

**Surja Devi and ors. Vs. Shivdevi and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Dec-09-1998

**Reported in :** 1999(2)MPLJ51

**Judge :** S.P. Srivastava, J.

**Acts :** Code of Civil Procedure (CPC) - Sections 100 - Order 41, Rule 22

**Appeal No. :** S.A. No. 245 of 1997

**Appellant :** Surja Devi and ors.

**Respondent :** Shivdevi and ors.

**Advocate for Pet/Ap. :** D.D. Bansal, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**S.P. Srivastava, J.**

1. Heard the learned counsel for the defendants/appellants.
2. Perused the record.
3. This appeal was heard along with Second Appeal No. 316 of 1996, Smt. Shivdevi and Ors. v. Surja Devi and Ors..

4. The plaintiff's suit had been dismissed by the trial Court and the decree of the trial Court had been upheld in appeal.
5. The second appeal filed by the plaintiffs has been dismissed vide a separate judgment and order disposing of the second appeal No. 316 of 1996, today.
6. The present appellants who were the defendants in the suit feel aggrieved by the finding returned by the Courts below against them holding that Devidayal, who was their common ancestor had ceased to be a member of the family of the deceased, Shivnarayan in view of the registered adoption deed dated 19-7-1941, whereunder he had become a member of another family.
7. Both the Courts below have held that the adoption was duly established and acted upon. It was evidenced by a duly executed 'adoption deed' dated 19-7-1941, and the adoption of Devidayal in a family which had no concern with the family of Shivnarayan as pleaded by the plaintiff stood fully established.
8. In this appeal, the appellants have prayed for the setting aside of the finding recorded by both the Courts below on the issue No. 3 relating to the question of adoption of Devidayal by Algarji son of Ganesh and its effect.
9. As has already been noticed hereinabove, the present second appeal is directed only against the finding returned by the Courts below on the issue No. 3 which is adverse to the defendants. A second appeal against a finding only is not maintainable.
10. The plaintiff had come up with a case that he had become the owner-in-possession of the property in dispute by virtue of a 'Will' executed by Shivnarayan. While contesting the claim of the plaintiff, the present appellants who had been impleaded as defendants in the suit while denying the execution of the 'will' and its genuineness had set up a claim that as Devidayal, was the real brother of Shivnarayan and these defendants were the descendants of Devidayal, they were entitled to inherit the right, title and interest of Shivnarayan in accordance with law regulating the succession of a deceased Hindu male who had died intestate.

11. Both the Courts below have negated the claim of the plaintiff in regard to Shivnarayan having bequeathed his right, title and interest in his favour through the 'will' in question set up by the plaintiff.

12. In the aforesaid circumstances, it is apparent that the decree which was ultimately passed by the Courts below was against the plaintiff. His entire suit had been dismissed. In such a situation, in the absence of a decree against the defendants, no second appeal could be held to be maintainable at their instance.

13. It must be emphasised that a party cannot be said to have a right to file a second appeal merely against a finding that may have been recorded against him when the ultimate decree stands in his favour. Such a party could, however, file a cross-objection in the event the party aggrieved by the decree has challenged the same in an appeal. But, this cross-objection envisaged under Order XLI, Rule 22 of the Code of Civil Procedure, 1908, has to be for challenging the finding given in the judgment to sustain the decree and nothing else. It cannot be lost sight of that a right to file a cross-objection in a pending appeal is entirely different from the right vesting in a party to file an appeal against a decree.

14. The provisions contained in Order XLI, Rule 22 of the aforesaid Code explicitly contemplate a contingent right to file cross-objection only when an appeal is filed and also a contingent right further to press the cross-objection for decision only when the Court assumes jurisdiction to decide the appeal. In a case, however, where a party to the suit feels aggrieved by any part of the decree, it can certainly file an appeal seeking redress and he need not wait for the other side to file an appeal and then to file a cross-objection. But in a situation where the decree in its entirety does not affect a party to the suit, he has no right to file an appeal but the only right which is secured under the provisions of the Code of Civil Procedure is to support the decree and while doing so, in case there is any finding recorded in the judgment which goes against him, the correctness of that finding is also amenable to challenge. This right to challenge such a finding has been vested so as to protect the decree from being reversed and in the exercise of this right, it is open to a party aggrieved by a finding recorded against him to get it reversed if need be, so as to get the decree maintained as it is.

15. In the present case, since the entire decree stood in favour of the defendants/appellants, they could not be taken to be an aggrieved party so as to maintain a second appeal. They could challenge the finding recorded against them while supporting the decree passed against the plaintiff. Since the second appeal filed by the plaintiff has been dismissed in limine under Order XLI, Rule 11 of the aforesaid Code, even this opportunity to file a cross-objection could not be said to be available to the defendants as is apparent from the provisions contained in Order XLI, Rule 22 of the aforesaid Code.

16. In the aforesaid view of the matter, no justifiable ground can be said to have been made out for any interference in this second appeal which is clearly devoid of merits.

17. This second appeal deserves to be and is hereby dismissed in limine.

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