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SUPREME COURT ON INHERITANCE RIGHTS OF ILLEGITIMATE CHILDREN

A. Introduction

The Supreme Court (“**SC**”) on a reference made by a two-judge bench of the SC¹ in *Revanasiddappa* case,² on September 1, 2023, has conclusively settled the debate regarding the inheritance rights of illegitimate children in cases where the parents’ marriage is void and voidable (“**Invalid Marriage**”) as per the Hindu Marriage Act, 1955 (“**HMA**”).

The SC affirmed that children from an Invalid Marriage are entitled to a share each in their parents’ property, both self-acquired and ancestral, under the mandates specified in the Hindu Succession Act, 1956 (“**HSA**”).

B. Brief Facts

1. This reference was made to the larger bench of the SC (“**LB**”) to reconsider the correctness of the earlier decision rendered by the SC in the *Jinia Keotin* case,³ (“**Jinia**”). Here, a two-judge bench of the SC held that children born out of an Invalid Marriage ought not to be treated on par with children born from a lawful marriage for the purpose of inheritance of the ancestral property of the parents.
2. As per the provisions of the HMA, a marriage is void⁴ for reasons such as a party to such marriage has a living spouse; such marriage is within the degrees of prohibited relationship and a *voidable*⁵, marriage is any marriage that has been annulled by a decree of a court on grounds such as lack of valid consent.
3. Section 16 of the HMA, by legal fiction, legitimises a child of an Invalid Marriage, however, Section 16(3)⁶ declares that a child of such marriage shall not have “*any rights in or to the property of any person, other than the parents,*” where but for the enactment of HMA, such a child would be

¹ Three-Judge Bench comprising of Dr. D.Y. Chandrachud, C.J., J.B. Pardiwala and Manoj Misra, JJ.

² *Revanasiddappa & Anr. v. Mallikarjun & Ors.* 2023 SCC OnLine SC 1087.

³ *Jinia Keotin v. Kumar Sitaram Manjhi*, (2003) 1 SCC 730.

⁴ Sec. 11 of the HMA.

⁵ Section 12 of the HMA.

⁶(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.*

incapable of possessing or acquiring any such rights “by reason of his not being the legitimate child of his parents”.

4. The questions that arose before the LB were:
 - a. Whether the legislative intent is to confer legitimacy on a child covered by Section 16 of the HMA in a manner that makes them coparceners, and thus entitled to initiate or get a share each in the partition – actual or notional?
 - b. At what point does a specific property transition into becoming the property of the parent?

C. LB’s Judgement and Reasoning

1. It harmonised the provisions of HSA with that of Section 16(3) of the HMA and held that⁷ a child of an Invalid Marriage is deemed to be a legitimate child and thus such children come within “*related by legitimate kinship*” as appearing in the HSA.⁸
2. By virtue of the legal fiction set out in Section 6(3)⁹ of the HSA, the coparcenary property is deemed to have been divided as if a partition had taken place before the death of such a Hindu and clarified that: “*[f]or 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...*”¹⁰
3. Since, the law assumes a state of affairs immediately prior to the death of such coparcener, the shares of the deceased in the coparcenary property is ascertained and consequently his legal heirs (including his children who have been conferred legitimacy under the HMA) are entitled to a share each in such property.
4. While an illegitimate child has been conferred with legitimacy and a right in the parents’ property, both ancestral and self-acquired, such a child does not become a coparcener in the Hindu Mitakshara Joint Family and does not acquire any right by birth, as enjoyed by a coparcener.

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⁷ See paragraph K(74) of the Judgement.

⁸ As appearing in Section 3(1)(j) defining the expression “*related*” to mean *related by legitimate kinship*.

⁹ Provides that on the death of a Hindu governed by the Mitakshara law his share in the coparcenary property shall devolve upon his heirs as if a partition had taken place.

¹⁰ See paragraph K(74)(ix) of the Judgement