(2024:HHC:10259)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 2840 of 2023
Date of Decision : 17.10.2024

....Petitioners

Versus

State of H.P. & others

....Respondents

Coram

Justice Jyotsna Rewal Dua, Judge

Whether approved for reporting? Yes

For the petitioners	**:**	**Mr. Divya Raj Singh Advocate.**
For the respondents	**:**	**Mr. Dalip K. Sharma & Mr.Amandeep Sharma, Additional Advocates General.**

Jyotsna Rewal Dua, Judge

Three minor children aged 12, 9 and 5 years, respectively, have preferred this petition through their mother-natural guardian seeking direction to the respondents to enter their names in the Panchayat record i.e Birth Register and Pariwar Register. The prayer clause of the petition reads as follows:-

> " It is therefore, respectfully prayed that this writ petition may very kindly be allowed, and an appropriate writ, order or direction, in the nature of mandamus directing the respondents to enter the name of the petitioners in the Panchayat record i.e birth register and Pariwar Register and all other documents which are maintained by

> the Panchayat, as far as the registration in the marriages register. Birth and Pariwar register etc, are maintained by the Gram Panchayat or any such or further order which this Hon'ble Court may deem fit may kindly be passed in the interest of justice."

During hearing of the case, learned counsel for the petitioners submitted that he would confine his prayers only for seeking direction to the respondents to enter the names of the petitioners in the Birth Register and Pariwar Register of the concerned Panchayat. The matter has been heard accordingly.

2. The **case set-up** by the petitioners as urged by their learned counsel is that :-

2(i) Petitioners are offsprings of Marriage between the two was solemnized on 12.10.2011. Smt. have been living as husband and wife in the house owned by . Petitioners' father-Sh. was earlier married to , who was not keeping good health and suffered from several ailments. With consent of Smt. solemnized second marriage with Smt.

2(ii) In support of above factual assertions, petitioners have placed on record affidavits of Sh. and Smt. attested on 23.01.2023, by the Executive Magistrate Fatehpur, District Kangra, H.P.

2(iii) The grievance of the petitioners is that their repeated endeavors for incorporating their names in the Panchayat record i.e Birth Register and

Pariwar Register have not proved fruitful. This has led them to institute this writ petition.

3. **On 26.6.2023**, while issuing notice to the respondents a Division Bench of this Court *inter-alia* directed as under:-

> "The petitioner shall submit representation to 3rd respondent by Registered Post with Acknowledgment Due, which shall be received by the 3rd respondent and within a period of three weeks of its receipt, appropriate decision shall be taken by the 3rd respondent in that regard and communicated to the petitioner. List on 29.08.2023."

Respondents No. 1 to 3 alongwith their reply have placed on record an order, passed by them on 22.08.2023 pursuant to the above direction. According to the respondents, the petitioners' names cannot be entered in the Birth as well as Pariwar Registers as marriage of -petitioners' father with his second wife Smt. (petitioners' mother) can not be registered in view of Section 4(a) of the Special Marriage Act 1954 read with Rule 21 of the H.P. Panchayati Raj General Rules 1997. For this reason, the names of petitioners-children of Sh. and Smt cannot be recorded in the Panchayat record.

The above ground has been pressed into service by the learned Additional Advocate General for opposing the prayer of the petitioners for incorporating their names in the Panchayat record.

4. **Consideration**

4(i) Applicable **Legal Provisions** may be noticed first:-

4(i)(a) Respondents have declined to enter the names of the petitioners in the concerned Panchayat's record i.e Birth & Pariwar Registers on the

ground that marriage of their parents cannot be registered in view of Section 4(a) **of the Special Marriage Act 1954**. This Section reads as under:-

> "4. Conditions relating to solemnization of special marriages.—Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—
>
> (a) neither party has a spouse living"…….

As per Section 4(a) of the Special Marriage Act 1954, marriage between any two persons can be solemnized under the Act if at the time of marriage inter-alia neither party had a living spouse. In the instant case, though petitioners' mother Smt. is the second wife of their father Sh. , however petitioners' prayers are not in respect of registration of second marriage solemnized between Sh. and Smt. . The prayer is only for entering the names of the petitioners, i.e children from the second marriage solemnized between Sh. , in the Birth Register & Pariwar Register of the concerned Panchayat. Section 4(a) of the Special Marriage Act therefore does not per-se bar registration of names of the children in the Birth & Pariwar Register of the concerned Panchayat.

4(i)(b) Respondents have next pressed into service **Rule 21 (2) of the H.P. Panchayati Raj General Rules 1997** for not incorporating the names of the petitioners in the Panchayat Record. The said rule reads as under:

> "21. Pariwar Register and registration of births, deaths and marriages-
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> (1) After the Government has established a Sabha by a notification under subsection (1) of section 3, a Pariwar

> Register shall be prepared for every Gram Sabha in Form-19 appended to these rules. It shall contain the names and particulars of all persons, family-wise, who are the bonafide residents of the village which forms part of the Sabha area. The register shall be prepared by the Panchayat Secretary and shall be verified by the Panchayat Inspector of the concerned Block.
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> (2) At the close of each calendar year, the entries in the Pariwar Register, required to be prepared under sub-rule (1) shall be revised and all entries pertaining to births, deaths and marriages shall be made in the register which has taken place during the preceding year i.e. up to the 31st day of December. No other addition or alteration may be made without any authenticated evidence or certificate of the member of the member of concerned constituency of the Gram Panchayat. In the event of division of the family, separation of family shall only be entered in the Pariwar Register on the decision of the Gram Sabha by passing a resolution by majority in its general or special meeting on a application made by the head of family concerned. However, the Gram Sabha shall take into consideration the definition of the family as defined under clause (13-A) of section 2 of the Act while deciding the matter regarding division of family. It shall be the duty of the Panchayat Inspector to verify these entries after satisfying himself about the reasons recorded by the Panchayat Secretary. He shall also put his initials on the goshwara prepared by Panchayat Secretary on Form 19-A"
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> … ….
>
> (5) The Secretary of the Gram Panchayat shall undertake registration of births and deaths in accordance with the provisions of the Registration of Births and Deaths Act, 1969 and rules made thereunder."

Rule 21 of the H.P. Panchayati Raj General Rules 1997 deals with maintaining Pariwar Register and registration of births, deaths and

marriages. There is nothing in this Rule debarring entering the name of the children from the second marriage. Rather in terms of Rule 21 (5), the Secretary of Gram Panchayat is bound to undertake registration of births and deaths in accordance with provisions of the Registration of Births and Deaths Act 1969 and the Rules made thereunder.

4 (i)(c) In terms of Section 8 of the **Registration of Births and Deaths** Act 1969, it is the duty of the person specified therein to give information in respect of Births and Deaths to the Competent Authority. Section 7 of the Act mandates the Registrar to enter in the register all information given to him under sections 8 or 9 in respect of births and deaths that take place in his jurisdiction. The provisions read as under:

> "7 **Registrars**.—(1) The State Government may appoint a Registrar for each local area comprising the area within the jurisdiction of a municipality, panchayat or other local authority or any other area or a combination of any two or more of them:
>
> Provided that the State Government may appoint in the case of a municipality, panchayat, or other local authority, any officer or other employee thereof as a Registrar.
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> (2) Every Registrar shall, without fee or reward, enter in the register maintained for the purpose all information given to him under section 8 or section 9 and shall also take steps to inform himself carefully of every birth and of every death which takes place in his jurisdiction and to ascertain and register the particulars required to be registered.
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> (3) Every Registrar shall have an office in the local area for which he is appointed.
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> (4) Every Registrar shall attend his office for the purpose of registering births and deaths on such days and at such hours as the Chief Registrar may direct and shall cause to be placed in some conspicuous place on or near the outer door of the office of the Registrar a board bearing, in the local language, his name with the

addition of Registrar of Births and Deaths for the local area for which he is appointed, and the days and hours of his attendance.

(5) The Registrar may with the prior approval of the Chief Registrar, appoint Sub-Registrars and assign to them any or all of his powers and duties in relation to specified areas within his jurisdiction.

{Explanation- For the purpose of this sub-section , the expressions,-

(i) “disaster” shall have the same meaning as assigned to it in clause (d) of section 2 of the Disaster Management act, 2005 (53 of 2005);

(ii) ‘epidemic” means the epidemic referred to in the Epidemic Diseases act, 1897 (3 of 1897)}

“8. **Persons required to register births and deaths.**—

(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing with signature, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars including the Aadhaar number of parents and the informant, if available, in case of birth, required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16,—

(a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses (b) to (e), the head of the house or, in case more than one household live in the house, the head of the household, the person, who is so recognised by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult person present therein during the said period;

(aa) in respect of non-institutional adoption, the adoptive parents;

(ab) in respect of birth of a child to a single parent or unwed mother from her womb, the parent;

(ac) in respect of birth of a child through surrogacy , the biological parent;

(b) in respect of births and deaths in a hospital, health centre, maternity or nursing home or other like institution, the medical officer incharge or any person authorized by him in this behalf;

(c) in respect of births and deaths in a jail, the jailor in charge;

(d) in respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;

(da) respect of a child who is taken on adoption from the Specialised Adoption Agency, the person in-charge of the Specialised Adoption Agency.

Explanation.—For the purposes of this clause, the expression "Specialised Adoption Agency" shall have the same meaning as assigned to it in clause (57) of section 2 of the Juvenile Justice (Care and Protection of Children)Act, 2015; (2 of 2016);

(db) in respect of an orphan or abandoned child or surrendered child in any child care institution, the person in-charge or caretaker of the child care institution.

Explanation.—For the purposes of this clause, the expressions"abandoned child" or "child care institution" or "orphan" or "surrendered child" shall have the same meanings as respectively assigned to them in clauses (1), (21), (42) and (60) of section 2 of the Juvenile Justice (Care and Protection of Children)Act, 2015; (2 of 2016);

(dc) in respect of birth of a child through surrogacy in a surrogacy clinic, the person in-charge of the surrogacy clinic.

Explanation.—For the purposes of this clause, the expressions"surrogacy" and "surrogacy clinic" shall have the same meanings as respectively assigned to them in clauses (zd) and (ze) of sub-section (1) of section 2 of the Surrogacy (Regulation)Act, 2021(47 of 2021);

(e) in respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere:

Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;

(f) in any other place, such person as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in clause (a) of sub-section (1) instead of the persons specified in that clause."

4(i)(d) At this stage, it would be appropriate to take note of Section 16 of **the Hindu Marriage Act** 1955 that goes as follows:

"16. Legitimacy of children of void and voidable marriages.—
(1) Notwithstanding that a marriage marriage is null and void under section 11, any 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 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.
(2) Where a decree of nullity 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 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."

In **Union of India vs. V.R. Tripathi** [1] while interpreting & elaborating upon interplay of Sections 16 (1) & 16(3)of the Hindu Marriage Act, it was held that child born from a marriage which is null and void under Section 11, is legitimate. The legitimacy of such a child, is matter of public policy so as to protect the child born from null and void marriage suffering the consequences of illegitimacy. Though a marriage may be null & void but a child born from such marriage is nonetheless treated as legitimate by sub-section (1) of Section 16. As per Section 16(3), a child who is born from the marriage which is null and void, will have right in the property though only of parents and none other than the parents. The High Court there had proceeded on the basis that the recognition of legitimacy in Section 16 was restricted only to the property of the deceased and for no other purpose. Hon'ble Supreme Court held that the High Court had missed the principle that Section 16(1) treats a child born from a null and void marriage as legitimate. Section 16(3) though restricts the right of such child in respect of property only to the property of his parents. Section 16(3) does not in any manner affect the principle of legitimacy of such child enshrined in Section 16(1) of the Act. Accordingly, the respondent therein born from a second marriage was held entitled to compassionate appointment after the death of his father. Relevant paras from the judgment read as under:

> "15. In sub-section (1) of Section 16, the legislature has stipulated that a child born from a marriage which is null and

[1] (2019) 14 SCC 646

void under Section 11 is legitimate, regardless of whether the birth has taken place before or after the commencement of Amending Act 68 of 1976. Legitimacy of a child born from a marriage which is null and void, is a matter of public policy so as to protect a child born from such a marriage from suffering the consequences of illegitimacy. Hence, though the marriage may be null and void, a child who is born from the marriage is nonetheless treated as legitimate by sub-section (1) of Section 16. One of the grounds on which a marriage is null and void under Section 11 read with clause (i) of Section 5 is that the marriage has been contracted when one of the parties had a spouse living at the time of marriage. A second marriage contracted by a Hindu during the subsistence of the first marriage is, therefore, null and void. However, the legislature has stepped in by enacting Section 16(1) to protect the legitimacy of a child born from such a marriage. Sub-section (3) of Section 16, however, stipulates that such a child who is born from a marriage which is null and void, will have a right in the property only of the parents and none other than the parents.

16. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage

entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

17. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination.

18. The learned Additional Solicitor General submitted that the decision of this Court in Rameshwari Devi (supra) arose in the context of the grant of family pension to the minor children born from the second marriage of a deceased employee. That is correct. This Court, in that context, observed that Section 16 of the Hindu Marriage Act, 1955 renders the children of a void marriage to be legitimate while upholding the entitlement to family pension. The learned Additional Solicitor General submitted that pension is a matter of right which accrues by virtue of the long years of service which is rendered by the employee, entitling the employee and after his death, their family to pension in accordance with the rules. Even if we do accept that submission, the principle which has been laid down by this Court on the basis of Section 16 of the Hindu Marriage Act, 1955 must find application in the present case as well. The exclusion of one class of legitimate children from seeking compassionate appointment merely on the ground that the mother of the applicant was a plural wife of the deceased employee would fail to meet the test of a reasonable nexus with the object sought to be achieved. It would be offensive to and defeat the whole object of ensuring the dignity of the family of a deceased employee who has died in harness. It brings about unconstitutional discrimination between one class of legitimate beneficiaries– legitimate children.

20. The High Court has proceeded on the basis that the recognition of legitimacy in Section 16 is restricted only to the property of the deceased and for no other purpose. The High Court has missed the principle that Section 16(1) treats a child born from a marriage which is null and void as legitimate. Section 16(3), however, restricts the right of the child in respect of property only to the property of the parents. Section 16(3), however, does not in any manner affect the principle declared in sub-section (1) of Section 16 in regard to the legitimacy of the child. Our attention has also been drawn to a judgment of a learned Single Judge of the Madras High

> Court in M Muthuraj v Deputy General of Police, Tamil Nadu7 adopting the same position. In the view which we have taken, we have arrived at the conclusion that the exclusion of a child born from a second marriage from seeking compassionate appointment under the terms of the circular of the Railway Board is ultra vires. A Division Bench of the Madras High Court followed the view of the Calcutta High Court in Namita Goldar in Union of India vs M Karumbayee. A Special leave petition filed against the judgment of the Division Bench was dismissed by this Court on 18 September 2017.

In Revanasiddappa and another versus Mallikarjun & others[2] reiterated that children born from void or voidable marriages are conferred legitimacy under Section 16 of the Hindu Marriage Act. It was further held that such children will have rights to or in absolute and in exclusive property of their parents but not in property of any other person. The property of the parents in which children would have rights would include share of parents in the coparcenary property even though such children are not coparcenary in their own right. It was further held that children who are legitimate under Section 16(1) or 16(2) of the Hindu Marriage Act for the purpose of Section 3(j) of the **Hindu Succession Act** would fall within the main definition of "related" therein i.e "related by legitimate kinship" and cannot not be recorded as "illegitimate child" for purposes of proviso to Section 3 (j) of the Hindu Succession Act. The conclusion drawn by the Hon'ble Apex Court in the judgment is as under:

> "81. We now formulate our conclusions in the following terms:
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> 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

[2](2023)10 SCC 1

born before or after the commencement of 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(1)(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 recognize 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 September 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 PART K 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 harmonized 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."

4(ii) Learned Additional Advocate General placed reliance upon *Jinia Keotin & ors vs. Kumar Sitaram Manjhi*[3], to contend that Section 16 of the Hindu Marriage Act was enacted only to legitimise children in respect of inheriting/succeeding to the property of their parents. No further rights can be accorded upon such children. Reference in this regard was made to following para from the judgment:-

> "5. So far as Section 16 of the Act is concerned, though it was enacted to legitimise children, who would otherwise suffer by becoming illegitimate, at the same time it expressly provide in sub-section (3) by engrafting a provision with a non obstante clause stipulating specifically that 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." In the light of such an express mandate of the legislature itself, there is no room for according upon such children who but for Section 16 would have been branded as illegitimate any further rights than envisaged therein by resorting to any presumptive or inferential process of reasoning, having recourse to the mere object or purpose of enacting Section 16 of the Act. Any attempt to do so would amount to doing not only violence to the provision specifically engrafted in sub-section (3) of Section

[3](2003)1 SCC 730

> 16 of the Act but also would attempt to court relegislating on the subject under the guise of interpretation, against even the will expressed in the enactment itself. Consequently, we are unable to countenance the submissions on behalf of the appellants. The view taken by the courts below cannot be considered to suffer from any serious infirmity to call for our interference, in this appeal."

The contention of learned Additional Advocate General is not well founded. The view taken in *Jinia Keotin's case*[3] was not accepted and considered a narrow view of Section 16(3) of the Hindu Marriage Act in ***Revanasiddappa & anr. vs. Mallikarjun & ors.***[4]. In *Revanasiddappa's case*[4] the Apex Court observed that 'with changed social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus in shaping of which various social groups play a vital role. Law takes its own time to articulate such social changes through process of amendment. Development of Hindu Law was never static and has changed from time to time to meet the challenges of the changing social pattern in different times. The Hindu Marriage Act, a beneficial legislation, has to be interpreted in a manner which advances object of the legislation and intends to bring about social reforms. The Preamble of our Constitution focuses on the concept of equality of status and opportunity and also on individual dignity. The relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid

[4] (2011) 11 SCC 1

marriage. This is the crux of the amendment in Section16(3) of the Hindu Marriage Act. However, some limitation on the property rights of such children have been put in place in the sense their right is confined to the property of their parents. Such rights cannot be further restricted in view of the pre-existing common law view'. Relevant paras of the judgment read as under:-

> "23. However, the issues relating to the extent of property rights conferred on such children under Section 16(3) of the amended Act were discussed in detail in the case of Jinia Keotin & Ors. vs. Kumar Sitaram Manjhi. It was contended that by virtue of Section 16(3) of the Act, which entitled such children's rights to the property of their parents, such property rights included right to both self-acquired as well as ancestral property of the parent.
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> 24. This Court, in Jinia Keotin,repelling such contentions held that :
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> > "5…..In the light of such an express mandate of the legislature itself, there is no room for according upon such children who but for Section 16 would have been branded as illegitimate any further rights than envisaged therein by resorting to any presumptive or inferential process of reasoning, having recourse to the mere object or purpose of enacting Section 16 of the Act. Any attempt to do so would amount to doing not only violence to the provision specifically engrafted in sub-section (3) of Section 16 of the Act but also would attempt to court relegislating on the subject under the guise of interpretation, against even the will expressed in the enactment itself."
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> Thus, the submissions of the appellants were rejected.
>
> 25. In our humble opinion this Court in Jinia Keotin (supra) took a narrow view of Section 16(3) of the Act. The same issue was again raised in Neelamma & Ors. v. Sarojamma wherein the court referred to the decision in Jinia Keotin and held that illegitimate children would only be entitled to a share of the self-acquired property of the parents and not to the joint Hindu family property.
>
> 26. Same position was again reiterated in a recent decision of this court in Bharatha Matha & Anr. V.R. Vijaya Renganathan & Ors. [AIR 2010 SC

2685], wherein this Court held that a child born in a void or voidable marriage was not entitled to claim inheritance in ancestral coparcenary property but was entitled to claim only share in self-acquired properties.

27. We cannot accept the aforesaid interpretation of Section 16(3) given in Jinia Keotin (supra), Neelamma (supra) and Bharatha Matha (supra) for the reasons discussed hereunder.

… …

30. With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus, in the shaping of which various social groups play a vital role. Very often a dominant group loses its primacy over other groups in view of ever changing socio-economic scenario and the consequential vicissitudes in human relationship. Law takes its own time to articulate such social changes through a process of amendment. That is why in a changing society law cannot afford to remain static. If one looks at the history of development of Hindu Law it will be clear that it was never static and has changed from time to time to meet the challenges of the changing social pattern in different times.

…….

36. With the amendment of Section 16(3), the common law view that the offsprings of marriage which is void and voidable are illegitimate `ipso-jure' has to change completely. We must recognize the status of such children which has been legislatively declared legitimate and simultaneously law recognises the rights of such children in the property of their parents. This is a law to advance the socially beneficial purpose of removing the stigma of illegitimacy on such children who are as innocent as any other children.

… …

39. We are constrained to differ from the interpretation of Section 16(3) rendered by this Court in Jinia Keotin (supra) and, thereafter, in Neelamma (supra) and Bharatha Matha (supra) in view of the constitutional values enshrined in the preamble of our Constitution

> which focuses on the concept of equality of status and opportunity and also on individual dignity. The Court has to remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid marriage. This is the crux of the amendment in Section 16(3). However, some limitation on the property rights of such children is still there in the sense their right is confined to the property of their parents. Such rights cannot be further restricted in view of the pre-existing common law view discussed above."

The views taken in Jinia Keotin [3] and Revanasiddapa[4] were though considered in Revanasiddapa[2] but primarily vis a vis rights of children to property, born from void & voidable marriages. The conclusion drawn by the larger Bench in Revanasiddapa[2] has been reproduced at para 4(i)(d) on page 17.

4(iii) In the order passed by the Sub Divisional Officer, Fatehpur, District Kangra on 22.8.2023, it has not been disputed that the petitioners are the children born to

had solemnized second marriage with Smt This marriage was solemnized during subsistence of his first marriage with Smt. who is alive. Sh. has acknowledged the petitioners as his children. This fact is apparent not only from his affidavit placed on record, duly attested by Executive Magistrate but also from his statement recorded by the Sub Divisional Magistrate Fatehpur. District Kangra on 28.07.2023. In fact Balwinder Singh and his first wife Smt. had recorded a joint statement praying before the Competent Authority to enter the names of

petitioners in the Panchayat Record. Smt

clearly stated that she had no objection for recording the names of the petitioners in the Panchayat Record.

4(iv) The petitioners are living beings. The fact that they are there, needs to be acknowledged in law. Hence their names are required to be entered in the record of concerned Panchayat. Entering the names of the petitioners in the Panchayat Record i.e. would be in consonance with the provisions of Section 16 of the Hindu Marriage Act keeping in view the law laid down by the Hon'ble Apex Court. The objection of the respondents that since the marriage between the parents of the petitioners cannot be registered in view of provisions of Section 4(a) of the Special Marriage Act and on that count names of the petitioners cannot be entered in the Panchayat Record is clearly misconceived and violates the import of Section 16(1) of the Hindu Marriage Act.

5. In view of above discussion, the writ petition is allowed. The respondents are directed to enter the names of the petitioners in the Panchayat record i.e Birth Register as well as Pariwar Register. This exercise be carried out within a period of five weeks from today.

Jyotsna Rewal Dua
Judge

October 17, 2024
(veena).