International Journal of Research in Economics and Social Sciences (IJRESS)

Available online at : http://euroasiapub.org/current.php?title=IJRESS

Vol. 6 Issue 8, August , 2016, pp. 101~108

ISSN(o): 2249-7382 | Impact Factor: 6.225 , | Thomson Reuters ID: L-5236-2015

Revanasiddappa & Another vs. Mallikarjun & Others (2011) 11 SCC 1 - A case comment

Dr.P.B.Pankaja*

Keywords

Legitimacy, Annulled voidable marriage, Illegitimacy, Coparcenery

Abstract

In all systems of jurisprudence, the legitimacy of a child is determined by the validity of marriage of which he or she is born. Hindu law makes a distinction between children of three categories on the basis of legality of cohabitation between their mother and father. They are children of legally wedded marriage, children of void and annulled voidable marriage and children of no marriage and the Hindu Marriage Act 1955 places them in a hierarchy in the scale of legal entitlements to 'coparcenery' property rights. While the scope of legal entitlements of legitimate and illegitimate children is well settled, that of children of void and annulled voidable marriages often becomes the subject matter of judicial scrutiny by the courts, which differ in their interpretations calling for legislative clarity through amendments to the existing legislations. The present case titled '*Revanasiddappa & Another* Vs. *Mallikarjun & Others* (2011) 11 SCC 1' has been selected by the author to make a case comment as the decision of the case further needs reconsideration by a larger bench of the Apex Court.

Author Correspondence

Associate Professor, Faculty of Law, University of Delhi, Delhi.

INTRODUCTION

Issue: 'Whether the children born from a void marriage are to be treated at par with coparceners and whether they are also entitled to the joint family properties of their father?'

The facts of the case: It was a case of a man having two wives, two children from his first marriage and two children from his second wife whom he had married while the first marriage was subsisting. His two children through his first wife along with their mother (Plaintiffs 1 to 3) had filed a suit for partition against their father, his two children from his second wife and his second wife (Defendants 1 to 4). They claimed 1/4th share each with respect to ancestral

* Associate Professor, Faculty of Law, University of Delhi, Delhi

properties in the hands of the first defendant. The first defendant contended that all the properties except one were his self acquired properties, that an oral partition had already taken place earlier and that the second wife was the legally wedded wife and not the first woman and hence the plaintiffs had no right to claim partition.

The trial court through its judgment dated 28.7.2005 held that the plaintiff no.3 was the legally wedded wife, the second marriage was void as being conducted while the first marriage was subsisting and the husband had not divorced his first wife. The Court further held that the properties were not self acquired properties but ancestral properties and since he could not prove the oral partition, the plaintiffs 1 to 3 (first wife and her two children) were entitled to 1/4th share each in all the suit properties.

On an appeal preferred by the defendants, the first appellate court re-appreciated the entire evidence on record and affirmed the findings of the trial court about the validity of the first marriage and void nature of the second marriage. However, it relied on a judgment of the Division Bench of the Karnataka High Court in *Smt. Sarojamma & Ors. Vs. Smt. Neelamma & Ors*. (ILR 2005 Kar 3293) and reversed the finding of the trial court that the illegitimate children of the second marriage had no right to share in the ancestral properties of their father. It held that children born from a void marriage were to be treated at par with coparceners and they were also entitled to the joint family properties of their father in the present case and accordingly the first wife and her two children, the husband and his two children from the second marriage were equally entitled to 1/6th share each in the ancestral properties.

Aggrieved by the said judgment of the first Appellate Court, the Respondents/Plaintiffs preferred a second appeal before the High Court of Karnataka which stated that Section 16(3) of the Hindu Marriage Act, 1956 makes it clear that illegitimate children had only the right to the property of their parents and no one else. As the first and the second plaintiffs were the legitimate children of the first defendant they constituted a coparcenary. The second and third defendants were not entitled to a share in the coparcenary property by birth but were entitled to the separate property of their father. Upon partition between the father and his two coparceners, when the father got his share, then the second and the third defendants would be entitled to a share on his dying intestate. Accordingly the first and the second plaintiffs and the first defendant would be entitled to 1/3rd share each in the suit properties as coparceners. The Court rejected the claim of the first wife and that of the two children from void marriage. The Court also observed that the said question was no more *res integra* and had been considered in the judgment of *Sri Kenchegowda* v. *K.B. Krishnappa & Ors* (ILR 2008 Kar 3453)

As a result the second and the third defendants (the appellants in the present appeal) came before the Supreme Court. The Apex court, through Hon'ble Justice Ganguly, re-examined the question 'Whether illegitimate children are entitled to a share in the coparcenary property or whether it is limited only to the self-acquired property of their parents under Section 16(3) of the Hindu Marriage Act?' (Para 11 of the case under comment)

Observations of the Court

The court referred two decisions of the Supreme Court in *Jinia Keotin & Ors*. V. *Kumar Sitaram Manjhi & Ors* [(2003) 1 SCC 730], *Bharatha Matha & Anr* v. *R.Vijaya Ranganathan & Ors.* [AIR 2010 SC 2685] and one decision by the Karnataka High Court in *Neelamma & Ors* v. *Sarojamm & Ors* [ILR 2005 Kar 3293] wherein the courts analysed the issues relating to the extent of property rights conferred on such children under Section 16 (3) of the Act and which had held that "in the light of an express mandate of the legislature itself, there is no room for according upon such children who but for Section 16 would have been branded as illegitimate any further rights than envisaged therein by resorting to any presumptive or inferential process of reasoning, having recourse to the mere object or purpose of enacting Section 16 of the Act. Any attempt to do so would amount to doing not only violence to the provision specifically engrafted in sub-section (3) of Section 16 of the Act but also would attempt to court re-legislating on the subject under the guise of interpretation, against even the will expressed in the enactment itself. The illegitimate children of Section 16(3) of the Act would only be entitled to a share in the separate property of the parents and not to the joint Hindu family property".

Justice Ganguly expressed that the apex court in *Jinia Keotin* took a narrow view of Section 16(3) of the Act that illegitimate children would only be entitled to a share of the self-acquired property of the parents and not to the joint Hindu family property and he could not accept the interpretation of section 16(3) given in *Neelamma and Bharatha Matha*. (para 22) The reasons were spelled out by him in paras 24-40. "The legislature has used the word "property" in Section 16(3) and is silent on whether such property is meant to be ancestral or self-acquired....Clauses (1) and (2) of Section 16 expressly declare that such children shall be legitimate. If they have been declared legitimate, then they cannot be discriminated against and they will be at par with other legitimate children, and be entitled to all the rights in the property of their parents, both self-acquired and ancestral. The prohibition contained in Section 16(3) will apply to such children with respect to property of any person other than their parents. (Para 25) With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus, in the shaping of which various social groups play a vital role. Very often a dominant group loses its primacy over other groups in view of ever changing socio-economic scenario and the consequential vicissitudes in human relationship. Law takes its own time to articulate such social changes through a process of amendment. That is why in a changing society law cannot afford to remain static. If one looks at the history of development of Hindu Law it will be clear that it was never static and has changed from time to time to meet the challenges of the changing social pattern in different time. (Para 27) The Supreme Court upheld the constitutional validity of Section 16 (3) in *Parayankandiyal Eravath Kanapravan Kalliani Amma (Smt.) & Ors.* vs. *K. Devi and Ors [*(1996) 4 SCC 76] held that Hindu Marriage Act, a beneficial legislation, has to be interpreted in a manner which advances the object of the legislation. This Court also recognized that the said Act intends to bring about social reforms and conferment of social status of legitimacy on innocent children is the obvious purpose of Section 16..... Therefore, the interpretation given to Section 16(3) by this Court in *Jinia Keotin, Neelamma and Bharatha Matha* needs to be reconsidered."(Para 32)

"With the amendment of Section 16(3), the common law view that the offspring of marriage which is void and voidable are illegitimate `ipso-jure' has to change completely. We must recognize the status of such children which has been legislatively declared legitimate and simultaneously law recognises the rights of such children in the property of their parents. This is a law to advance the socially beneficial purpose of removing the stigma of illegitimacy on such children who are as innocent as any other children." (Para 33)

"We are constrained to differ from the interpretation of Section 16(3) rendered by this Court in *Jinia Keotin* and, thereafter, in *Neelamma* and *Bharatha Matha* in view of the constitutional values enshrined in the preamble of our Constitution which focuses on the concept of equality of status and opportunity and also on individual dignity." (Para 36)

"It is well known that this Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children. In doing so, the Court must have regard to the equity of the Statute and the principles voiced under Part IV of the Constitution, namely, the Directive Principles of State Policy. (Para 37) Going by this principle, we are of the opinion that Article 39 (f) must be kept in mind by the Court while interpreting the provision of Section 16(3) of Hindu Marriage Act that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment." (Para 38) "Apart from Article 39(f), Article 300A also comes into play while interpreting the concept of property rights. Article 300A is as follows: "300A. Persons not to be deprived of property save by authority of law: No person shall be deprived of his property save by authority of law." (Para 39) "Right to property is no longer fundamental but it is a Constitutional right and Article 300Acontains a guarantee against deprivation of property right save by authority of law." (Para 40)

Decision in the case

"In the instant case, Section 16(3) as amended does not impose any restriction on the property right of such children except limiting it to the property of their parents. Therefore, such children will have a right to whatever becomes the property of their parents whether self acquired or ancestral." (Para 41) "We are, therefore, of the opinion that the matter should be reconsidered by a larger Bench and for that purpose the records of the case be placed before the Hon'ble Chief Justice of India for constitution of a larger Bench." (Para 43)

The case has not been placed before the larger Bench as on date.

CASE COMMENT

The author respectfully submits her observations:

This is a case of void marriage under section 11 of Hindu Marriage Act, 1955. The children of void marriage are conferred legitimacy under section 16. The extent of legitimacy is the issue for discussion.

Section 16, for the purpose of this case, is as hereunder:

16: Legitimacy of children of void and voidable marriages: (1) Not withstanding 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 or not a decree of nullity is granted in respect of that marriage under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made..... shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in subsection (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such right by reason of his not being the legitimate child of his parents.

For the purpose of this case, section 16(1) and (3) are sufficient. No doubt, Section 16 (1) expressly declares that children of void marriage shall be legitimate. But it is not a blanket statement. The legislature qualifies the statement in 16 (3) which is a part of Section 16 which limits the rights of such children to inherit to the property of their parents only and none else. S.16 must be viewed as a whole. The construction of a section is to be made of all the parts together and not of one part only by itself. Such an interpretation would lead to consequences not intended by the legislature.

The conferment of legitimacy made in 16(1) shall not be construed as conferring upon such child any right in the property of any person other than the parents. The child can claim right only in the property of the parents and not in the properties in which father has an undivided interest along with any other persons.

Coming to the discussion on “property” mentioned in 16 (3), the Court opined that “The legislature has used the word "property" in Section 16(3) and is silent on whether such property is meant to be ancestral or self-acquired... Clauses (1) and (2) of Section 16 expressly declare that such children shall be legitimate. If they have been declared legitimate, then they cannot be discriminated against and they will be at par with other legitimate children, and be entitled to all the rights in the property of their parents, both self-acquired and ancestral. The prohibition contained in Section 16(3) will apply to such children with respect to property of any person other than their parents.” (Para 25)

It is respectfully submitted that the word “property” mentioned in S. 16(3) though silent on whether it is ancestral or self acquired, it is a clear statement that the property is “the property of their parents”. In the given case the father has ancestral as well as his self acquired properties in his hands. The self acquired properties are his own absolute properties exclusively belonging

to himself. There is no embargo on children of void marriage (bigamous marriage) to succeed to the property on par with children of valid marriage (First marriage). But the ancestral properties in the hands of their father are not his own exclusive property and he does not have absolute rights over the said property. He is karta and a co-owner along with other coparceners who have equal rights in the undivided coparcenary property. The essential feature of ancestral property is that if the person inheriting it has sons, grandsons or great grandsons, they become joint owners and coparceners with him[1]. According to Hindu law, his exclusive share in the ancestral property will be determined either on partition among coparceners or on his death by virtue of Section 6 of Hindu Succession Act, 1956. Neither of the incidents took place in the given case. The father, defendant 1 is alive having an unidentified joint share in the ancestral property along with his coparcener sons whose shares are also unidentified. Neither severance of status took place nor did division by metes and bounds happen. The coparceners (the children of first marriage) are equally entitled to demand partition, a right which is accrued to them by birth.

Coming to the next question whether the children of void marriage are coparceners or not along with children of valid first marriage? The un-codified law of Hindu joint family system and Coparcenary till the enactment of Hindu Marriage Act 1955 did not categorise the children of first marriage and second marriage differently as bigamous marriages were not statutorily declared as void marriages. The distinction was however maintained between children born within marriage and children born outside wedlock. The illegitimacy was conferred on children outside wedlock and they were not entitled to be coparceners along with legitimate children. Depending on the caste, they were to be maintained out of joint family property.

The Hindu Marriage Act 1955 declared bigamous marriage as void marriage. By virtue of section 16 a new category of children are statutorily carved out who are neither fully legitimate children on par with children of valid marriage nor illegitimate children on par with children between whose parents no marriage exists. They stand in between.

The expression "Property" in this section means all property of the deceased intestate heritable under the Act. It includes not only his separate or self acquired property but also his 'divided' interest in the coparcenary property by virtue of section 6 of HSA, 1956. Children of valid marriage are coparceners with their father having a right in the ancestral property in the hands of their father, which they can demand even during the life time of their father. They are also class I heir in the scheme of succession to succeed to their father's properties after his death. (Section 8 of Hindu Succession Act 1956) (Succession opens on the death of the propositus) Children of void marriage, by virtue of Section 16 (1) and (3) are class I heirs on par with children of valid marriage in the scheme of succession to succeed to their father's properties after his death. Children of no marriage are illegitimate children having no place either in coparcenary or in the scheme of succession.

The legislative intention behind Section 16 is to bring out the distinction between children of three categories namely children of legally wedded marriage, children of void and annulled voidable marriage and children of no marriage and places them in a hierarchy. The second

category, i.e., children of void and annulled voidable marriage, stand in between the first and the third, thereby entitled to neither full protection as children of valid marriage nor left with no protection as children of 'no' marriage. A partial benefit is given to the children with the objective that there exists some form of marriage between the father and mother of the children, even though it is not legally valid or valid but opted to be avoided unlike in the case of no marriage. But for Section 16, such children would have been illegitimate. They are entitled to succeed to the property of their parents under sections 8 and 15 of Hindu Succession Act, 1956. They are given a better status than children of concubine. The children whose parents are not married at all are not treated on par with the children of void marriage.

Application of above analogy to the given case makes it clear that the children of second wife cannot be equated with children of first wife in their right to demand partition of their share in the ancestral property in the hands of their father as long as father is alive and as long as his undivided interest has not been separated from his coparceners who are the sons of first marriage. Hence the proposition that the term property in Section 16(3) is silent on whether such property is meant to be ancestral or self-acquired does not arise. S.16 maintains the subtle difference between the children of valid marriage on one hand, the children of void and annulled voidable marriage on the other hand. This decision has the potential of washing off the difference.

Linking Section 16 of HMA 1956 to Art.14 (right to equality), Art 39 (f) (directive that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment and Art 300-A (Persons not to be deprived of property save by authority of law) does not go in tune with legislative wisdom of treating children of void marriage as a special category. Equality should not be forced upon certain individuals by depriving the due share of other individuals.

The Court observed "This Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma of illegitimacy on such children." It may give rise to a natural follow up for a legal and judicial inquiry - Can the same proposition be extended to children of no marriage because they too suffer from the social stigma of illegitimacy for no fault of their parents? One of the principles of interpretation of Statute is that a construction cannot extend its sweep beyond the frontiers within which it was intended to operate.

Though concept of legitimacy stems from social consensus, it is within the province of legislature to designate it with regard to certain legally acceptable relationship. Legislation is the product of a collective will. On the count of changing nature of society, the law of coparcenary cannot be altered. It is for the legislature to bring coparcenary within the statutory fold if it intends so.

Using the word 'illegitimate': The legislature, through legal fiction, has conferred 'artificial legitimacy' to the children of S.16 and has never used the term 'illegitimate' to mean them. By keeping the children of 'no marriage' outside the legal umbrella, the legislature has indicated the

need to maintain the difference between them and children of Section16. Children of S.16 are not illegitimate children from a void marriage. They are children on whom artificial legitimacy or fictional legitimacy is conferred by law. Even the opening words of S.16 start as: 'Legitimacy of children of void and voidable marriages'. Overlooking this fact the court in para 11 of the judgment observes "The question which crops up in the facts of this case is whether *illegitimate* children are entitled to a share in the coparcenary property or whether their share is limited only to the self-acquired property of their parents under Section 16(3) of the Hindu Marriage Act?"

Need for reconsideration: In a series of cases referred above, S.16 has been made very clear that the children of S.16 will inherit only to the separate property of their parents and not to the ancestral property. The present decision in the name of giving a wider meaning takes a 'U' turn and makes an inroad into the Mitakshara law of coparcenary.

In the light of above analysis it is very much opined by the author that the case needs reconsideration by a larger bench as observed by the Court in its concluding part of the judgement.

ACKNOWLEDGEMENT

The author is grateful to the R&D Council of University of Delhi, Delhi for providing financial support for publication of the present research paper as a part of continuing research program through R&D grant 2015-16.

REFERENCE

Satyajeet A Desai, (2012): Mulla Hindu Law (21st Ed.). Lexis Nexis, Butterworths Wadhwa, Nagpur.

Ramesh Chandra Nagpal, (2011): Modern Hindu Law (Supplement to Second Ed.). Eastern Book Company, Lucknow.

http://indiankanoon.org/doc/391843