

(1989) 06 KL CK 0030

In the High Court Of Kerala

Case No : A.S. No's. 68 and 70 of 1980 and 5 of 1981

Parayankandiyil Eravath Kanapraavan Kalliani Amma and
Others

APPELLANT

Vs

K. Devi and Others

RESPONDENT

Date of Decision : 22-06-1989

Acts Referred:

Constitution of India, 1950 — Article 14
Hindu Marriage Act, 1955 — Section 11, 16, 4, 5

Citation : AIR 1989 Ker 279 : (1990) 2 DMC 157

Hon'ble Judges : T.V. Ramakrishnan, J;P.C. Balakrishna Menon, J

Bench : Division Bench

Advocate : C.R. Natarajan, M.K. Anandakrishnan, R. Bhaskaran and M. Ramesh Chandar, for the Appellant; P.S. Narayanan, S.R.D. Prabhu, N. Subramonian, P. Krishnan and P.V. Madhavan Nambiar, for the Respondent

Judgement

Balakrishna Menon, J.—These appeals arise out of three connected suits O.S. Nos. 38/1976. 99/1977 and 39/1976 tried together by the lower Court.

2. All the three suits relate to the assets left behind by Parayankandiyil Kanhirakunnath Kurungodan Raman Nair. He died on 9-1-1975. O.S. 38/1976 is by the children of Raman Nair from his first wife Ammu Amma. The defendants in that suit are the second wife and children of Raman Nair. The plaintiffs in O.S. 38/1976 seek recovery of possession of five items of properties on the strength of the plaintiffs' title. Recovery is sought from the second wife and children of Raman Nair.

3. O.S. 99/1977 is by the second wife and children against the children of Raman Nair from his first wife for partition of the A, B and C schedule properties mentioned in the plaint. The A schedule properties are the assets left behind by Raman Nair in Kerala, The B schedule properties are his assets in Tamil Nadu and the C schedule properties are the movables in the B schedule items. O.S. 39/1976 is by the children of Raman Nair from his first wife for partition of one

item of property that was held in tenancy-in-common by Raman Nair and his second wife. The plaintiffs in O.S. 39/1976 claim partition of a half share as belonging to Raman Nair and seek separate allotment of the same.

4. In all these suits the contention of the children of Raman Nair from his first wife, is that the second wife and children are not his legal heirs. According to them Raman Nair did not have a second wife. He was only keeping a concubine and the children born to such a woman are not the legal heirs of deceased Raman Nair. The second wife and children of Raman Nair contended that they are also the legal heirs of Raman Nair as, according to them, there was a valid marriage between Raman Nair and the defendant in O.S. 39/1976 and the children born in that wedlock are also the legal heirs of Raman Nair. It was however admitted that the second marriage of Raman Nair was at a time when his first wife Ammu Ammawas alive, and the first marriage was subsisting. The Court below has therefore found that the second marriage is invalid and the children born of the second marriage are not the legal heirs of Raman Nair. The Court below has also found that the properties mentioned in O.S. 38/1976. and in schedules A and B, of the plaint, in O.S. 99/1977 (except the two clinics in Schedule B) belonged to Raman Nair. The C schedule movables, even though belonged to Raman Nair, are found not now available for partition. The Court below has also found that the property in O.S. 39/1976 belonged in tenancy-in-common to Raman Nair and his second wife who is the sole defendant in that suit, and the plaintiffs who are his children from his first wife, being his legal heirs, are entitled to partition and separate allotment of a half share in that property. On the finding that the second wife and children are not the legal heirs of Raman Nair, the suit O.S. 38/1976 was decreed for recovery of possession of the properties mentioned therein from the defendants. O.S.99/1979 for partition by the second wife and children was dismissed.

5. Learned counsel for the appellants Sri R. Bhaskaran has urged only one point before us and that is that the second wife and children are also the legal heirs of Raman Nair. According to learned counsel Section 16 of the Hindu Marriage Act confers legitimacy on the children born in the second wife and they are also the legal heirs of deceased Raman Nair. The relevant clauses of Section 16 are extracted below :

"Legitimacy of children of void and voidable marriages.-

(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.

* * * * *

(3) Nothing contained in Sub-section (1) or Sub-section (2) shall be construed as

conferring upon any child of a marriage which is null and void of which is annulled by a decree of nullity wider. 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 rights by reason of his not being the legitimate child of his parents."

The legitimacy conferred by Sub-section (1) is on the children born of a marriage null and void u/s 11. Section 11 applies only to marriages solemnized after the commencement of the Hindu Marriage Act and does not relate to marriages solemnized prior to the said Act. Section 11 reads :

""Void marriages.-- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in Clauses (1), (iv) and (v) of Section 5."

Clause (i) of Section 5 invalidates a marriage if either party has a spouse living at the time of the marriage. In the present case, however, there is no dispute that the second marriage of Raman Xair was prior to the commencement of the Hindu Marriage Act and it was at a time when his first wife Ammu Amma was living. The invalidity of the second marriage is not for the reason of Section 11 which would apply only to marriage solemnized after the commencement of the Act. The second marriage of Raman Nair was at a time when the Madras Marumakkathayam Act, 1933 was in force. Section 5 of the said Act provided that during the continuance of a prior marriage which is valid u/s 4, any marriage contracted by either of the parties thereto on or after the date on which the said Act came into force shall be void. The invalidity of the second marriage of Raman Nair was therefore for the reason of violation of Section 5 of the Madras Marumakkathayam Act. Section 16 of the Hindu Marriage Act does not purport to confer legitimacy on children born of a marriage invalid under the law in force prior to the commencement of the Act.

6. Learned counsel for the appellants relies on Section 4 of the Hindu Marriage Act which provides for overriding effect of any law in force immediately before, the commencement of the Act. The relevant part of Section 4 reads :--

"Overriding effect of Act.----

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(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act."

According to learned counsel the subsistence of a valid marriage at the time of the second marriage invalidates the second marriage both under the Mammakkathayam law as well as under the Hindu Marriage Act. The invalidity of the marriage u/s 5 of the Marumakkathayam Act is a matter provided for in

Section 11 read with Section 5(i) of the Hindu Marriage Act and such invalidity, according to learned counsel, should therefore be construed as an invalidity u/s 11 of the Act. We see no merit in this submission as Section 11 on its express terms applies only to marriages solemnized after the commencement of the Hindu Marriage Act and it has no application to marriages solemnized prior to the Act. The conferment of legitimacy u/s 16 of the Act is only on the child born of a marriage null and void u/s 11 which can apply only to a marriage solemnized after the commencement of the Hindu Marriage Act.

7. Learned counsel made a further submission that the conferment of legitimacy by Section 16 of the Act on children born of marriages after the commencement of the Act to the exclusion of children born of marriages solemnized prior to the Act is discriminatory and is violative of Article 14 of the Constitution. Much reliance is placed on the decision in D.S. Nakara and Others Vs. Union of India (UOI), in support of this proposition. In that case a memorandum of the Ministry of Finance conferring the benefits of revised pension only on those retiring on or after a particular date was held to be discriminatory for the reason that all pensioners belong to the same category and there was no reasonable nexus between the classification and the objects of the memorandum providing for revised pension. Accordingly the words in the Government memorandum "who were in service on 31st March, 1979 and retiring from service on or after that date" were struck down as discriminatory and opposed to Article 14 of the Constitution extending the benefits to all the pensioners whatever be their respective dates of retirement. The Supreme Court observed :

"42, If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date."

It is further observed at page 144 :

"48. It was very seriously contended, remove the event correlated to date and examine whether the scheme is workable. We find no difficulty in implementing the scheme omitting the event happening after the specified date retaining the more humane formula for computation of pension. It would apply to all existing pensioners and future pensioners."

Learned counsel for the appellants, therefore, submits that the words in Section 16 of the Hindu Marriage Act restricting the benefit to children born of marriage

void u/s 11 should be so read omitting those words "void" extending the benefit to all those children born of a second marriage at a time when the first marriage was subsisting. Counsel relies also on the following passage in Maxwell's Interpretation of Statutes, 12th Edn. p. 228 :--

""Where the language of a statute, in its ordinary meaning, and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning."

We find it difficult to accept this contention. Section 16 of the Hindu Marriage Act confers the benefit of legitimacy only on those children born of a marriage void u/s 11 of the Act. Section 11 declares certain marriages as null and void and one of the grounds of invalidity of marriage is the ground in Clause (i) of Section 5. Clause (i) of Section 5 enjoins the requirement of a valid marriage that neither party has a spouse living at the time of the marriage. In other words, the benefit of Section 16 is available only to the children born of marriages which are declared invalid u/s 11 of the Act. The section deals with only invalidity of marriage under the Act and not of marriages otherwise invalid. In the present case the second marriage of Raman Nair was null and void u/s 5 of the Madras Marumakkathayam Act and the children born of such a marriage are not conferred legitimacy by Section 16 of the Hindu Marriage Act, We see no discrimination in conferring legitimacy by Section 16 of the Act only on those who will be otherwise illegitimate for the reason of the applicability of Section 11 of the Act. The disqualification of illegitimacy under the Hindu Marriage Act alone is removed u/s 16 of the Act. The fact that the section does not confer legitimacy on those who are already illegitimate apart from the provisions of the Act does not render the section discriminatory, or violative of Article 14 of the Constitution. It deals only with cases of illegitimacy under the Act and does not go beyond" the same. We therefore see no substance in the plea that Section 16 is violative of Article 14 of the Constitution. No other point is raised in these appeals.

8. Counsel for the appellants has however prayed for a direction for allotment of the house in the plaint schedule property in O.S. 39/1976 to the defendant. The defendant and her children are residing in the house in the suit property in O.S. 39/1976. She is admittedly entitled to a half share in that item. There will, therefore, be a direction that the house in the plaint schedule property in O.S.139/1976 will as far as possible be allotted to the share due to the defendant in that suit.

Subject to the above direction in A.S. No. 5/1981 all these appeals are dismissed. The parties will suffer their respective costs.