

SRI CHOWDEGOWDA @ DORJI (DEAD) BY LRS. AND ORS. A

v.

C. NEGARAJU AND ORS.

AUGUST 5, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.] B

Hindu Law :

Marriage—Presumption—‘A’ and ‘B’ lived together as husband and wife and the appellant was born from the wed-lock—Held, presumption of valid marriage and as to appellant having been born legitimately out of the said marriage could be drawn. C

Suit for partition—Appellant claiming his share in the property left by the deceased as his son from the first wife—Held, evidence indicates that deceased described the appellant to be the son born to his first wife—Though there is controversy as regards the factum of customary marriage stated to have taken place in 1920, but in view of the facts that mother of appellant and the deceased lived together as wife and husband and appellant came to be born from the wed-lock, presumption of valid marriage and appellant having been born legitimately out of that marriage could be drawn—Appellant is granted one acre of wet land and the rest of the land to be given to respondents according to their respective shares. D E

Badri Prasad v. Deputy Director of Consolidation, [1978] 3 SCC 527; Sumitra Devi v. Bhikan Choudhary, [1985] 1 SCC 637 and S.P.S. Balasubramanyan v. Suruttayan, [1994] 1 SCC 460, relied on. F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10696 of 1996.

From the Judgment and Order dated 17.3.95 of the Karnataka High Court in R.S.A. No. 204 of 1994. G

S.N. Bhat for the Appellants.

P. Mahale and Shante Kr. V. Mahale for the Respondents.

The following Order of the Court was delivered :

H

A Leave granted.

We have heard learned counsel on both sides.

B Since this is a long drawn litigation for over 37 years we think it appropriate to give quick end to the litigation instead of remanding the matter to the High Court for further remanding it to the appellate Court. It is not in dispute that Machine Chowdegowda, the father of the appellant had three brothers. The suit came to be filed for partition of 10 acres of wet land, 5.30 acres of dry land, 30 gunthas of house site into four equal parts and 1/8th share towards the appellant-plaintiff. At three stages, the
C suit came to be dismissed and ultimately in the second appeal No. 204/94, by judgment and decree dated March 17, 1995 the High Court of Karnataka confirmed the dismissal of the suit. Thus this appeal by special leave.

D There is evidence in this case Exs. P-1, P-4 and P-36 which would indicate that Machine Chowdegowda had described the appellant to be the son born to his first wife, Siddamma. It is seen that there is a controversy as regards the factum of the customary marriage by name Kuduvali marriage which seems to have taken place in early 1920. Under those circumstances, at the distance of 40 years it would be difficult to prove with
E certainly of evidence of the factum of the marriage etc. But the meat of the fact is that Siddamma and Machine Chowdegowda lived together as wife and husband and the appellant came to be born from the wed-lock. Under those circumstances, the presumption of valid marriage and as to appellant having been born legitimately out of the that marriage through Machine Chowdegowda could be drawn. This is the legal position settled
F by this Court in *Badri Prasad v. Deputy Director of Consolidation*, [1978] 3 SCC 527; *Sumitra Devi v. Bhikan Choudhary*, [1985] 1 SCC 637 and *S.P.S. Balasubramanyan v. Suruttayan*, [1994] 1 SCC 460. The appellant must, therefore, be presumed to be a legitimate son of Machine Chowdegowda. Accordingly the appellant is granted one acre of the wet land and the rest
G of the land will be given to the respondents according to the respective shares. A preliminary decree be drawn and an application to pass final decree be made and dealt with by the trial Court.

The appeal is accordingly allowed. No costs.

R.P.

Appeal allowed.