

Gurnam Kaur (Smt) and Another

Vs

Puran Singh and Others

Civil Appeal No. 1542 of 1975

(K. Ramaswamy, G. B. Pattanaik JJ)

08.02.1996.

ORDER

1. In this appeal, the only question is whether the appellant is a legitimate child of her father, Ram Singh. Though all the courts concurrently have found that she is the daughter of Ram Singh and her mother Gurnam Kaur, the finding recorded is that she is the illegitimate child since the marriage of Gurnam Kaur with her previous husband was not legally dissolved. Section 16(1) of the Hindu Marriage Act, 1955, as amended by Amendment Act 68 of 1976 reads as under :

"16. (1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act."

2. Preceding the amendment, declaration of nullity a decree of a court is a precondition. Amendment Act 68 of 1976 has done away with it and declared that notwithstanding the marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate whether such child is born before or after the commencement of the Amendment Act, 68 of 1976 and whether or not a decree of nullity is granted in respect of that marriage under the Act and whether or not the marriage is held to be void otherwise than on a petition under the Act. Thus, it would be clear that declaration of voidity of a marriage on a petition of either party or, in other words, declaration of the marriage as nullity under a decree which were preconditions under Section 12 of the Act, is done away with. Consequentially, as if the marriage had been valid, the child shall be legitimate whether such child was born before or after the commencement of the Amendment Act 68 of 1976. By operation of Section 8 of the Hindu Succession Act, 1956 read with Schedule I, appellant being the daughter of Ram Singh, is entitled to the property of her father. The decree is accordingly granted. Application for appointing a guardian of the minor is allowed.

3. The appeal is accordingly allowed.