

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.689 of 2017

Order:

This revision arises out of an order passed by the Trial Court refusing to implead in a partition suit, a lady and her minor daughter, who claimed respectively to be the living-in partner and the child of the 1st defendant in the suit.

2. Heard Mr. P.Venugopal, learned Senior Counsel appearing for the petitioners and Mr. K.S. Murthy, learned counsel appearing for the contesting respondents, who were the plaintiffs in the suit.

3. The respondents 1 to 3 herein, who are the wife and children of the 4th respondent herein, filed the suit in O.S.No.174 of 2011 seeking partition and separate possession and about 9 items of suit properties. In the suit, the plaintiffs impleaded the 5th respondent herein as the 2nd defendant on the ground that the 1st defendant sold one property to the 2nd defendant and that the plaintiffs were not bound by such sale.

4. After 3 years of the institution of the suit, the plaintiffs also got impleaded a minor girl as the 3rd defendant, on the ground that the said minor girl was the illegitimate child of the 1st defendant and that the 1st defendant had created a registered gift deed dated 22-12-2007 in favour of the minor 3rd defendant in respect of Item No.10 of the suit schedule.

5. In the year 2016, the petitioners herein filed an application in the suit, seeking to implead themselves as parties on the ground that the 1st petitioner herein as well as the 3rd defendant in the suit, both of whom were born to the 2nd petitioner herein through the 1st defendant, have a share in the suit schedule properties. This petition for impleadment was dismissed by the Trial Court on the ground that a person who is in a living-in relationship with the 1st defendant when his marriage with the 1st plaintiff was subsisting, could not be recognised as having any right and that insofar as the illegitimate children are concerned, namely, the 1st petitioner herein and the 3rd defendant, they are not entitled to a share in the ancestral property. Aggrieved by the said order, the petitioners are before us.

6. There can be no quarrel with the proposition that a person who is in a living-in relationship cannot claim any right in the property of the other spouse, especially when the marriage of the spouse is still subsisting. It appears that though the marriage between the 1st plaintiff and the 1st defendant was dissolved by a decree granted in O.P.No.554 of 2005, an appeal against the same in F.C.A.No.174 of 2011 is pending. The 1st petitioner herein was born on 04-10-2013 and the 3rd defendant was born on 21-5-2007, obviously before the dissolution of the marriage.

7. But insofar as the question of impleadment of the 1st petitioner is concerned, the Trial Court has obviously

fallen into an error. The question as to whether the properties involved in the partition suit are ancestral properties or not, is a question which is pending adjudication before the Trial Court. If any one or more of the suit schedule properties is found to be a self-acquired property of the 1st defendant, the 1st petitioner herein and the 3rd defendant (6th respondent herein) would certainly have a right to a share in such properties. By holding that the illegitimate children have no right in the ancestral property, the Trial Court has actually put the cart before the horse and arrived at a finding that the properties were ancestral properties. This is where the Court below went wrong.

8. In *Jinia Keotin v. Kumar Sitaram Manjhi*¹, the Supreme Court pointed out that Section 16 of the Hindu Marriage Act, 1955 creates a fiction in ordaining the children, though illegitimate, to be treated as legitimate, insofar as the succession or inheritance to the properties of the parents are concerned. The same principle was reiterated in *Bharatha Matha v. R. Vijaya Renganathan*². However, it was pointed out in *Bharatha Matha* that in that case, the respondents had not pleaded at any stage that the suit land was a self-acquired property. Therefore, it was held in the 2nd last paragraph of *Bharatha Matha* that the question of inheritance of coparcenary property by the illegitimate children, who were born out of live-in relationships would not arise.

¹ (2003) 1 SCC 730

² (2010) 11 SCC 483

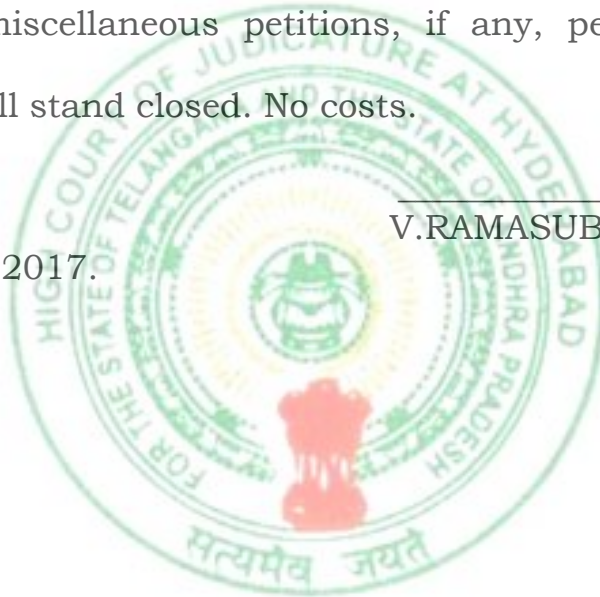
9. In *Revanasiddappa v. Mallikarjun*³, the Supreme Court expressed difficulties in accepting the views expressed in *Jinia Keotin, Neelamma v. Sarojamma* [(2006) 9 SCC 612] and *Bharatha Matha*. Now the matter has been placed before a Larger Bench for reconsideration.

10. In such circumstances, the rejection of the petition for impleadment is contrary to law. Hence, the revision is allowed, the impugned order is set aside and the petitioners are directed to be impleaded as defendants 4 and 5 to the suit. The miscellaneous petitions, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

03rd March, 2017.

Ak



³ (2011) 11 SCC 1

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.689 of 2017



03rd March, 2017.
(Ak)