

PETITIONER:  
SMT. GURNAM KAUR & ANR.

Vs.

RESPONDENT:  
PURAN SINGH & ORS.

DATE OF JUDGMENT: 08/02/1996

BENCH:  
RAMASWAMY, K.  
BENCH:  
RAMASWAMY, K.  
G.B. PATTANAIAK (J)

CITATION:  
1996 SCC (2) 567                      JT 1996 (5) 664  
1996 SCALE (2)382

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

In this appeal, the only question is whether the appellants are legitimate children of their father, Ram Singh. Though all the courts concurrently have found that they are the daughters of Ram Singh and their mother Gurnam Kaur, the finding recorded is that they are illegitimate children 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:

"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."

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 than on a petition under the Act. Thus it would be clear that declaration of

validity 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 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.

The appeal is accordingly allowed.

JUDIS