed by the Civil Judge (Junior Division), Karnal as null and void and to the effect that he is owner in possession of the property which was originally owned and possessed by Shyogi alias Saugi, has been dismissed and the suit preferred by Mimla alias Bimla against appellant-Mahinder Singh claiming herself to be the owner of the property which was owned and possessed by Shyogi alias Saugi in the light of the judgment and decree dated 04.04.2006 passed by the Civil Judge (Junior Division), Karnal and for a declaration that the judgment and decree dated 11.12.2006 passed by the Additional Civil Judge (Senior Division), Karnal, in favour of appellant-Mahinder Singh declaring him to be the owner of the property owned and possessed by Shyogi to be his, in the light

of the fact that he had been adopted by Shyogi, has been decreed. Appeals preferred against the said judgment and decree by appellant-Mahinder Singh have been dismissed by the Additional District Judge, Karnal, on 14.01.2016.

2. It is the contention of learned counsel for the appellants that after the marriage of Shyogi son of Parsa with respondent Mimla alias Bimla, she lived with him for just three days and after that she had started living with Ram Nath as his wife and from his loins, she has two daughters namely Santosh and Reena. Evidence proving paternity of these two girls has been brought on record by way of birth certificates which clearly establish that respondent-Mimla alias Bimla had not been residing with deceased-Shyogi. He contends that after Shyogi having been left alone, he adopted appellant-Mahinder Singh as his son on 30.03.1973 Exhibit P-12. On the basis of the said adoption, appellant-Mahinder Singh is the son of Shyogi and, therefore, entitled to the declaration, as has been prayed for by him. He, thus, contends that the judgments and decree as passed by the Courts below cannot sustain and deserve to be set aside.

3. Apart from that, counsel has asserted that ample evidence has been brought on record in the form of statement of brother of respondent-Mimla alias Bimla, who had categorically stated that after the initial marriage with Shyogi, she had been all through living with Ram Nath and had two daughters as a result of the relationship with him. The circumstances clearly reflect that there was no relationship of husband and wife between Shyogi and respondent-Mimla alias Bimla and, therefore, for all intents and purposes, she had cut all relationships with Shyogi and

the matrimonial relationship cease to exist. He, thus, contends that the adoption, in these situations of appellant-Mahinder Singh by Shyogi, would be covered by the Exception as provided in Section 7 of The Hindu Adoption and Maintenance Act, 1956, because the relationship between Shyogi and respondent-Mimla alias Bimla had been renounced by the respondent. He, thus, contends that the appeal may be allowed.

4. I have considered the submissions made by learned counsel for the appellants and with his assistance, have gone through the impugned judgments but keeping in view the provisions as contained in Section 7 of the The Hindu Adoption and Maintenance Act, 1956, the plea as taken by the counsel for the appellants, cannot be accepted.

5. Section 7 of The Hindu Adoption and Maintenance Act, 1956, reads as follows:-

7. Capacity of a male Hindu to take in adoption.- Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption.

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation.-If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

6. Counsel for the appellants has made an effort to bring the adoption deed which is in favour of the appellants within the ambit of the proviso to the Section i.e. the wife has completely and finally renounced the

relationship between herself and the husband but the said plea cannot be accepted in the light of the language used in the provision, according to which renunciation is of the world and not of a relationship. Admittedly, there is no decree which would show that the relationship of husband and wife between Shyogi and respondent-Mimla alias Bimla had cease to exist. Even if the assertion of the counsel for the appellants is accepted, the marriage between Mimla alias Bimla and Shyogi is prior in time and is an admitted fact. As per the pleadings of the appellants-plaintiffs, it is after that that she had left the matrimonial house and started residing with Ram Nath. The marriage, in the light of the above facts, subsisted between Mimla alias Bimla and Shyogi. Therefore, the Courts below have rightly proceeded to decide the case in accordance with law which do not call for any interference by this Court.

7. No other point has been argued by the counsel for the appellants.

8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.5252-C of 2016, stands disposed of as infructuous.

April 26, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE