M. GOVINDARAJU

v.

K. MUNISAMI GOUNDER (D) AND ORS.

AUGUST 13, 1996

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

Hindu Marriage Act, 1955 : Sections 3(a), 13 and 16.

Hindu Law—'Gounders'—Marriage—Woman walking out of her husband's house and started living with another person, second husband—Son born out of second marriage—Right of such a son to claim partition of joint hindu family property—Evidence suggesting that after separation neither wife nor first husband taking interest in each other—Held divorce was complete—Neither paternity nor maternity of son born out of second marriage disputed—Held son born out of second marriage was a legitimate offspring—Held High Court erred in illegitimising the son.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 209 of 1996.

From the Judgment and Order dated 14.2.95 of the Madras High Court in A. No. 186 of 1984.

S. Srinivasan for the Appellant.

V. Krishnamurthy for the Respondents.

The following Order of the Court was delivered :

The appellant, M. Govindaraju, was born to Pappammal from the loins of Munisami Gounder. The trial court as well as the High Court have neither disputed the paternity nor the maternity of the appellant. He has been denied his share in the joint Hindu family property owned by his father on the sole ground that when begotten no valid marriage subsisted between his parents. The trial court was in his favour though in giving him legitimacy, but the High Court branded the appellant as an illegitimate child of his parents and, hence, not entitled to claim partition of the joint Hindu family property. The said property consists of about 21 acres of agricultural land in which the appellant claims 1/7th share.

A Evidence was led by the parties on the issue whether Munisami Gounder had validly married Pappammal. It was not denied by either side that beforehand Pappammal stood married to one Koola Gounder and after living with him for a couple of years, had walked out of his house to live with Munisami Gounder way-back in the year 1942/1943. The evidence of P.W. 2 led by the plaintiff as to the performance of the spoken of marriage B by rites and rituals, or that efforts were made to have the marriage of Pappammal with Koola Gounder cancelled, was rejected by the High Court. Be that as it may, the fact found remains that Pappammal walked out of her husband's house and started living with Munisami Gounder in the year 1942/1943 and it is as a result of that union that the appellant was born.

C The High Court in illegitimising the appellant, seems to have overlooked the caste factor which would have a great bearing in order to establish the relationship between the parties. They were 'Gounders', necessarily falling in the classification other them Dwijas. Hindu law is clear on the subject that if a non-dwija woman is turned out of the house by her D husband, or she willfully abandons him and is not pursued to be brought back as wife, a divorce in fact takes place, sometimes regulated by custom, and then each spouse is entitled to re-arrange his/her life in marriage with other marrying partners. Walking out of Pappammal from the house of her first husband Koola Gounder was irretrievable and irreversible, for it is in evidence that neither of them took interest in each other thereafter. The E divorce was thus complete. Paternity of the appellant having not been denied, he was treated as a son of his father. We would, therefore, think that the trial court was right in giving him the status as a son of his father. In doing so, the trial court rightly took in aid the fact that in recognition of that status, the appellant was given his first cousin in marriage i.e. Munisami's sister's daughter. That fact was corroborative of a valid acknowF ledgment of paternity and legitimacy. If the people, especially the relatives, had treated and acknowledged the appellant as the legitimate son of his father by forging a bond of matrimony of the sort aforementioned, it is a strong piece of evidence to hold that the appellant was a legitimate offspring of his father. The High Court thus clearly fell in error in illegitimising him. We reverse that view.

G For the foregoing reasons, we allow this appeal, set aside the impugned order of the High Court and restore that of the trial court, but without any order as to costs.

T.N.A. Appeal allowed.