

Zilla Singh and Another

Vs

Chandgi and Others

Civil Appeal No. 336 of 1976

(M.M. Punchhi, S.C. Agarwal)

30.10.1990

JUDGMENT

1. This appeal is directed against the Judgment and order of the Punjab and Haryana High Court dated March 20, 1974 regular second appeal No. 1432 of 1968 preferred by the appellant herein before the High Court was dismissed as having abated.
2. The facts are straight and simple. Rikhi and Nanu were two brothers, Nanu had a son by the name of Nagar and Rikhi had three sons - Matu, Chandan and Pahlada. Zilla Singh the appellant herein is the son of Chandan. On the death of Nagar his agricultural estate was mutated in the revenue papers in the name of his widow Sarupi. She also succeeded to his house. Zilla Singh appellant claiming himself to be an adopted son of Nagar filed a suit for possession in the Court of Sub-Judge, Ist Class, Panipat alleging (1) that Nagar left no widow at all much less by the name of Sarupi and (2) of being the adopted son was Nagar was entitled to succeed to the estate. The trial Court partially decreed the suit holding that Sarupi was the widow of Nagar and Zilia Singh appellant his adopted son, directing delivery of half share of the property to Zilla Singh appellant. On Sarupi's appeal, the Additional District Judge, Karnal dismissed the suit taking the view that Nagar had not validly adopted Zilla Singh in accordance with the provisions of the Hindu Adoptions and Maintenance Act, 1976 as the adoptee being 16/ 17 years of age on the date of adoption, and no custom or usage had been established as required by law permitting adoption of a person above 15 years of age. The adoption was thus held invalid and even otherwise not been proved. On this basis the judgment and decree of the trial Court was upset.
3. When Zilla Singh appellant was in second appeal before the High Court the contesting respondent Sarupi died. Her estate was mutated in favour of the Manbhari the sister of Nagar. The appellant appealed against the sanction of mutation before the Collector concerned but unsuccessfully. Fully cognizant that Manbhari had appeared on the scene to claim the estate of Sarupi the appellant chose to sleep over the matter and did not have the estate of Sarupi represented by making a suitable application under tile provisions of Order XXII of C.P.C. within time. On the contrary an application was moved by the children of Manbhari, who by then had also died, to be substituted in place of Sarupi deceased so as to contend that the appeal had abated. It is that stage that the appellant moved two applications (1) for stating that he need not have made application under the provisions of Order XXII of C.P.C. as he himself as heir of Sarupi was on record and secondly to challenge the action of the applicants in becoming parties on the basis of relationship of the applicants with Manbhari the alleged sister of Nagar. The High Court when seizen of the matter required the trial Court to report as to whether Manbhari was the sister of the Nagar and the

applicants children of Manbhari. The trial Court on examining evidence and consideration reported that the relationship was established and Manbhari was the sister of Nagar. On that basis the appeal was dismissed as abated and the view of the High Court is now under challenge.

4. We have heard Mr. S. K, Gambhir learned counsel of the appellant. As long as the finding of the Lower Appellate Court stands the appellant was not the adopted son of Nagar and Sarupi was the widow of Nagar. Besides the finding reported to the High Court was that on the death of Sarupi Manbhari succeeded to the estate and on the later's death her children. In the situation we fail to appreciate the claim of the appellant that he could continue the appeal on the sole assertion that he was the adopted son of Nagar being fully aware that the children of Manbhari had appeared in the scene and had successfully claimed the estate before the Revenue Authorities. There is no cause pleaded why the application for bringing on record the legal representatives of Sarupi were belatedly made or cause to have the abatement set aside. In the circumstances it appears to us that the view of the High Court is unexceptionable. The appeal fails and accordingly it is dismissed, but in the circumstances we leave the parties to bear their own costs.

Appeal dismissed.

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