
(1991) 09 AP CK 0027
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2650 of 1990

Jagarlamudi Sujata and another	Vs	APPELLANT
Jagarlamudi Jadadish Krishna Prasad and others		RESPONDENT

Date of Decision : 02-09-1991

Acts Referred:

Hindu Marriage Act, 1955 — Section 12, 16, 16(1), 16(2), 16(3)

Citation : AIR 1992 AP 291 : (1992) 1 ALT 503

Hon'ble Judges : N.D. Patnaik, J

Bench : Single Bench

Advocate : Y.V. Narayana, for the Appellant; M. Ramayya, for the Respondent

Judgement

1. This revision is filed against the order in I.A. No. 966 of 1987 in O.S. No. 110 of 1970 in the Court of the Subordinate Judge, Chirala.

2. The 2nd respondent in this revision who is the son of the 1st respondent, filed a suit for partition against his father. The 3rd respondent is his mother. A preliminary decree was passed by the trial Court on 22-2-78. Along with the suit there were two other proceedings--one petition filed by the 1st respondent against 3rd respondent for dissolution of marriage and another suit filed by the 3rd respondent against her husband for maintenance. Both of them were also disposed of along with partition suit on the same day and the marriage between the first respondent was dissolved. In pursuance of the preliminary decree passed in O.S. No. 110 of 1970, the plaintiff who is 2nd respondent in this petition filed a final decree petition. At that stage, the petitioners have filed an application under order I Rule 10, C.P.C., to implead them as parties. Their claim is that the 1st Respondent married their mother by name Venkayamma alias Vasantha Kumari and that they are children born to the first respondent through the said Venkayamma alias Vasanthakumari and therefore they also got a right in the property. The learned Subordinate Judge dismissed the petition holding that they are only illegitimate children and they have no right in the property and therefore they are not necessary or proper parties to the suit. Questioning the

same this revision has been filed.

3. Section 16 of the Hindu Marriage Act after it is amended by the amending Act of 1976 reads as follows :--

"Sub-section (1):-- Notwithstanding that a marriage is null and void u/s 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, 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.

Sub-section (2):-- Where a decree of nullity is granted in respect of a voidable marriage u/s 11, any child begotten or conceived before the decree is made who would have been the legitimate child of the parties concerned to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

Sub-section (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 of nullity u/s 12, any rights in or to the property of any person, other than the parents, in any case where, but but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reasons of his not being the legitimate child of his parents."

4. The lower Court proceeded on the assumption that the marriage between the mother of the petitioners i.e., Venkayamma alias Vasantha Kumari with the first respondent is not proved and therefore she will be only a concubine and so they are illegitimate children. But the learned counsel for the petitioners has referred to the allegations in para 3(b) of the plaint in O-S. No. 114 of 1970 in which the plaintiff has alleged that the defendant i.e. his father stealthily married a girl called Venkayamma alias Vasantha Kumari daughter of Popuri Subbarao and now the defendant is living with Venkayamma alias Vasantha Kumari in Karam-chedu and other places. Therefore, the plaintiff admits that his father, the respondent herein who is defendant in that suit had married Vasantha Kumari the mother of the petitioners herein. But what is the effect of such a marriage. It is not in dispute that the first respondent herein was married to the 3rd respondent. That marriage was dissolved by a decree of divorce passed on 22-2-1978. So the marriage of petitioners' mother i.e., Smt. Vasanta Kumari with the first respondent is during the subsistence of his marriage with the 3rd respondent. Section 11 of the Hindu Marriage Act provides that "Any Marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party therein against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in Clauses (i), (iv) and (v) of Section 5", Clause (i) of Section 5 says that "neither party must have a spouse living at the time of the marriage." Therefore, the marriage

of petitioners" mother Smt. Vasantha Kumari with the 1st respondent is void for the reason that the marriage between the 1st respondent and the 3rd respondent was subsisting at that time. But by virtue of Section 16(i) which is amended in 1976 and child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate while such child is 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 a marriage is held to be void otherwise than on a petition under this Act. So by virtue of this provision, the children born but of such a marriage are treated as legitimate children.

5. Then the next question is what is their right in the property, sub-section (3) says that "nothing contained in sub-section (1) or subsection (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity u/s 12, any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of this parents."

6. A learned single Judge of this Court, Chennakesava Reddy, J. (as he then was) has held in the decision reported in Goverdhana Singh v. Hiranman Singh, (1980) 2 ALT 210 that "the Legislature enacted the section to see that in no case, the children of persons, whose marriage is solemnized, but is void or voidable under S. 11 or 12 of the Act will be regarded as illegitimate children. The section confers a right in the joint Hindu Family property on such children." It may be pointed out that the learned Judge had considered only the effect of sub-section (1) of Section 16. He had stated that sub-sections (2) and (3) are not relevant for the purpose of the case and did not consider the effect of sub-section (3).

7. Learned counsel for the respondents has brought to my notice a decision of learned single Judge of the Madras High Court reported in Perumal Gounder and another Vs. Pachayappan and others, . The learned judge has considered the effect of S. 16(1) and subsection (3) of the Hindu Marriage Act and also, the previous decisions of the Madras High Court on that aspect and has laid down that "the share of the legitimate children in the properties could be confined to the interest of their parents and they are not entitled to claim an equal share along with the legitimate children." The learned Judge specifically stated that "they cannot seek the relief of partition as such, but at best may be entitled to rights in the properties of the First"ap-pellant in that case after his death." This question was also considered by a Division Bench of the Bombay High Court in Shantaram Tukaram Patil and Another Vs. Dagubai Tukaram Patil and Others, . In paragraph 27 of the judgment, the learned judges have summarised the propositions of law emerging from the discussion made above:--

"In regard to a child of a void marriage :

(1) a child of a marriage which is void under the provisions of Hindu Marriage Act

whether a decree of nullity is passed Or not, is a legitimate child (S. 16(1), Hindu Marriage Act).

(2) Such a child does not acquire right to property which a legitimate child would, but the legitimacy confers upon him right to property of his parents. (S. 16(3), Hindu Marriage Act);

(3) The property to which such a child can lay claim must be the separate property of the parents and not the coparcenary property in which the parent has a share. (Contrary view in Raghunath alias Ashok Nana Patil Vs. Nana Rama Patil, is not the correct law;

(4) Since no child, whether legitimate or otherwise acquires right by birth in separate property of its parent, a child of any void marriage can only succeed to the property of its parent in accordance with the provisions of S. 8 or S. 15, Hindu Succession Act;

(5) A child of a void marriage is related to its parents within the meaning of S.3(1)(j) Hindu Succession Act because of the provisions of S. 16 Hindu Marriage Act proviso to S.3(1)(j) must be confined to those children who are not clothed with legitimacy under S. 16 H.M. Act."

The view taken by the learned judges indicated above is that the property to which such a child can claim must be separate property of the parents and not the coparcenary property.

8. In view of the fact that sub-section (3) of Section 16 specifically lays down that "nothing contained in sub-section (1) or subsection (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity u/s 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 rights by reasons of his not being the legitimate child of his parents"! am unable to agree with the view taken by justice Chen-nakesava Reddy in Goverdhana Singh v. Hiranman Singh (1980 (2) A LT 210) that the section confers a right in the joint family property also with great respect to the learned judge. The view taken by the Madras and Bombay High Courts which I have referred to above is in conformity with sub-section (3) of S. 16. Therefore I agree with the contentions of the learned counsel for the respondents that that the right of the illegitimate children who have been made legitimate by the virtue of the amendment to S. 16(1) of the Act are concerned only with the property left by their parents i.e. they succeed to the property on the death of their parents. Therefore, the petitioners who have no right to claim a share on partition in the joint family property are not necessary or proper parties to the suit.

9. The Civil Revision petition is therefore dismissed. No costs.

10. Petition dismissed.