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ensuring that where



This section has been recasted by the Marriage Laws (Amendment) Act, 1976 with intent to remove difficulties in its interpretation. Prior to the above amendment, the language of the section showed that a decree of nullity of marriage was necessary under Sections 11 and 12, before a child begotten or conceived before that decree could be given the status of legitimate child. Where a decree was not granted under Section 11 of the Act, the provisions of Section 16 of the Act did not confer legitimacy on the child and if a third party successfully challenged the validity of the marriage in other proceedings on the ground that it was void, the children of such marriage would still be illegitimate.

In *Thrumurthi Ranayammal v. Thrumurthi Muthamal*, the Madras High Court observed, “ the wordings of Section 16 of the Hindu Marriage Act, in so far as it is relevant to a marriage void under Section 11, leads to an anomalous and startling position which could not have been contemplated by the legislature. The position and status of a child of void marriage should obviously be the same whether the marriage is declared a nullity under Section 11 or otherwise. Though the language of the section is more appropriate to voidable marriage, it has been applied to void marriages as well, presumably with the object of ensuring that where a marriage is in fact solemnised but was void for any of the reasons mentioned, in Section 11, the children of such marriages should not be bastardised whether a decree of nullity is passed or not. But this obvious intention of the legislature has not been carried out.

The section is so plain and unambiguous and it would be stretching the language beyond permissible limits to say that children born of void

marriages are legitimate even in cases where a decree of nullity had not been granted. It is not possible for the court to construe the same in a different manner having in mind the presumed intention of the legislature even if it appears to be obvious. This casualness which the court cannot reach for no canon of construction would permit court to supply what is clearly a lacuna in the statute and it is for the legislature to set right the matter by suitable amendment of the section.

The lacuna has now been removed by the Marriage laws (Amendment) Act, 1976. The section now provides: (1) Notwithstanding that a marriage is null and void under Section 11, and 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 the marriage under this Act and whether or not the marriage is held to be void otherwise than on petition under this Act. (2) Where a decree 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 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 barring other Act, such child would have been incapable of passing or acquiring any such rights by

reason of his not being the legitimate child of his parents. Now, under the section any child of a void marriage, who had been legitimate if the marriage had been valid, shall be legitimate, whether or not a decree of nullity of marriage is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on petition under this Act. As regards the legitimacy of the children of voidable marriages, the position is the same as it was prior to the Marriage Laws (Amendment) Act, 1976. Where a decree of nullity is granted with respect to a voidable marriage under Section 12, the position is clear. Such a child be deemed to be a legitimate child.

But where the validity of marriage is challenged by either party and decree of nullity is not granted, it would be a valid marriage and the children of the parties to such marriages would undoubtedly be legitimate. There is a distinction between the above two positions. Where the marriage is annulled at the instance of either party, the children born of such marriage are by the operation of this section to be deemed to be the legitimate children for all intents and purposes except that by virtue of this proviso to the section they cannot claim any right in or over property of any person other than the parents. But if the decree of nullity is refused or it is not opted by either party, the children of the parties to marriage would be still legitimate and they would not be subjected to the limitations of clause (3) of the Act, i.

e., they would be entitled to inherit the property of their parents as well as of any collaterals of the parents or descendants of the parents either: " A voidable marriage can only be challenged at the instance of either party to the marriage and cannot be challenged after the death of one of the parties

to the same. So if the marriage though voidable was not challenged during the life time of the spouse, it could not be challenged thereafter and the issue of such marriage would be legitimate and no question would arise of the applicability of the rule laid down in the section.

” Children of void marriage shall be regarded as legitimate whether such children had been born before or after the amendment of Section 16 under the Marriage Laws (Amendment) Act, 1976. Sub-section 3 of Section 16 of the Act lays down that the children born of void and voidable marriage, who have acquired the status of legitimate children by virtue of the provisions of sub-sections (1) and (2) of this section, cannot claim to succeed to persons other than the parents. They have no right to succeed to the collaterals of the parents or ascendants of the parents either.

In *Shanta Ram v. Smt. Dargubai*, the Bombay High Court observed that the children of void marriages would be deemed legitimate, irrespective of the decree of nullity although they would not acquire the right to succession to the same extent as is available to the children of valid marriage. But the legitimacy conferred upon such children under Section 16(3) entitles them to claim right only in the property of their parents which must be separate property of the parents not the coparcenary property in which father is allotted only one share.

Such children would not be treated as coparceners and they would not acquire the right of partition. In *Bhogadi Kannababu & others v. Vaggina Pydamma & others*, the Supreme Court held that the children of void marriage would be deemed legitimate because Section 16 of the Act deals

with legitimacy of children of void and voidable marriage, and sub-section (1) of Section 16 of the Act clearly says that under these circumstances the illegitimate children are entitled to inherit the property with first wife.

Where a child was found to be at the time of marriage with the contact of a person other than the husband and the husband later on obtains a decree of nullity on this account under Section 12 of the Act, such child cannot be given the benefit of Section 16 of the Act. Only the child concerned and born of void and voidable marriages with the contact of the husband could be deemed to be legitimate child of such parents. The constitutionality of Section 16 of the Act which confers status of legitimacy to the illegitimate children has been upheld by the Supreme Court in P. E.

K. Kalliani Amma v. K. Devi. The Court observed that the words “ notwithstanding that a marriage is null and void under Section 11 employed in Section 16(1) indicate undoubtedly the following:— (a) Section 16(1) stands delinked from Section 11.

(b) Mischief of the vice which was the basis of unconstitutionality of unamended Section 16 has been effectively removed by the amendment. (c) Section 16(1) now stands on its own strength and operates independently of other sections with the result that is constitutionally valid as it does not discriminate between illegitimate children in similar circumstance and classifies them as one group for conferment of legitimacy. Section 16 in its present form, is, therefore not ultra vires of the Constitution.