[2024] 1 S.C.R. 413 : 2024 INSC 47

Raja Gounder and Others

v.

M. Sengodan and Others

(Civil Appeal No. 600 of 2024)

19 January 2024

[M.M. Sundresh and S.V.N. Bhatti*, JJ.]

Issue for Consideration

A civil suit was filed by respondent Nos. 1 and 2 for partition and separate possession of plaint schedule properties. During the pendency of the suit, appellants were impleaded. The Trial Court recorded a categorical finding that appellant no.2 and respondent no.2 were not wives of MG, propositus of parties, and consequently, the status of the children through the extended family as coparceners was rejected. The issue for consideration is as to entitlement of share to the children of void or voidable marriage.

Headnotes

Partition – Partition and separate possession of plaint schedule properties – The Trial Court held that respondent No. 4 herein admittedly is the first and legally wedded wife of MG – Appellant No. 2 and respondent No. 2 did not produce evidence to prove the factum of the marriage with MG – The evidence adduced by the appellants or respondent Nos. 1 and 2, does not inspire the confidence of the Court to accord to them the status as wives of MG – The Trial Court records a categorical finding that appellant No. 2 and respondent No. 2 are not the wives of MG, and consequently, the status of the children through the extended family as coparceners was rejected – High Court accepted the view of the Trial Court – Propriety:

Held: A mere perusal of the preface to Ex. B-6, mortgage deed, would show that MG treated appellant No. 1, respondent No. 1 and respondent No. 3 as his sons – The document was executed for himself and on behalf of his minor sons – The statement was made by MG during the subsistence of his interest in the property mortgaged – The appellants also rely on the patta dated 27.04.1984 (Ex. B-3) standing in the name of MG and

* Author

his sons; the voters lists, viz., Exs. B-4 and B-5, to show that MG and his sons lived as a family – By applying ss.17 and 18 of the Evidence Act, it is convincing that MG made a statement describing appellant No. 1 and respondent No. 1 as his sons and treated as an admission by record – This statement satisfies the ingredients of s.18 of the Evidence Act – Further, in the absence of contrary evidence and withdrawal of admission or explained through admissible evidence, the admission in the mortgage deed, viz., Ex. B-6, coupled with the joint patta and voters lists, declares the status of appellant No. 1, respondent No. 1, along with respondent No. 3 as the sons of MG – At this juncture, the status derived through an admission in Ex. B-3 vis-à-vis appellant No.1 as a natural corollary could be extended to appellant No.3 as a child/daughter of MG – This is an inescapable consequential conclusion which the Court has to record – Once the status of the parties, other than respondent No. 3, is established as the extended family of the propositus, irrespective of whether the marriages of appellant No. 2 and respondent No. 2 with MG are void or voidable, denying the children of MG a share in the property of notional partitioned in favour of MG, is unsustainable in law and fact – Also, applying the principle laid down in *Revanasiddappa and another v. Mallikarjun and others* on entitlement of share to the children of void and voidable marriages, the judgments under appeal are set aside. [Paras 15.1, 16, 17, 18]

Evidence Act, 1872 – Admission:

Held: Admission is a conscious and deliberate act and not something that could be inferred – An admission could be a positive act of acknowledgement or confession – To constitute an admission, one of the requirements is a voluntary acknowledgement through a statement of the existence of certain facts during the judicial or quasi-judicial proceedings, which conclude as true or valid the allegations made in the proceedings or in the notice – The formal act of acknowledgement during the proceedings waives or dispenses with the production of evidence by the contesting party – The admission concedes, for the purpose of litigation, the proposition of fact claimed by the opponents as true – An admission is also the best evidence the opposite party can rely upon, and though inconclusive, is decisive of the matter unless successfully withdrawn or proved erroneous by the other side. [Para 13.1]

Case Law Cited

Revanasiddappa and another v. Mallikarjun and others **(2023) 10 SCC 1 – relied on.**

Gopal Das and another v. Sri Thakurji and others **AIR 1943 PC 83 – referred to.**

Nirmala v. Rukminibai **AIR 1994 Kar 247 – approved.**

List of Acts

Evidence Act, 1872 – ss. 17 and 18.

List of Keywords

Partition; Factum of marriage; Void or voidable marriage; Status of wife; Status of the children through the extended family; Coparceners; Admission by record; Entitlement of share to the children of void and voidable marriages; Preliminary decree of partition; Notional partition.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.600 of 2024.

From the Judgment and Order dated 26.09.2006 of the High Court of Judicature at Madras in AS No.929 of 1991.

Appearances for Parties

Ms. N. S. Nappinai, V. Balaji, A. Krishna Kumar, R. Mohan, Nizamuddin, C. Kannan, Rakesh K. Sharma, Advs. for the Appellants.

Vinodh Kanna B., K. K. S. Krishnaraj, T. R. B. Sivakumar, Ms. Shagufa Khan, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

S.V.N. Bhatti, J.

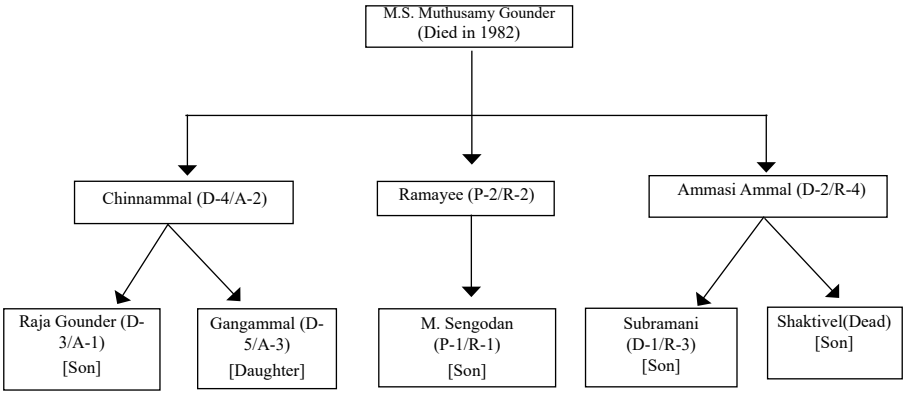
1. Leave granted.

2. The Defendant Nos. 3 to 5 in O.S. No. 357 of 1985 before the Court of the Subordinate Judge, Sankari, Coimbatore District, Tamil Nadu, are the Appellants in the Civil Appeal. The Appellants assail the judgment and decree of the Trial Court and the High Court of

Judicature at Madras, dismissing the suit filed by Respondent No. 1 and Respondent No. 2 for partition and separate possession of the plaint schedule properties.

I. FACTUAL BACKGROUND

3. A genealogy is prefaced to appreciate the relationship between the parties: -



4. Respondent Nos. 1 and 2 in this Civil Appeal were the Plaintiffs in O.S. No. 357 of 1985 before the Trial Court filed for partition and separate possession of plaint schedule properties. The plaint schedule consists of three items of agricultural land in Amani, Kliyanoor, Agraharam and Pallipayam villages of Tiruchengode Taluk. The suit was filed against Respondent Nos. 3 and 4 herein. During the pendency of the suit, the Appellants filed I.A. No. 1019 of 1987 and were impleaded by the Trial Court as Defendant Nos. 3, 4 and 5.

5. Muthusamy Gounder is the propositus of the parties to the suit and the claim for partition arose on his demise in the year 1982. The plaint averments are that Respondent No. 1 is the son of the propositus through Respondent No. 2/Ramayee. Respondent No. 3 is also the son of the propositus through Respondent No. 4/Ammasi Ammal. The marriage of Respondent No. 2 with the propositus is alleged to have happened in the early 1950s. It is averred in the plaint that Respondent Nos. 1 to 4 lived together and had a common kitchen during the lifetime of Muthusamy Gounder. Respondent Nos. 1 and 2 claim that a coparcenary/joint Hindu family existed, and Respondent Nos. 1 to 3 inherited the plaint schedule properties. The plaint schedule properties are treated as joint family/ancestral properties.

The demand of Respondent Nos. 1 and 2 through legal notice dated 21.06.1984 did not result in a reply from Respondent Nos. 3 and 4, or result in partition, the suit for partition of plaint schedule into three equal shares was filed and allot to Respondent Nos. 1 and 3, each one such share. The other share notionally allotted to Muthusamy Gounder, and since he died in 1982, is divided and allotted to Respondent Nos. 1 to 4 in accordance with law.

6. We have specifically referred to the share demanded by Respondent Nos. 1 and 2 in O.S. No. 357 of 1985 because the shares of the parties resulted in change with the impleadment of Appellants. Respondent Nos. 3 and 4 filed written statements denying the factum of marriage between Respondent No. 2 and Muthusamy Gounder, stating that Respondent No. 1 alone is a member of the Hindu Undivided Family (HUF) of Muthusamy Gounder.

6.1 As a natural result of the denial of marriage and relationship between Muthusamy Gounder and Respondent No. 2, the other averments in the plaint, namely, the existence of coparcenary and ancestral properties; the rights of Respondent Nos. 1 and 2 for partition, are specifically denied. The Appellants as Defendant Nos. 3 to 5 claimed that Appellant Nos. 1 and 3 are the son and daughter, respectively, of Muthusamy Gounder through Appellant No. 2/Chinnammal. The Appellants further averred that upon the demise of the propositus, the parties to the suit have inherited the plaint schedule properties as the legal heirs of the late Muthusamy Gounder. The Appellants and other legal heirs of Muthusamy Gounder were in joint possession and enjoyment of the plaint schedule properties. Therefore, the Appellants, along with other legal heirs/successors of Muthusamy Gounder, pray for partition of the coparcenary headed by Muthusamy Gounder. The Trial Court considered the following issues: -

1. Whether the Plaintiffs are entitled to the reliefs claimed in the suit?
2. Whether Defendant Nos. 1 to 5 are also entitled to shares as legal heirs of the deceased Muthusamy Gounder in his estate?
3. To what relief?

7. The oral evidence of PW1 to 3 and DW1 to 5 was adduced. Ex. A-1 to A-10 and Ex. B-1 to B-10 were marked by the parties.

8. The Trial Court examined the claim for partition from the perspective of the existence of a coparcenary/joint Hindu family and that the extended family of Muthusamy Gounder through Respondent No. 2 and Appellant No. 2 as wives of Muthusamy Gounder. In fine, the Trial Court examined the existence of coparcenary with Respondent Nos. 1 and 2 and Appellant No. 1, and the status of marriage of Respondent No. 2 and Appellant No. 2 with Muthusamy Gounder, and a coparcenary existed with the extended family members. The Trial Court held that Respondent No. 4 herein admittedly is the first and legally wedded wife of Muthusamy Gounder. Appellant No. 2 and Respondent No. 2 did not produce evidence to prove the factum of the marriage with Muthusamy Gounder. The evidence adduced by the Appellants or Respondent Nos. 1 and 2, does not inspire the confidence of the Court to accord to them the status as wives of Muthusamy Gounder. The Trial Court records a categorical finding that Appellant No. 2 and Respondent No. 2 are not the wives of Muthusamy Gounder, and consequently, the status of the children through the extended family as coparceners was rejected.

9. Appeal Nos. 394 and 929 of 1991 were filed before the High Court of Judicature at Madras by Respondent Nos. 1 and 2 and the Appellants herein. Through the impugned judgment, the appeals filed at the instance of extended family members of Muthusamy Gounder, stood dismissed. The High Court, in all particulars, accepted the view of the Trial Court on the status of marriage claimed by Appellant No. 2 and Respondent No. 2 as not established by the parties and the claim for partition on the footing of the existence of the coparcenary with the parties of the suit would not arise. The appeals stood dismissed by the common impugned judgment dated 26.09.2006.

9.1 Hence, the Civil Appeal at the instance of the Appellants in Appeal No. 929 of 1991.

II. SUBMISSIONS

We have heard the Counsel appearing for the parties.

10. Advocate N.S. Nappinai, appearing for the Appellants, accepting the findings of fact recorded by the Courts below on the status of Respondent No. 2 and Appellant No. 2 as part of the extended

family of Muthusamy Gounder, argues a substantive point *viz.,* both the Courts below fell in a serious flaw in not moulding the relief from admitted circumstances/evidence particularly when the suit filed is for partition and separate possession of the plaint schedule properties. It is argued that the Appellants and Respondent Nos. 1 and 2, assuming failed in establishing the status of a valid marriage of Appellant No. 2 and Respondent No. 2 with Muthusamy Gounder, still the entitlement of a share as sons/children of Muthusamy Gounder through the extended family of Muthusamy Gounder should have been considered. The documentary evidence shows that Muthusamy Gounder treated Appellant No. 1, Respondent No. 1 and Respondent No. 3 as his sons. Therefore, Appellant No. 1 and likewise Respondent No. 1 even are children of Muthusamy Gounder through a void or voidable marriage, still the children of Muthusamy Gounder through extended family are entitled to a share in the half share of Muthusamy Gounder in the schedule properties. The Counsel places reliance on ***Revanasiddappa and another v. Mallikarjun and others***[1], for the proposition that the children of Appellant No. 2 and Respondent No. 2 will be entitled to a share in the property, which would have been allotted to Muthusamy Gounder in the notional partition of plaint schedule properties. The Counsel places reliance on Ex. B-6, a registered mortgage deed dated 01.11.1976, executed by Muthusamy Gounder in favour of Karuppana Gounder and on Ex. B-3 dated 27.04.1984, a joint *patta* in favour of Muthusamy Gounder and all his three sons. The unrebutted documentary evidence in Exs. B-3 and B-6 constitute, *firstly*, an admission in the form of a substantive piece of evidence by Muthusamy Gounder on the status of Appellant No. 1 and Respondent No. 1 as his sons, coupled with corroborative documentary evidence in Ex. B-4 and B-5, electoral rolls. Respondent No. 3 claims through the common propositus, i.e., Muthusamy Gounder, and these admissions are valid in law on Respondent No. 3. This is the best evidence from none other than the common propositus. The Appellants and Respondent No. 1 are entitled to a share in the share allotted to Muthusamy Gounder. Therefore, the Counsel argues that given the settled legal position on the status of sons of Muthusamy Gounder through Appellant No. 2 and Respondent No. 2, a decree for partition though not as prayed for, is passed, but a preliminary decree of partition firstly on plaint schedule properties

1 (2023) 10 SCC 1

between Muthusamy Gounder and Respondent No. 3 is made, and a further decree, distributing the share of Muthusamy Gounder to Appellant Nos. 1 and 3 and Respondent Nos. 1 and 3 is rendered.

11. Advocate Vinodh Kanna B., appearing for Respondent Nos. 3 and 4, contends that the findings of fact recorded by the Courts below do not warrant reconsideration of evidence by this Court under Article 136 of the Constitution of India, and alternatively, the evidence is wanting on the status of Appellant Nos. 1 and 3 and Respondent No. 1 as the children of Muthusamy Gounder. The alternative argument now canvassed before the Supreme Court is not available in the circumstances of the case or from the material on record. The proof of status as children of Muthusamy Gounder is a condition precedent for applying the ratio of ***Revanasiddappa (supra),*** and there is no evidence on this crucial aspect to mould the relief. Therefore, the judgements impugned are sustainable in law and fact. He prays for the dismissal of the Civil Appeal.

III. ANALYSIS

12. We have perused the record and noted the rival contentions canvassed by the Counsel, briefly reiterated in this Civil Appeal, the claim for partition in the share notionally allotted to late Muthusamy Gounder is pressed for. Thus, it presupposes the Appellants do not press the claim as coparceners of the family of Muthusamy Gounder; however, from the material on record, they claim a share from the share as the children of Muthusamy Gounder. The claim for a share depends on the application and appreciation of Exs. B-3 to B-6.

13. Sections 17 and 18 of the Indian Evidence Act, 1872 ("the Act") defines "admission" and "admission by party to proceeding or his agent". Section 17 of the Act reads thus: -

> *"**17. Admission defined** admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."*

13.1 Admission is a conscious and deliberate act and not something that could be inferred. An admission could be a positive act of acknowledgement or confession. To constitute an admission, one of the requirements is a voluntary acknowledgement through

a statement of the existence of certain facts during the judicial or quasi-judicial proceedings, which conclude as true or valid the allegations made in the proceedings or in the notice. The formal act of acknowledgement during the proceedings waives or dispenses with the production of evidence by the contesting party. The admission concedes, for the purpose of litigation, the proposition of fact claimed by the opponents as true. An admission is also the best evidence the opposite party can rely upon, and though inconclusive, is decisive of the matter unless successfully withdrawn or proved erroneous by the other side.

13.2 The above being the position, pithily stated on what constitutes an admission, Section 17 of the Act does not come in aid to answer or appreciate the documentary evidence marked in the suit. Therefore, Section 17 has to be read along with Section 18 of the Act, which reads thus:-

> *"**18. Admission by party to proceeding or his agent.—**Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.*
>
> ***by suitor in representative character.—**Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.*
>
> *Statements made by —*
>
> ***(1) by party interested in subject-matter.—**persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or*
>
> ***(2) by person from whom interest derived.—**persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.."*

13.3 Section 18 of the Act deals with:

(i) admission by a party to a proceeding,

(ii) his agent,

(iii) by a suitor in a representative character,

(iv) statements made by a party in trusted subject matter,

(v) statements made by a person from whom interest is derived.

The qualifying circumstances to merit as admission are subject to satisfying the requirements.

14. The Privy Council in ***Gopal Das and another v. Sri Thakurji and others***[2]***,*** held that a statement made by a person is not only evidence against the person but is also evidence against those who claim through him. Section 18 of the Act lays down the conditions and the requirements satisfied for applying to a statement as an admission. We keep in our perspective Sections 17 and 18 of the Act while appreciating Exs. B-3 and B-6.

15. The Appellants rely on Exs. B-3 to B-6 to evidence that Muthusamy Gounder treated Appellant No. 1, Respondent No. 1 and Respondent No. 3 as his sons. Now let us examine whether these exhibits, *firstly*, contain an admission on the relevant fact in issue and *secondly*, whether they satisfy the requirements under Section 18 of the Act. Ex. B-6 is the registered mortgage deed dated 01.11.1976 executed by Muthusamy Gounder/propositus in favour of one Karuppana Gounder. Sy. No. 66 of Pallipayam, Agraharam Village was the mortgage deed executed by Muthusamy Gounder in favour of Karuppana Gounder. The mortgaged property is one of the items in the schedule in O.S. No. 357 of 1985. Muthusamy Gounder in Ex. B-6 stated as follows: -

> "Mortgage deed executed in favour of Karuppannna Gounder, son of…Vellaya Gounder, residing at Vaagaikkadu, Cusba Elandaikkuttai Village, Thiruchengodu Taluk, Salem District.

2 AIR 1943 PC 83

By Muthusamy Gounder (1) son of Sengoda Gounder, residing at Malagoundenpalayam, Kaliyanoor Ayan Village, - Do - Taluk, - Do - District, Guardian and father of the minors Subramani (2) Raja Gounder (3) and Sengodam (4), for himself and on behalf of the minors Nos. 2 ,3 and 4."

15.1 A mere perusal of the preface to Ex. B-6, mortgage deed, would show that Muthusamy Gounder treated Appellant No. 1, Respondent No. 1 and Respondent No. 3 as his sons. The document was executed for himself and on behalf of his minor sons. The statement is made by Muthusamy Gounder during the subsistence of his interest in the property mortgaged. Respondent No. 3 definitely claims through Muthusamy Gounder for the half share notionally partitioned in favour of Muthusamy Gounder. The Appellants also rely on the *patta* dated 27.04.1984 (Ex. B-3) standing in the name of Muthusamy Gounder and his sons; the voters lists, *viz.,* Exs. B-4 and B-5, to show that Muthusamy Gounder and his sons lived as a family. By applying Sections 17 and 18 of the Act, we are convinced that Muthusamy Gounder made a statement describing Appellant No. 1 and Respondent No. 1 as his sons and treated as an admission by record. This statement satisfies the ingredients of Section 18 of the Act. Further, in the absence of contrary evidence and withdrawal of admission or explained through admissible evidence, the admission in the mortgage deed, *viz.,* Ex. B-6, coupled with the joint *patta* and voters lists, declares the status of Appellant No. 1, Respondent No. 1, along with Respondent No. 3 as the sons of Muthusamy Gounder. At this juncture, we notice that the status derived through an admission in Ex. B-3 *vis-à-vis* Appellant No.1 as a natural corollary could be extended to Appellant No. 3 as a child/daughter of Muthusamy Gounder. This is an inescapable consequential conclusion which the Court has to record.

15.2 We make a useful reference to the judgement reported in ***Nirmala v. Rukminibai***[3]***.*** The Division Bench of the High Court of Karnataka considered a dispute nearer to the circumstances with the case on hand. The decision made in this case decided

3 AIR 1994 Kar 247

the status of inheritance of one Narayanarao among the children born out of his second marriage. The Plaintiffs were the first wife and daughter of Narayanarao, who filed a suit for possession of the suit properties in the estate of Narayanarao, which devolved on the Defendants, i.e., Narayanarao's second wife and children. The Trial Court decreed the suit in the Plaintiffs' favour, against which the Defendants filed an appeal before the High Court of Karnataka. The Defendants relied on Section 18 of the Act to point out Narayanarao's admission that he indeed treated the Defendants as his legally wedded wife and legitimate children. Accepting this argument, the High Court allowed the appeal holding that where the children from the first wife brought a suit for possession of their father's property disputing the second marriage of their father, the admission of their deceased father that the defendant, as his legally wedded wife, was binding on the Plaintiffs. We are in agreement with the High Court of Karnataka's consideration of the scope of the binding nature of admission by a common ancestor in a matter of inheritance under Section 18 of the Act.

16. We are of the view that the statement in Ex. B-6 is a clear admission of Muthusamy Gounder as to how he treated Appellant No. 1, Respondent No. 1 and Respondent No. 3 as his sons. Respondent No. 3 is claiming through Muthusamy Gounder, the common predecessor in interest; therefore, the admission is binding on Respondent No. 3 as well. Hence, by treating Appellant Nos. 1 and 3 and Respondent Nos. 1 and 3 as successors in the interest of Muthusamy Gounder, the shares are worked out. Once the status of the parties, other than Respondent No. 3, is established as the extended family of the propositus, irrespective of whether the marriages of Appellant No. 2 and Respondent No. 2 with Muthusamy Gounder are void or voidable, denying the children of Muthusamy Gounder a share in the property of notional partitioned in favour of Muthusamy Gounder, is unsustainable in law and fact. Appellant No. 3 claims to be the daughter of Muthusamy Gounder, and the law, as applicable to the separate share of Muthusamy Gounder, grants an equal share to the daughter along with the sons of Muthusamy Gounder.

17. The above discussion takes us to point out a common infirmity in the examination of issues by the Trial and the Appellate Courts. The suit is one for partition, and the shares are dependent upon the

nature of status and the time at which the partition is decreed. It is axiomatic that the shares fluctuate not only with the happening of events in the family but also with the circumstances established by the parties to the *lis.* In the present case, the claim as a coparcenary is unacceptable for want of evidence on the factum of the marriage of Muthusamy Gounder with Appellant No. 2 and Respondent No. 2; the courts below ought to have considered the relief from admitted circumstances on record. Hence, the argument of Respondent No. 3 that the status of Appellant Nos. 1 and 3; and Respondent No. 1 as the children of Muthusamy Gounder is without evidence is untenable and rejected accordingly. At this stage, it is apposite to refer to the conclusions laid down in ***Revanasiddappa (supra)***:-

> *"**81.** We now formulate our conclusions in the following terms:*
>
> ***81.1.** In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether: (i) such a child is born before or after the commencement of the amending Act, 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;*
>
> ***81.2.** In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child "begotten or conceived" before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;*
>
> ***81.3.** While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in sub-section (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;*

81.4. *While construing the provisions of Section 3(j) of the HSA, 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA, 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA, 1956. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 of the HMA would, for the purposes of Section 3(j) of the HSA, 1956, fall within the ambit of the explanation "related by legitimate kinship" and cannot be regarded as an "illegitimate child" for the purposes of the proviso;*

81.5. *Section 6 of the HSA, 1956 continues to recognise the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;*

81.6. *Section 6 of the HSA, 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9-9-2005 by the amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of sub-section (3) of Section 6 as amended, on a Hindu dying after the commencement of the amending Act of 2005 his interest in the property of a joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the*

rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a joint Hindu family governed by Mitakshara law has been made the norm;

81.7. *Section 8 of the HSA, 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;*

81.8. *While providing for the devolution of the interest of a Hindu in the property of a joint Hindu family governed by Mitakshara law, dying after the commencement of the amending Act of 2005 by testamentary or intestate succession, Section 6(3) lays down a legal fiction, namely, that "the coparcenary property shall be deemed to have been divided as if a partition had taken place". According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;*

81.9. *For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener, namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA, 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and*

> ***81.10.*** *The provisions of the HSA, 1956 have to be harmonised with the mandate in Section 16(3) of the HMA, 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above."*

18. By applying the above principle on the entitlement of share to the children of void or voidable marriages, the judgements under appeal are liable to be set aside and are accordingly set aside. We allow the appeal by passing a preliminary decree of partition for the plaint schedule properties, *firstly* between Respondent No. 3 and Muthusamy Gounder. *Secondly*, in the notionally partitioned share of Muthusamy Gounder, his children, i.e., Appellant Nos. 1 and 3, Respondent No. 1 and Respondent No. 3 are allotted equal shares.

19. Hence, a preliminary decree of partition, as indicated above, is passed. The appeal is allowed accordingly. No costs.

Headnotes prepared by: Ankit Gyan *Result of the case:* Appeal allowed.