

(1982) 12 BOM CK 0022

Bombay High Court

Case No: Second Appeal No. 202 of 1978

Laxmibai Nagappa Matiwadar
and Others

APPELLANT

Vs

Limbabai Nagappa Matiwadar

RESPONDENT

Date of Decision: Dec. 8, 1982

Acts Referred:

- Hindu Marriage Act, 1955 - Section 16
- Hindu Succession Act, 1956 - Section 24, 25, 26, 27, 28

Citation: AIR 1983 Bom 222 : (1984) 1 BomCR 275 : (1983) 2 DMC 203 : (1983) MhLj 103

Hon'ble Judges: Misodkar, J

Bench: Single Bench

Advocate: Ajit P. Shah, for the Appellant; Arvind J. Joshi, for the Respondent

Judgement

1. For the purpose of the present appeal that arises out of a suit filed by the respondent for possession of three plots relying on her right to succeed to the interest of her husband Nagappa. Few facts, as are found, are not in dispute. It was held by the first appeal Court that Nagappa got the suit property, that is, plot No. 228 by inheritance from his mother Nagawwa, but the appeal Court dismissed the suit with regard to the other plots, being plots Nos. 230 and 231. There is no cross-appeal with regard to those plots. The first appeal Court judgment decreed the suit of Limbabai with regard to the said plot No. 228, holding that the present appellant would not have any right or interest therein because appellant No. 1 Laxmibai's marriage with Nagappa was void. That marriage took place on May 24, 1955. The other appellants were born thereafter. It has been found that plaintiff Limbabai was married to Nagappa according to Hindu rites and was alive on that date. Applying the provisions of the Bombay Prevention of High Bigamous Act, 1946, the first appeal Court held that Hiralal and Ambubai, the sons and the daughter born from Limbabai to Nagappa would not be entitled to any interest in the property of Nagappa because Laxmibai's marriage was void and that they would be

illegitimate children. Holding so, the first appeal Court has decreed the suit with regard to plot No. 228 and has also made an order, directing delivery of possession of said plot as well as inquiry into further mesne profits.

2. These undisputed facts clearly go to show that as far as application of the law is concerned, there is an apparent error in the judgment under appeal. The marriage of Laxmibai and the right and entitlement of Hiralal and Ambubai will have to be found on the basis of the Hindu Marriage Act, 1955 (hereinafter called "the Act"). It is not in dispute that this should be so because the Act came into force on May 18, 1955, while Laxmibai was married with Nagappa on May 24, 1955, that is after the commencement of the Act. Undoubtedly, therefore, to that marriage, the provisions of S. 5(i) read with S. 11 of the Act will have to be applied. So applied, it leaves no manner of doubt that plaintiff Limbabai, the first wife of Nagappa, being alive on the decree date of the marriage. the marriage of Laxmibai would be void and will have to be treated as such .

3. The narrow question is, what is the impact of S. 16(1) and S. 16(3) of the Act read with the provisions of Section 8 of the Hindu Succession Act, 1956?

4. It was contended on behalf of the appellant that in view of the provisions of S. 16 the children born from the void marriage do not lose their legitimate right in the property there being express recognition enacted by the terms of law. The contesting argument is that legitimacy under S. 16 would not further clothe the other wife's illegitimate children with the statue of "son" or "daughter" for the purpose of the Hindu Succession Act.

5. The history of S. 16 of the Hindu Marriage Act goes to show that it was enacted to confer status of legitimacy upon children born of void and voidable marriage. The Joint Committee's report, with regard to the basis on which S. 16 was enacted, clearly indicates that in its view, in no case, the off-spring of the void of voidable marriage be regarded as illegitimate.

6. The present section, which is in three parts has been substituted for the original S. 16 and sub-sec (1) which opens with non obstante clause, declares, in no uncertain terms, that notwithstanding that such a marriage is null and void under S. 11, the off-spring of such marriage shall be legitimate whether such child was 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 the Act and whether or not the marriage is held to be void otherwise than on a petition under the Act. The 1976 amendment and the substitution of Section 16(1) in this manner beyond doubt take away and eclipse the general rule that the off-spring of marriage, which is null and void ipso jure,. is illegitimate. That was common law doctrine. inevitably resulting in the effect of bastardising children. The same has been superseded and the matter is governed by the express declaration available to S. 16(1) of the Act to the effect that though because of the statute the marriage

would be void. that would not lead to the inevitable result of bastardising the children who are born out of such a void wedlock. Sub-sec (3) of Section 16 is, no doubt, restrictive. It is, however, in furtherance of the legislative declaration available in sub-section (1) of Section 16 of the Act. Though couched in negative language, the provision itself is in two parts. one excluded in entitlement of such child of possession or acquiring right in or to the property of any person and recognising such right in his favour with regard to the property of his parents. The effect of legitimacy recognised by S. 16 thus is to confer the right in or to the property of the parents, the disablement or incapacity being enacted only with regard to the property of any other person. As far as the property of other person is concerned, sub-section (3) makes the position clear that the legitimacy conferred by sub-section (1) or (2) would not clothe such a child with the capacity of possession or acquiring any right which it did not so possession reason of its not being that legitimate children of its parents. Section 16 thus enacts a complete code with regard to the off-springs of void or voidable marriages. Firstly, it declares the status of such a child being one as legitimate. Secondly, it recognises right in the property of the parents. The provisions itself thus is for the benefit of the children and will have to be applied in full so as to confer status with interest in property. This provisions thus removes the disability of such children as far as the property of their parent is concerned. Reading together, it follows that Hiralal and Ambubai would be the legitimate children notwithstanding the fact that Laxmibai's marriage is void and they would have right in or to the property left by Nagappa or Laxmibai.

7. A brief reference then to the Hindu Succession Act is necessary, for the succession opened after that Act came into force. Nagappa, admittedly, died on Dec. 31, 1969. As stated earlier, the suit plot No. 228 is the property which he inherited from his mother and was his property at the date of his death. To the succession of that property. Nagappa having died intestate, the rule laid down by Section 8 of the Hindu Succession Act will have to be applied. Under clause I of the Schedule would succeed to Nagappa's property. Class I of the Schedule appended to the Hindu Succession Act speaks of "son", "daughter", without Laxmibai, whose marriage is void, could not be treated as widow, Limbabai, whose marriage was valid and was alive, would answer the terms "widow". The question is whether the legitimately conferred by reason of Section 16 of the Act would cloth Hiralal and Ambubai with the status of "son" and "daughter". The Hindu Succession Act itself does not define the words "son" or "daughter". They are the person who are classed as heirs and the term "heir" means any person male or female, who is entitled to succeed to the property of an intestate under the Hindu Succession Act (Section 3(f)). The terms "son" and "daughter" which are included as the person entitled to succeed as heirs in Class I, are the descriptive natural terms indicating off-spring having only the sex differentia, "son" indicating the male off-spring and "daughter" indicating the female offspring. It is well settled uses or interpretation that if the statute uses the natural words, then full effect should be given to the same. What was intended by

the Law of Succession was to confer the right of succession upon the persons, who answer the terms and description available in class I. To be conversed by that case and to be the son or daughter, it has to be shown that the person was born to the Hindu who has died intestate. If the description is answered, then, unless there is anything contrary to disqualify such an heir mentioned expressly as entitled to succeed. It will not be possible to exclude such person from the rights of succession.

8. As far as Hiralal and Ambubai are concerned, it is nobody's case that they do not answer to the natural descriptions of "son" and "daughter". If they answer and if their father died intestate, notwithstanding the fact that they were the off-spring of the void marriage, they would be covered by the definition of the word "heir" available in S. 3(f) of the Hindu Succession Act. The law of Succession is principally a law that recognises a class of persons who can succeed to the decision when the succession opens. It is both a law of status as well as made in recognition of rights in or to the property of the deceased. In the entire body of Hindu Succession Act, there exists no disqualification with regard to the off-spring or the children born out of void marriage. A group of sections that lay down specific disqualification is available only in the provision of Sections 24, 25, 26, 27 and 28. These sections do not, in any manner, exclude children born out of a void marriage. The grounds of exclusion from the succession under the Hindu Succession Act having been specified, like remarriage case falling under S. 24, murder in case falling under S. 25, conversion in case falling u/s 26, it is not necessary to find a new head for the purpose of disqualifying the otherwise illegitimate children recognised to be legitimate by virtue of the declaration available in Section 16 of the Act. The policy and principles underlying the codification of Hindu law clearly go to show that the legislature intended to avoid the effect of bastardisation and to clothe the children notwithstanding the fact of the marriage of their parents being void, with the status of legitimate and with conferring right in the property of their parents. Such rights would include, by very intent, right of succession to the property of the parents. It will be fair, therefore, to hold that there being no disqualification enacted or any incapacity indicated by the provisions of the Hindu Succession Act as far as the succession to Nagappa and right in his property are concerned Hiralal and Ambubai would be the children covered by Class I and would thus be the heirs of Nagappa along with his widow Limbabai.

9. As a result of this finding, the provisions of Section 10 of the Hindu Succession Act would indicate that Limbabai would be entitled to have one-half share, while Hiralal and Ambubai together would be entitled to one-half share. Laxmibai would not be entitled to any share.

10. With regard to the suit plot No. 228, therefore, plaintiff Limbabai would be entitled to a decree to the extent of one-half share, the remaining one-half going to the two children.

11. This being the position, the present appeal will have to be allowed. The decree under appeal is, therefore, set aside and in the place the following decree is made:--

"It is hereby declared that the plaintiff has one-half share in the suit property, being plot No. 228 and she is entitled to partition and possession of her share to that extent. The rest of the claim of the plaintiff is dismissed".

12. Though the appeal is thus allowed to the above extent under the circumstances, the parties are directed to bear their own costs throughout.

13. Order accordingly.