

A SMT. GURNAM KAUR AND ANR.

v.

PURAN SINGH AND ORS.

FEBRUARY 8, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Hindu Marriage Act, 1955 :*

C *Section 16 as amended by Amendment Act 68 of 1976—Pre-conditions under S.12 done away with—No need for declaration of earlier marriage as nullity—Consequently as if the marriage had been valid, the child shall be legitimate whether it was born before or after the commencement of the Amending Act, 1976—Hence the child is entitled to her share in her father's property.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1542 of 1975.

From the Judgment and Order dated 14.8.75 of the Punjab & Haryana High Court in R.S.A. No. 1314 of 1973.

E V.C. Mahajan and S.K. Mehta and P.N. Puri for the Appellants.

Arvind Minocha for the Respondent.

R.S. Sharma for the Respondent No. 3.

F The following Order of the Court was delivered :

G 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 illegitimate child since the marriage of Gurnam Kaur with her previous husband was not legally dissolved. Section 16 of the Hindu Marriage Act, 1955, as amended by Amendment Act 68 of 1976 reads as under :

H "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 valid otherwise than on a petition under the Act." A

Preceding the amendment, declaration of nullity by a decree of a Court is a pre-condition. Amendment 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 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 then 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 pre-conditions 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 Act 68 of 1976. By operation of Section 8 of the Hindu Succession Act, 1956 read with Schedule 1, 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. B C D E

The appeal is accordingly allowed.

G.N.

Appeal allowed.