Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7108 of 2003

Bharatha Matha & Anr. .....Appellants

Versus

R. Vijaya Renganathan & Ors. .....Respondents

O R D E R

Dr. B. S. CHAUHAN, J

1. This appeal has been preferred against the Judgment and Order of the High Court of Judicature at Madras dated 10th July, 2001 allowing the appeal filed by the respondent No.1 against the judgment and decree of the Ist Appellate Court dated 17.9.1986 affirming the judgment and decree of the Trial Court dated 7.3.1977 in O.S. No.269/1975 instituted

by the predecessor-in-interest of the present appellants for claiming the property in dispute and denying the share to the respondent Nos. 2 to 5 or their predecessor-in-interest.

2. The facts and circumstances giving rise to the present case are that the predecessor-in-interest of the present appellants, Peria Mariammal instituted a suit, being O.S. No. 269 of 1975 against the respondents and their predecessor-in-interest claiming the share of her brother Muthu Reddiar, on the ground that he died unmarried and intestate and that Smt. Rengammal, the defendant No. 1 in the suit was a legally wedded wife of one Alagarsami Reddiar, who was still alive, therefore, her claim that she had live-in-relationship with plaintiff's brother Muthu Reddiar and had two children from him, had to be ignored. The defendants/respondents contested the suit denying the marriage between defendant No. 1 and the said Alagarsami Reddiar. The Trial Court decreed the suit vide Judgment and decree dated 7th March, 1977 recording the finding that Rengammal, defendant No.1 in the suit was wife of Alagarsami Reddiar who was alive at the

time of filing the suit. There had been no legal separation between them. Therefore, the question of live-in-relationship of Smt. Rengammal with Muthu Reddiar could not arise.

3. Being aggrieved, the defendants therein filed the First Appeal. The respondent No. 1 herein, Vijaya Renganathan, purchased the suit property in 1978 i.e. during the pendency of the First Appeal for a sum of about Rs. 10,000/- and got himself impleaded in the appeal as a party. The First Appeal was dismissed by the Appellate Court vide judgment and decree dated 17th September, 1986. The said purchaser, respondent No.1, alone filed the Second Appeal under Section 100 of Code of Civil Procedure, 1908 (hereinafter called as 'CPC') before the High Court which has been allowed. Hence, this appeal.

4. Learned counsel for the appellants has submitted that Smt. Rengammal, original defendant No.1 was legally wedded wife of Alagarsami and he was still alive. Therefore, the question of presumption of marriage for having live-in-

relationship with Muthu Reddiar could not arise. In such eventuality, Muthu Reddiar could be liable for offence of Adultery under Section 497 of Indian Penal Code, 1860 (hereinafter called as 'IPC'). More so, even if live-in-relationship is admitted and it is further admitted that the two children were born due to that live-in-relationship, the said children could not inherit the coparcenery property and in absence of any finding recorded by any Court below that the suit land was self-acquired property of Muthu Reddiar, the judgment of the High Court is liable to be set aside. At the most, the respondent No. 1 herein can claim recovery of the sale consideration from his vendors as the possession is still with the present appellants.

5. On the contrary, learned counsel for the respondent No.1 has vehemently opposed the submission of the learned counsel for the appellants, contending that the High Court after re-appreciating the evidence on record came to the conclusion that the factum of marriage of Smt. Rengammal with Alagarsami Reddiar could not be proved by the appellants

herein and because of their live-in-relationship, a presumption of marriage between Muthu Reddiar and Smt. Rengammal could be drawn and, therefore, in view of the provisions of Section 16 of the Hindu Marriage Act, 1955 (hereinafter called as, "the Act"), the two children born out of that live-in-relationship were entitled to inherit the property of Muthu Reddiar and thus, the appeal is liable to be dismissed.

6. We have considered the rival submissions of the learned counsel for the parties and perused the record.

7. The Trial Court as well as the First Appellate Court have recorded a categorical finding of fact that Smt. Rengammal, defendant No.1 had been married to Alagarsami Reddiar who was alive on the date of institution of the suit and, therefore, the question of marriage by presumption between Smt. Rengammal and Muthu Reddiar would not arise and for determining the same all the material on record had been taken into consideration including the statement of

Seethammal, DW1 along with all other defence witnesses and the documents, particularly, Exts.B14, B18, B19 and B2.

8. However, the High Court framed two substantial questions of law, namely:

> (a) Whether on the admitted long cohabitation of the First defendant and Muthu Reddiar, a legal presumption of a lawful wedlock is not established; and
>
> (b) Whether the specific case of prior and subsisting marriage between defendant and Alagarsami Reddiar set up by Plaintiff is established as required by law and she could have a preferential claim over defendants 1 to 3?

9. While determining the substantial question (b) the High Court only considered the statement of Seethammal, DW1, the step mother of Muthu Reddiar and did not take into consideration the evidence of plaintiff's witnesses which had been relied upon by the courts below, particularly,

Kumarasamy PW2 and Kandasamy PW5 and re-appreciated the documentary evidence. Therefore, the question does arise as to whether such a course is permissible while deciding the Second Appeal under Section 100 CPC.

10. In **Sheel Chand** Vs. **Prakash Chand,** AIR 1998 SC 3063, this Court held that question of re-appreciation of evidence and framing the substantial question as to whether the findings relating to factual matrix by the court below could vitiate due to irrelevant consideration and not under law, being question of fact cannot be framed.

11. In **Rajappa Hanamantha Ranoji** Vs. **Mahadev Channabasappa & Ors**. AIR 2000 SC 2108, this Court held that it is not permissible for the High Court to decide the Second Appeal by re-appreciating the evidence as if it was deciding the First Appeal unless it comes to the conclusion that the findings recorded by the court below were perverse.

12. In **Kulwant Kaur & Ors**. Vs. **Gurdial Singh Mann (dead) by L.Rs**. AIR 2001 SC 1273, this Court held that the question whether Lower Court's finding is perverse may come within the ambit of substantial question of law. However, there must be a clear finding in the judgment of the High Court as to perversity in order to show compliance with provisions of Section 100 CPC. Thus, this Court rejected the proposition that scrutiny of evidence is totally prohibited in Second Appeal.

13. Thus, it is evident that High Court can interfere with the finding of fact while deciding the Second Appeal provided the findings recorded by the Courts below are perverse.

14. In **H.B. Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal & Ors.** Vs. **M/s. Gopi Nath & Sons & Ors.** 1992 Supp.(2) SCC 312, this Court held that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the

vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in law. In **M/s. Triveni Rubber & Plastics** Vs. **Collector of Central Excise, Cochin** AIR 1994 SC 1341, this Court held that the order suffers from perversity in case some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration or where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings. In **Kuldeep Singh** Vs. **Commissioner of Police & Ors**. (1999) 2 SCC 10, this Court held that if a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which cannot be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with. In **Gaya Din (dead) thr. Lrs. & Ors**. Vs. **Hanuman Prasad (dead) thr. Lrs. & Ors**. AIR 2001 SC 386, it has been held that order of an authority is perverse in the sense that

the order is not supported by the evidence brought on record or it is against the law or it suffers from the vice of procedural irregularity. In **Rajinder Kumar Kindra** Vs. **Delhi Administration, thr. Secretary (Labour) & Ors.** AIR 1984 SC 1805, this Court while dealing with a case of disciplinary proceedings against an employee considered the issue and held as under:

> "17. It is equally well-settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. ….The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence."

15. In the instant case, the Courts below had appreciated the entire evidence and came to the conclusion that Smt. Rengammal, defendant no.1 was legally wedded wife of Alagarsami Reddiar and thus did not presume her marriage with Muthu Reddiar. The High Court without making any

reference to the evidence of the plaintiff's witnesses, particularly, Kumarasamy-P.W.2 and Kandasamy-PW.5 reversed the finding of fact and reached the conclusion that merely live-in-relationship between the said two parties would lead the presumption of marriage between them. The High Court erred in not appreciating that the judgments of the Courts below could be based on another presumption provided under Section 112 of the Evidence Act, 1872 (hereinafter called as the 'Evidence Act').

16. Section 112 of the Evidence Act provides for a presumption of a child being legitimate and such a presumption can only be displaced by a strong preponderance of evidence and not merely by a balance of probabilities as the law has to live in favour of innocent child from being bastardised. In the instant case, as the proof of non-access between Rengammal and Alagarsami had never been pleaded what to talk of proving the same, the matter has not been examined by the High Court in correct perspective. It is settled legal proposition that proof of non-access between the

parties to marriage during the relevant period is the only way to rebut that presumption. [vide **Mohabbat Ali Khan** Vs**. Muhammad Ibrahim Khan & Ors.** AIR 1929 PC 135; **Chilukuri Venkateswarlu** Vs**. Chilukuri Venkatanarayana** AIR 1954 SC 176; **Mahendra Manilal Nanavati** Vs**. Sushila Mahendra Nanavati** AIR 1965 SC 364; **Perumal Nadar (Dead) by Lrs.** Vs**. Ponnuswami Nadar (minor)** AIR 1971 SC 2352; **Amarjit Kaur** Vs**. Harbhajan Singh and Anr.** (2003) 10 SCC 228; **Sobha Hymavathi Devi** Vs. **Setti Gangadhara Swamy and Ors.** AIR 2005 SC 800; and **Shri Banarsi Dass** Vs. **Teeku Dutta (Mrs.) and Anr.** (2005) 4 SCC 449]

17. The High Court has decided the issue regarding the factum of marriage between Alagarsami and Rengammal only placing reliance upon the statement of Smt. Seethammal, DW1, step mother of Muthu Reddiar who had been disbelieved by the Courts below by giving cogent reasons and taking note of the fact that she had arranged their marriage spending a sum of Rs.10 only. The High Court has also reappreciated the documentary evidence and took a view contrary to the view

taken by the court's below. It was not appropriate for the High Court to re-appreciate the evidence in Second Appeal as no substantial question of law involved therein. Both the Courts below found that Rengammal was legally wedded wife of Alagarsami. The Courts below had placed very heavy reliance upon the witnesses examined by the appellant/plaintiff particularly, Kumarasamy- PW 2 and Kandasamy- PW 5.

18. In view of the fact that the High Court did not even take note of the deposition of the plaintiff's witnesses, findings recorded by the High Court itself become perverse and thus liable to be set aside.

19. Be that as it may, Section 5(1) of the Act lays down conditions for a Hindu marriage. It provides that marriage may be solemnized between any two Hindus if neither of them is a spouse living at the time of marriage. Section 11 provides that any marriage which is in contravention of Section 5(1) of the Act, would be void. Section 16 of the Act stood amended

vide Amendment Act of 1976 and the amended provisions read as under:-

> *"**Legitimacy of children of void and voidable marriages** – (1) Notwithstanding 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……..*
>
> *(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, who would have been the legitimate child of the parties 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.*
>
> *(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 or which is annulled by a decree of nullity 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 rights by reason of his not being the legitimate child of his parents."* (Emphasis added)

20. Thus, it is evident that Section 16 of the Act intends to bring about social reforms, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as its prime object.

21. In **S.P.S. Balasubramanyam** Vs. **Suruttayan @ Andali Padayachi & Ors.** AIR 1992 SC 756, this Court held that if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate.

22. In **S. Khushboo** Vs**. Kanniammal & Anr.** JT 2010 (4) SC 478, this Court, placing reliance upon its earlier decision in **Lata Singh** Vs**. State of U.P. & Anr.** AIR 2006 SC 2522, held that live-in-relationship is permissible only in unmarried major persons of heterogeneous sex. In case, one of the said persons is married, man may be guilty of offence of adultery and it would amount to an offence under Section 497 IPC.

23. In **Smt. P.E.K. Kalliani Amma & Ors.** Vs. **K. Devi & Ors.** AIR 1996 SC 1963, this Court held that Section 16 of the Act is not ultra vires of the Constitution of India. In view of the legal fiction contained in Section 16, the illegitimate

children, for all practical purposes, including succession to the properties of their parents, have to be treated as legitimate. They cannot, however, succeed to the properties of any other relation on the basis of this rule, which in its operation, **is limited to the properties of the parents**.

24. In **Rameshwari Devi** Vs**. State of Bihar & Ors.** AIR 2000 SC 735, this Court dealt with a case wherein after the death of a Government employee, children born illegitimately by the woman, who had been living with the said employee, claimed the share in pension/gratuity and other death-cum-retiral benefits along with children born out of a legal wedlock. This Court held that under Section 16 of the Act, children of void marriage are legitimate. As the employee, a Hindu, died intestate, the children of the deceased employee born out of void marriage were entitled to share in the family pension, death-cum-retiral benefits and gratuity.

25. In **Jinia Keotin & Ors.** Vs. **Kumar Sitaram Manjhi & Ors.** (2003) 1 SCC 730, this Court held that while engrafting a

rule of fiction in Section 16 of the Act, the illegitimate children have become entitled to get share only in **self-acquired properties of their parents**. The Court held as under :-

> *"4……Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of contravention of the statutory prescriptions, any child born of such marriage would have the effect, per se, or on being so declared or annulled, as the case may be, of bastardising the children born of the parties to such marriage. Polygamy, which was permissible and widely prevalent among the Hindus in the past and considered to have evil effects on society, came to be put an end to by the mandate of the Parliament in enacting the Hindu Marriage Act, 1955. The legitimate status of the children which depended very much upon the marriage between their parents being valid or void, thus turned on the act of parents over which the innocent child had no hold or control. But for no fault of it, the innocent baby had to suffer a permanent set back in life and in the eyes of society by being treated as illegitimate. A laudable and noble act of the legislature indeed in enacting Section 16 to put an end to a great social evil. At the same time, Section 16 of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as succession or*

inheritance by such children are concerned to the properties of the parents only.

5. So far as Section 16 of the Act is concerned, though it was enacted to legitimise children, who would otherwise suffer by becoming illegitimate, at the same time it expressly provide in Sub-section (3) by engrafting a provision with a non-obstante clause stipulating specifically that 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 or which is annulled by a decree of nullity 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 rights by reason of this not being the legitimate child of his parents'. In the light of such 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 relegislating on the subject under the guise of interpretation, against even the will expressed in the enactment itself. Consequently, we are unable to countenance the submissions on behalf of the appellants……."

26. This view has been approved and followed by this Court in **Neelamma and others** Vs. **Sarojamma and others** (2006) 9 SCC 612.

27. Thus, it is evident that in such a fact-situation, a child born of void or voidable marriage is not entitled to claim inheritance in ancestral coparcenery property but is entitled only to claim share in self acquired properties, if any.

28. In the instant case, respondents had not pleaded at any stage that the Suit land was a self acquired property of Muthu Reddiar. It is evident from the record that Muthu Reddiar did not partition his joint family properties and died issueless and intestate in 1974. Therefore, the question of inheritance of coparcenery property by the illegitimate children, who were born out of the live-in-relationship, could not arise. Thus, the judgment of the High Court is liable to be set aside only on this sole ground.

29. In view of the above, the appeal succeeds and is allowed. The judgment and order of the High Court dated 10th July, 2001 is hereby set aside. No order as to cost.

30. However, it shall be open to R.5 to resort to legal proceedings, permissible in law for recovery of the sale consideration from his vendors as he has purchased the property in lis pendis and the appellants are still in possession of the suit property.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(SWATANTER KUMAR)

New Delhi,
May 17, 2010

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

JUDGMENT TO BE PRONOUNCED

BY

HON'BLE DR. JUSTICE B.S. CHAUHAN

ON

25.5.2010 (TUESDAY)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7108 of 2003

Bharatha Matha & Anr. .....Appellants

Versus

R. Vijaya Renganathan & Ors. .....Respondents

Dear brother

A draft judgment in the above mentioned matter is being sent herewith for your kind perusal and favourable consideration.

With regards,

Yours sincerely,

(Dr. B.S. CHAUHAN)
19.5.2010

HON'BLE MR. JUSTICE SWATANTER KUMAR

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7108 of 2003

Bharatha Matha & Anr. .....Appellants

Versus

R. Vijaya Renganathan & Ors. .....Respondents

ORDER DICTATED BY

HON'BLE DR. JUSTICE B.S. CHAUHAN

ON

17.5.2010