
(1978) 07 AP CK 0018

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1636 of 1978

Ch. Krishnama Naidu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 17-07-1978

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 4
Hindu Marriage Act, 1955 — Section 11
Parent Act — Section 11

Citation : AIR 1979 AP 18 : (1979) 1 AnWR 65

Hon'ble Judges : Jayachandra Reddy, J

Bench : Single Bench

Advocate : I.A. Naidu, for the Appellant; K.F. Baba, Govt. Pleader for Land Ceiling, for the Respondent

Judgement

Jayachandra Reddy, J.—The declarant is the petitioner. The main contention is that the major son born to him through his holding and if so, there will not be surplus to be surrendered by the petitioner. Both the Tribunals have held that the petitioner's marriage with the said Kanthamma took place after 1952 and therefore Kanthamma is not the legally wedded wife of the petitioner and her children are illegitimate and they cannot be treated as members of the family of the petitioner.

2. Sri I. A. Naidu, the learned counsel for the petitioner, contends that this finding of the Tribunals below is illegal. It is true that the petitioner pleaded before the Tribunals below that the marriage took place in the year 1948, but the same has not been accepted and it has been held concurrently that the marriage took place after 1852 and therefore it is void. But S. 16(1) of the Hindu Marriage Act which was introduced by the amended Act 68 of 76 confers legitimacy on such children and the same reads follows:-

"16 (1). Notwithstanding that a marriage is null and void under S. 11, any child of such marriage who would have been legitimate if the marriage had been valid,

shall be legitimate, whether such child born before or after the commencement of the Marriage Laws (Amendment) Act. 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."

This section makes it clear that though the marriage is null and void under S. 11, any child born out 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 Amending Act of 1976. It can, therefore, be seen that S. 16(1) confers legitimacy on all such children even though a decree of nullity is not granted. When once, by virtue of this section, such children are treated as legitimate children, then it has to be seen whether under the Land Ceiling Act what rights they acquire. So far as minor children are concerned. It goes without saying that they become members of the family unit of the father, So far as the major son is concerned, it is contended by the learned counsel that by virtue of S. 4-A the ceiling area of the father has to be increased by the extent of the land by which the land held by such major son falls short of the ceiling area. The learned Government Pleader however contends that under S. 16(3) of the Hindu Marriage Act, such child who is declared to be legitimate can only have rights in the property of the parents and therefore, the question of his holding any lands does not arise till he can exercise right for a share in the properties of parents. This argument may be germane to the extent of giving a holding to major son through the second wife is considered to be legitimate by of S. 16(1) of the Hindu Marriage but the question is, whether u/s 4-A of the Ceiling Act, the area of the parents has to be increased by the extent by which the land held such major son falls short of the ceiling area. Even if the argument of the learned Government Pleader is to be accept it can only be said that the major son through Kanthamma, though legitimate, holds no property. But it must be remembered that by virtue of S. 4-A of the Ceiling Act, the ceiling area of the petitioner herein has to be increased by one more standard holding inasmuch , major son born through Kanthamma holds no land though he is a legitimate son. The surplus determined by the Tribunals below is 0.7983 standard holding.

3. For the aforesaid reasons the petitioner's ceiling area has to be increased by one more standard holding and therefore, he need not surrender any surplus. The revision petition is allowed. No costs. Advocate's fee Rs 100/-.

4. Petition allowed.