SUPREME COURT OF INDIA

Smt. Raj Rani

Vs.

State (Delhi Administration)

(K Thomas, D Mohapatra)

08.02.2000

ORDER

1. Appellant is Smt. Raj Rani whose brother Shashi Pal Malhotra had married one Veena in the year 1978. The said Veena committed suicide on 17-4-1984 after leaving a suicide note. The case was charge-sheeted against the appellant, her brother and her mother for the offence under Section 306 read with Section 34 of the Indian Penal Code. The trial Court convicted and sentenced the appellant to undergo imprisonment for 5 years and to pay a fine of Rs. 4,000 (it is not necessary to mention the sentences imposed on the other accused as they are not before us). When an appeal was filed by this appellant along with other 2 accused the High Court of Delhi found that there is no acceptable evidence to prove the offence under Section 306 and hence acquitted them. However, learned single Judge of the High Court felt that on the evidence an offence under Section 498A stood proved and accordingly all the accused were convicted under the altered sections and each of them was sentenced to undergo the period of imprisonment which they have already undergone.

2. The reason why the appellant has now challenged the said conviction and sentence has been stated by the learned Counsel for the appellant. She is a Government servant being a teacher attached to a Government school. Hence, the conviction will have devastating consequences on her career be sides the stigma attached to her even other wise. We, therefore, chose to hear the appeal on merits.

3. Both sides submitted that the only reliable evidence which can be looked into is the suicide note left behind by Veena which should have been scribed by her on 17-4-1984, the date of the commission of suicide.

4. We have gone through the entire writings contained in the suicide note. It makes a serious castigation against her husband for being an addict to narcotic drugs. Then she made a general allegation against her mother-in-law and in a lesser degree towards the appellant. But unfortunately she did not advert to any concrete instance which can be termed as cruelty as defined in Section 498A of the Indian Penal Code. The utterances said to have been made by the appellant towards the deceased were to her chagrin and she had taken them very seriously in the suicide note she described such utterances as not worthy of reproduction.

5. It is not enough that the deceased felt those words hurting, it must be subjected to judicial

scrutiny and the Court must be in a position to hold that those words were sufficiently hurting enough as to amount to "cruelty" falling within the parameters fixed in Section 498A of the Indian Penal Code. The area remains grey and vague. Not a single word said to have been spoken to by the appellant as against the deceased had been put on record by the deceased in the suicide note in spite of the fact that the said note is a very lengthy letter running into several paragraphs. The tenor and language of the suicide note would reflect that she was not an illiterate lady. As the Court is rendered helpless to judge whether the words which deceased heard from the appellant would amount to cruelty, it is far from possibility for the Criminal Court to hold that she is guilty of the offence of cruelty as envisaged in the section. It is also to be pointed out that the deceased did not mention a single deed which the appellant would have done against her. All that is said against the appellant were that she spoke same thing which she took objectionable.

6. In the aforesaid circumstances, it is not possible to hold her guilty of the offence of which she was found guilty by the High Court. No offence at all has been proved against her. She is entitled to be acquitted of the charge as well as the offence now found against her by the learned single Judge.

7. In the result, we allow this appeal and set aside the conviction passed on her and acquit her. The fine, if any, paid by her shall be refunded to her.

SLSCI 2

AIR 2000 SC 434, (1999) 3 CALLT 90 SC, I (2000) DMC 1 SC

Bench: S Majmudar, M Srinivasan, U C Banerjee

Velamuri Venkata Sivaprasad (D)By Lrs. vs Kothuri Venkateswarlu (D)By Lrs. Ors. on 24/11/1999
JUDGMENT

Umesh C. Banerjee, J.

1. Two specific questions arise for determination in this appeal by the grant of special leave against a Bench decision of the Andhra Pradesh High Court: Firstly, whether re-marriage of a widow prior to Hindu Succession Act, 1956 would divest her of even the limited ownership of her deceased husband's property, having due regard to the provisions of Section 2 of Hindu Widow's Re-marriage Act, 1856 (hereinafter referred to as 'the Act of 1856'); and secondly, whether disqualification of inheritance, if any, by reason of re-marriage would stand obliterated by reason of the provisions of the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949.

2. The factual score in the Appeal presently before us reveals that one Rosaiah was the owner of a large extent of properties. He died in February, 1937 leaving behind him his wife Lakshmamma and

mother Venkayamma. Rosaiah executed a will on 11th January, 1937 wherein he bequeathed all his properties to his mother Venkayamma. Apart from providing some maintenance, Rosaiah did not provide anything else to his wife Lakshmamma. As a matter of fact in the will he stated that his wife Lakshmamma was not obedient to him and that her father with her aid was trying to knock off all his properties and that his wife was also not living with him. He however in the will provided that, in case his wife was prepared to take a boy of his mother's choice, in adoption, she could do so but the boy so adopted should be under the guardianship of his mother until attainment of majority and in that event would be entitled to certain properties as specified in the will.

3. Factual score further depicts that after the death of Rosaiah, Lakshmamma filed a suit (OS No. 52 of 1939) for a declaration as regards her entitlement to all the properties of her husband. The mother, in her turn, also filed another suit for administration of the estate, on the basis of the will mentioned above (OS No. 42 of 1940). It appears from the records that there was in fact a compromise decree between both the mother and the wife of Rosaiah which was recorded by the Court on 19th April 1942. In the compromise memo Lakshmamma has been referred to as the plaintiff, while Venkayamma, the mother as the first defendant. Clause (a) of the said compromise expressly affirmed the will put forward by the mother, Venkayamma as true and valid and the properties of Rosaiah were categorised into three schedules, appended to the said Memo of compromise. Properties mentioned in Schedule-1 were jointly given to both the said ladies with absolute rights. While properties mentioned in Schedule-II were given to both of them jointly with a life estate only. Schedule-III contains three items. Items 1 and 2 were given to the mother, while item 3 was given to the wife. Clause (f) of the said memo of compromise provided as follows:

(f) The 1st defendant is agreeable that plaintiff shall continue the lineage of late Rosaiah by adopting a boy of her choice within 7 years from now, from the family of Velamuri people or from the family of any other person of the (same) Gotram or from out of the boys of her younger sister as provided within the will executed on 11.1.1937 by the late Rosaiah and receiving him as the adopted son of her husband. As soon as the adoption takes place, the immovable property mentioned in Schedule-II, attached hereto and retained by the plaintiff and the 1st defendant with life-interest the 2nd item in its entirety and half of 3rd item mentioned in Schedule III other than the portion necessary for the residence of the plaintiff and the 1st defendant till their life-time and the plate and cup being used by the plaintiff and the iron safe, pot () and 'Panakapu Binde' being used by the 1st defendant present out of the silver age given to Late Rosaiya at the time of the marriage shall be developed on the adopted son himself and he himself shall have absolute rights to the said items....

4. Admittedly there is no adoption by Lakshamamma within the period prescribed as contemplated in Clause (f) above and by reason therefor, Venkayamma the mother, filed a fresh suit (OS 93 of 1950) for a declaration that since Lakshmamma failed to take on adoption, as provided by Clause (f) above, she was not entitled to do so thereafter, and for a further declaration that she herself was entitled to adopt a boy. In the plaint filed and as the records depict, Venkayamma leveled specific allegations of unchastity against Lakshmamma and contended that by reason of the fact of leading a life of unchastity, Lakshmamma lost all her rights in her husband's estate. The said suit was however dismissed and an appeal being AS No. 344 of 1953 was preferred to the High Court against the dismissal of the suit (No. 93 of 1950). The facts reveal that the appeal came up for hearing on 8th March, 1958 and it is on the date of hearing counsel for the appellant Venkayamma conceded that by reason of the provisions of the Hindu Adoption and Maintenance Act, 1956 (Act No. 78 of 1956) even a success in the appeal would not entitle the appellant to adopt. The Appellate Court on the wake of the aforesaid, dismissed the appeal.

5. In 1969 as the records depict, the present suit (O.S. No. 44 of 1969) was filed by Venkayamma and her daughter Sitarammamma asking for a declaration of title to the suit properties and for possession of the properties mentioned in the plaint Schedule 'A' and 'B' and for mesne profits on the ground that since Lakshmamma did not take the adoption and also because of her re-marriage in 1953, she had lost all her rights and the same in any event stood forfeited so far as the husband's properties were concerned and that Venkayamma was otherwise exclusively entitled to the same.

6. Incidentally, be it noted that Venkayamma in the suit stated that she has relinquished all her rights in favour of Sitarammamma and therefore the latter was impleaded as the second plaintiff. Besides, the allegation of re-marriage, Venkayamma also attributed unchastity to Lakshmamma. In the said suit, nine defendants were impleaded. 1st defendant is Lakshmamma while defendants 2 to 4 were impleaded on the ground that they have been inducted into possession of the 'B' schedule properties in suit by the 1st defendant. Defendants 5 to 7 were impleaded on the ground that they were the alienees from the first defendant and the 8th defendant was impleaded because he was supposed to be the adopted son of the first defendant, while the 9th defendant was said to be the joint purchaser along with defendants 3 and 4 of some of the suit properties.

7. In the written statement, Lakshmamma's defence was that she did take a boy being the 8th defendant by way of a valid adoption. While denying the re-marriage she pleaded the bar of res-judicata with respect to the allegation of unchastity. The 8th defendant in his written statement asserted his own adoption whereas the other alienees substantially adopted the defence taken by Lakshmamma. The Trial Court on final disposal recorded a definite finding as regards the issue on unchastity being barred by the doctrine of res-judicata. But in regard to the issue of re-marriage in August, 1953, the same was found to be otherwise correct as a matter of fact. Trial Court further held that whatever properties were given to Lakshmamma under the memo of compromise became her absolute properties by virtue of Section 14 of Hindu Succession Act. Two other issues were raised before the Trial Court namely; the issue of adoption of 8th defendant and the suit being barred by the laws of limitation. The last issue of limitation was answered in the affirmative, the plea of adoption was negatived and the Trial Court came to a conclusion that no such adoption can even be valid also.

8. The factual score further reveals that Venkayamma died pending the suit and the 3rd plaintiff was brought on record as her adopted son: The 2nd plaintiff Sitarammamma also died after the judgment of the trial court and before the filing of the appeal. The appeal before the learned Single Judge of the Andhra Pradesh High Court was preferred only by the 3rd plaintiff in the suit being the adopted son of Venkayamma.

9. We may now deal with the twin issues noted at the beginning of the judgment.

Re-first Issue:

10. Conversion of limited ownership into an absolute one under Section 14(1) of the Hindu Succession Act did come up for judicial scrutiny intermittently before this Court and the law in regard thereto stands settled by the decision in Tulasamma's case V. Tulasamma and Ors. v. Sesha Reddy (d) by LRs. .

11. Admittedly the decision in Tulasamma's case (supra) is holding the field till date without even

any semblance of dissention in all subsequent decisions. We also do not wish to sound any different note in that regard. In paragraph 20 of the Report Fajal Ali, J. laid down certain propositions as regards Hindu women's rights to maintenance and we cannot resist but to quote the same herein below in extenso as useful refresher:

(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property cares with it the legal obligation to maintain the widow.

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e. it is a jus ad rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu Law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right;

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance.

12. Undisputably the Hindu Succession Act, 1956 in particular Section 14 has introduced far reaching changes having due regard to the role and place of womanhood in the country on the basis of the prevailing socio-economic perspective. It is now a well-settled principle of law that legislations having socio-economic perspective ought to be interpreted with widest possible connotation as otherwise, the intent of the legislature would stand frustrated. Recognition of Rights and protection thereof thus ought to be given its full play for which the particular legislation has been introduced in the Statute Book. Gender bias is being debated throughout the globe and the basic structure of the Constitution permeates equality of status and thus negates gender bias. Gender equality is one of the basic principles of our Constitution. The endeavour of the law court should thus be to give due weightage to the requirement of the Constitution in the matter of interpretation of statutes wherein specially the women folk would otherwise be involved. The legislation of 1956 therefore, ought to receive an interpretation which would be in consonance with the wishes and desires of framers of our Constitution. We ourselves have given this Constitution to us and as such it is a bounden duty and an obligation to honour the mandate of the Constitution in every sphere and interpretation which would go in consonance therewith ought to be had without any departure therefrom. Tulasamma's case obviously having this in mind decided the issue and attributed the widest possible connotation to the words used in Section 14(1) of the Act of 1956. The decision in Tulasamma's case from time to time came up for consideration before this Court and the same

stands accepted without any variation as noted herein before. One of the latest decisions where Tulasamma's case has been considered, is the decision of this Court in the case of Raghubir Singh v. Gulab Singh [1998] 6 SCC 324, wherein Dr. Justice A.S. Anand, Chief Justice speaking for the Bench in paragraphs 24 and 26 of the Report observed:

24. Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and the wife and that right in the case of a widow is "a preexisting right", which existed under the Shastric Hindu Law long before the passing of the 1937 or the 1946 Acts. Those Acts merely recognised the position as was existing under the Shastric Hindu law and gave it a "statutory" backing. Where a Hindu widow is in possession of the property of her husband she has a right to be maintained out of it and she is entitled to retain the possession of that property in lieu of her right to maintenance.

26. It is by force of Section 14(1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. So far as Sub-section (2) of Section 14 is concerned, it applies to instruments, decrees, awards, gifts etc., which create an independent or a new title in favour of the female for the first time. It has no application to cases where the instrument/document either declares or recognises or confirms her share in the property or her "pre-existing right to maintenance" out of that property. As held in Tulasamma case Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own, without interfering with the operation of Section 14(1) of the Act.

13. It would be convenient, however, at this juncture to note the exact language of Section 14. Section 14 reads as below:

14. Property of a female Hindu to be her absolute property-

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation- In this sub-section 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or order an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

14. Having due regard to the language as above introduced by Section 14 question of attributing a different interpretation, apart from what has been given in Tulasamma's case, does not arise but needless however to note that in order to have the provision applicable there shall have to be some right existing and not de hors the same. In Raghubir's case (supra) the Shastric law has been taken recourse to in order to ascribe a pre-existing right so far as the widow is concerned by reason of the social and temporal relationship between the husband and the wife during the life time of the

husband and the solemn obligation of the husband towards the wife. Hindu marriage is not a mere formality or a contract but has its due religious sanctity even in the present day society. Human i.e. oblation to fire and Saptapadi (seven steps together) are being observed in order to have a holy union between the husband and the wife. In this context, the observations in the decision of Raghubir Singh's case seem to be apposite and in paragraph 14 of the Report, Dr. Anand, CJ observed:

According to the old Shastric Hindu law, marriage between two Hindus is a sacrament-a religious ceremony which results in a sacred and a holy union of man and wife by virtue of which the wife becomes a part and parcel of the body of the husband. She is, therefore, called. ardhangani. It is on account of this status of a Hindu wife, under the Shastric Hindu law, that a husband was held to be under a personal obligation to maintain his wife and where he dies possessed of properties, then his widow was entitled as of right, to be maintained out of those properties. The right of a Hindu widow to be maintained out of the properties of her deceased husband is, thus a spiritual and moral right, which flows from the spiritual and temporal relationship of husband and wife, though the right is available only so long as the wife continues to remain chaste and does not remarry.

15. There is therefore no difficulty in appreciating the observations of this Court in Tulasamma's case or in Raghubir's case but the issue here as noticed above, is slightly different on the factual score and neither of the decisions can lend any assistance to the respondents herein.

16. The Division Bench of the Andhra Pradesh High Court unfortunately has not been able to appreciate the admitted re-marriage of Lakshmamma in the year 1953. Re-marriage is a fact which ought to be taken note of in the matter under consideration and it is this change of status, by reason of remarriage, falls for determination in the present appeal. While there is no amount of doubt that by reason of the well settled law as laid down by this Court, to the effect that a limited right of maintenance permeated into an absolute right under Section 14(1) of the Hindu Succession Act but would the effect be the same, in the event of there being a re-marriage of the widow prior to 1956? The Act of 1956, incidentally is prospective in its operation and no element of retrospectivity can be attributed therein. The effect of remarriage is available in the Act of 1856. Section 2 thereof reads as below:

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

17. Incidentally, the Act of 1856 was in the Statute Book until the year 1983 and it only stands repealed by Act 24 of 1983.

18. Section 2 of the Act 1856, therefore, has taken away the right of widow in the event of re-marriage and the Statute is very specific to the effect that the widow on re-marriage would be deemed to be otherwise dead. The words "as if she had then died" (emphasis supplied) are rather significant. The legislature intended therefore that in the event of a re-marriage, one loses the rights of even the limited interest in such property and after re-marriage the next heirs of her deceased's husband shall thereupon succeed to the same. It is thus a statutory recognition of a well reasoned

pre-existing shastric law.

19. An attempt has however been made as regards overriding effect of Hindu Succession Act in terms of Section 4(1) thereof. Section 4(1) provides as below:

4. Overriding effect of Act-(1) Save as otherwise expressly provided in this Act,-

(a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

20. Mr. Nageshwara Rao, learned Counsel appearing for the respondents contended that by reason of the overriding effect of the Act of 1956, question of reliance on Section 2 of the Act of 1856 does not arise. On the next count it was contended that re-marriage envisaged under Section 2 must be a valid re-marriage and since Lakshmamma got married to a person while he was having a spouse living, being Lakshmamma's own sister's husband, that is to say Lakshmamma got married to her own brother-in-law in the year 1953, question of there being a valid re-marriage does not and cannot arise. It is on this count, the learned Counsel contended that the act of 1949 (The Madras Hindu Bigamy Prevention and Divorce Act) which declares all marriages wherein one spouse has a spouse living, be a nullity and as such question of there being any valid marriage in terms of the Act of 1856 does not and cannot arise.

21. The above contentions fall squarely within the ambit of the second issue noticed above and as such we refrain ourselves from making any comment thereon at this juncture and reserve the same for consideration in the later part of this judgment.

22. On the issue as regards the applicability of Section 14(1) of the Act of 1956, B.P. Jeevan Reddy, J. (as His Lordship then was) hearing out the first appeal has the following to observe:

The next question arises is, whether the life estate created in Lakshmamma under Ex.A-1 gets enlarged by virtue of Section 14(1) of the Hindu Succession Act. For a proper appreciation of this question, it is necessary to notice a few dates. The Hindu Women's right to Property Act, 1937 came into force on 1st April, 1937. However, it was not applicable to agricultural properties. It was made applicable to agricultural properties only in 1946 by virtue of the Act passed by the Madras Legislature. In any event, Rosaiah having died in February, 1937, prior to the enforcement of the Principal Act itself, Lakshmamma cannot claim any right under the said Act. She would have been entitled to widow's estate according to Hindu Law. but she was deprived of even that, by virtue of the will (Ex. A-3) executed by Rosaiah, and the truth and validity of which will was affirmed by Lakshmamma herself in the Memo of Compromise, Ex.A-1. Once that will is true it has to be given effect to and, according to it, Lakshmamma had only a right to maintenance, and nothing more.

Therefore, when she was given certain properties, either absolute or for her life, under the said Memo of Compromise, it must be said that rights in her in respect of the said properties were created for the first time under and by the said Memo of Compromise that she had no pre-existing rights in the said properties. If so, according to the decisions of this Court and other High Courts, emphasising the distinction between and applicability of Sub-section (1) and Sub-section (2) of Section 14 of the Hindu Succession Act, it is Sub-section (2) alone that applies, and not Sub-section (1). In other words, there is no more question of enlargement of her right vide G. Konraiah v. G. Subbrabayudu (1968) II An.....455 were the earlier decisions of this Court and other High Courts also are noted and referred to. To the similar effect is the Decision of the Madras High Court in Hussain Uduman v.Venkatachal Mudaliar (1974) II, MLJ 275. Similarly the decision of the Supreme Court, Karmi v. Amrruaffirms that where a life estate is created by a will executed by a husband in favour of his wife, such a life estate does not got enlarged by virtue of Section 14(1) but that it is governed by Sub-section (2) only.

23. As regards the issue of re-marriage and the validity of the adoption so far as the 8th defendant is concerned, learned Single Judge observed that the findings have not been questioned in the appeal by anyone and as such no exception can be taken in regard thereto. Insofar as the question of the suit being barred under Section 113 of the Limitation Act, the learned Single judge has been pleased to answer the issue in the negative and on the basis of the aforesaid, the learned Single Judge allowed the appeal in the manner following:

It is declared that the 1st defendant has only a life-interest alongwith the 1st plaintiff, in the properties mentioned in Schedule II to Ex.A-1 and that, she has a life interest only even in item 3 of Schedule III to Ex.A-1 and that, the alienations made by her in favour of the other defendants are not binding upon the plaintiffs, insofar as the said alienations pertain to the properties mentioned in Schedule II or to item 3 in Schedule III, appended to Ex.A-1. In so far as the properties mentioned in Schedule 1 to Ex.A-1 are concerned, the 1st defendant has an absolute interest, alongwith the 1st plaintiff herein. Plaintiffs are, however, not entitled to immediate possession of the properties mentioned in Schedule II and item 3 in Schedule III to ExA-1, inasmuch as the 1st defendant has a life-interest therein. They shall, however, be entitled to the possession of the said properties after the life-time of the 1st defendant. The relief of mesne profits too accordingly fails.

24. Subsequently, however, the matter was taken up in Letters Patent Appeals and the Appellate Court by a judgment dated 31st March, 1978 in LPA Nos. 19 and 20 of 1977 was pleased to reverse the judgment of B.P. Jeevan Reddy, J. and confirmed the decree in Original Suit No. 87 of 1966. As regards the LPA No. 19 of 1977 the Appellate Bench has the following to observe:

First we will take up LPA No. 19/1977. Shri M. Chandrasekhara Rao has submitted that the adoption of the 8th defendant by the 1st defendant is true and valid and, therefore, the sale deed executed by him in favour of defendants 3,4 and 9 is also valid. On a consideration of the evidence on record we hold that the 1st defendant had remarried in August, 1953. If so, there is no question of her making an adoption to her first husband, late Rosaiah. Consequently, we affirm the findings of Jeevan Reddy, J., and dismiss LPA No. 19/1977.

25. As regards LPA No. 20/1977 the Appellate Court relying upon Tulasamma's case (supra) came to a conclusion that pre-existing rights of Lakshmamma for maintenance from out of the property of her late husband cannot be disputed and as such came to the conclusion that Lakshmamma got an absolute right in the properties given to her in Schedule II and item 3 of Schedule III by virtue of

Sub-section (1) of Section 14 and as such the alienation made by her under the sale deed in favour of defendant Nos. 2,3 and 4 is otherwise valid and it is this judgment which is presently in appeal under discussion before this Court.

26. It has to be kept in view that Section 14(1) of the Hindu Succession Act, in the light of the explanation thereto, clearly indicates that if a Hindu widow is given in lieu of her pre-existing right of maintenance, any property with limited interest, the said interest would mature into full ownership under Section 14(1) of the Act. It has further to be kept in view that under the will of Rosaiah, the first wife's pre-existing right of maintenance was recognised and in recognition of the very same right by the compromise decree she was given limited interest to recover maintenance from the earmarked properties mentioned in the same decree. It has, therefore, to be held in the light of the judgment in Tulasamma's case that if her right of maintenance had survived till the coming into operation of Section 14(1) of the Act, then her limited interest on the properties concerned over which the said right was exercised as per consent term could have matured under Section 14(1) of the Act and to that extent the Division Bench judgment upsetting the view of the learned Single Judge cannot be found fault with. However, in the light of the admitted fact on record on re-marriage of Rosaiah's widow in 1953, her right to claim maintenance from the ex-husband's properties got extinguished prior to 1956, as will be further seen from our discussion on the second issue. Hence, the ultimate decision rendered by the learned Single Judge will remain well-sustained and the Division Bench judgment upsetting the same cannot be sustained on this ground. Issue No. 1, therefore, will have to be answered in favour of the appellant and against the respondent.

27 Re:Second Issue: Addressing on this issue, Mr. Rao contended that the re-marriage, spoken of in Section 2 of the Act of 1856, cannot but mean a valid re-marriage and since Lakshmamma got married to her brother-in-law in the year 1953, the marriage, Mr. Rao contended cannot but be termed to be a void marriage as such a nullity and thus application of Section 2 does not and cannot arise. At first blush the submission seemed to be attractive but on a closer scrutiny of the matter in issue we are afraid we cannot lend concurrence to the submission of the respondent in that regard, the reasons for the same being as below:

I. In the contextual facts the doctrine of sincerity has its due application. Lakshmamma cannot take advantage of her own immoral conduct and illegality to confer upon herself a right to continue to get maintenance from the properties of her deceased husband under the consent decree.

II. The Act of 1949 being penal in nature, was introduced in the Statute Book to prohibit bigamous marriages and to provide for a right of divorce on certain grounds as mentioned therein statutory prohibition cannot be treated to be in aid of conferment of right: it is a prohibitory statute and not a conferring statute.

III. Any mechanical and literal applicability of the Act of 1949 would lead to incongruity as well as absurdity since in the event the widow is married to a person without having a spouse living-the widow divests herself of any right to deceased's properties by reason of Section 2 of the Act of 1856, but in the event the widow is married to a person with a spouse living, the same tantamounts to no marriage and resultantly entitlement under the general law would be available to the widow: what has been prohibited would, in effect, amount to conferment of a right of inheritance on the deceased husband's property- this is contrary to all cannons of law.

28. In detailing out the reasons as noticed above, reference may be made at this stage itself to a

decision of the House of Lords in the case of G. (The Husband) v. M. (The Wife) (LR 10 AC 171), wherein, EARI OF SELBORNE LC observed:

I think I can perceive that the real basis of reasoning which underlies that phraseology (sincerity) is this, and nothing more than this, that there may be conduct on the part of the person seeking this remedy which ought to estop that person from having it: as, for instance, any act from which the inference ought to be drawn that during the antecedent time the party has, with a knowledge of the facts and of the law; approbated the marriage which he or she afterwards seeks to get rid of, or has taken advantages and derived benefits from the matrimonial relation which it would be unfair and inequitable to permit on her, after having received them, to treat as if no such relation had ever existed. Well now, that explanation can be referred to known principles of equitable, and, I may say, of general jurisprudence. The circumstances which may justify it are various, and in cases of this kind many sorts of conduct might exist, taking pecuniary benefits for example, living for a long time together in the same house or family with the status and character of husband and wife, after knowledge of everything which it is material to know. I do not at all mean to say that there may not be other circumstances which would produce the same effect; but it appears to me that in order to justify any such doctrine as that which has been insisted upon at the bar, there must be a foundation of substantial justice, depending upon the acts and conduct of the party sought to be barred.

29. There must thus have to be a foundation of substantial justice depending upon the acts and conduct of the party sought to be barred-as stated by the Lord Chancellor.

30. It is in this context the will is to be noticed: In the will Rosaiah being the testator stated that his wife Lakshmamma was not obedient to him and that her father with her aid was also trying to knock off all his properties and that his wife was also not living with him.

31. The learned Subordinate Judge Narasaraopet in paragraph 21 of the judgment in the main suit recorded as below:

21. Smt. G. Samanthakamani, P.W. 2, deposed that the first defendant bore a child to Sri Veeraraghava Sastri in 1952 and that the name of that child is Kasi Visweswara Hanumath Prasad. She stated further that in the year 1954 she gave birth to a daughter and that some time thereafter, the first defendant gave birth to a son in the same year. She deposed that in the year 1953, her husband Veeraraghava Sastri married the first defendant Seelanagaram in a choultry near the temple. After hearing the contents of Ex.A.11, P.W.2 stated that it is not true that Kasi Visweswara Hanumath prasad is her natural son and that it is not true that he was given in adoption to first defendant's husband, the adoption being made by the first defendant. The evidence of Sri A. Sreeramchandra Murthy, P.W. 4, is to the effect that Sri G. Veeraraghava Sastry has two wives that Smt. Laxmidevamma is one of them, that the said Laxmidevamma has a son called Prasad or Prasad Babu and she was delivered of a male child in February or March 1954.

32. The factual score therefore, depicts that the sister of Lakshmamma in no uncertain terms stated before the Court that the first defendant bore a baby son through Sri Veeraraghava Sastri in 1952 and her (the sister's) husband married Lakshmamma in 1953. Thereafter Lakshmamma gave birth in 1954 to a daughter and subsequently to another son in the same year-this is the person who is said to have retained the right of maintenance from the deceased husband's estate by reason of the Act of 1949: This is, to say the least, a travesty of correct legal position. There is some moral estoppel also. It is only the estate which was attractive to her and the subsequent purported adoption by

Lakshmamma to her late husband when there were already two sons, through the brother-in-law bore ample testimony of her immorality disentitling her any continued maintenance from her deceased husband's estate.

33. On the score of adoption the learned Subordinate Judge on a consideration of the materials available, found "that the adoption of the 8th defendant by the 1st defendant to late Veeraragahava Sastri is neither true nor valid." Incidentally P.W.I before the learned Subordinate Judge stated that the 8th defendant is the natural son of the first defendant: the lady has thus three children and in spite thereof attempted to have an adoption established in favour of her own son before a court of law in the name of the deceased husband, simply by reason of the fact that deceased Rosaiah permitted certain properties to be given to the adopted son-the interest is only property: In our view the tests as laid down by Lord chancellor in G. v. M. (supra) stands amply satisfied in the contextual facts. The doctrine of sincerity, therefore, plays as a bar to such a construction being put on a prohibitory statute.

34. It is pertinent to note here that the courts ought always to adopt a construction of the statute which will enure to the benefit of the society and eschew such a construction which may adversely affect the society. Morality and law cannot but be equated with each other: what is legal is moral and as such morality cannot be differentiated from the law. One School of thought recorded that while it is true that what is legal is moral but the converse is not true. We however, do not dilate on this issue excepting reiterating what is stated herein before in this judgment.

35. The general doctrine of approbation and reprobation which is an aspect of equitable estoppel is not peculiar to English law and as a matter of fact Section 23(1)(a) of the Act of 1956 does gives statutory recognition to the said equitable principle. The language used in Section 23(1)(a) to wit- ".... is not in any way taking advantage of his or her own wrong..." is rather significant. Indeed, Direct in his book "Critique of Modern Hindu Law" at page 314 holds the view that "It is a rule of justice, equity and good conscience and is international.

36. In Mulla's Principles of Hindu Law, the learned author has the following to state:

The latter part of Clause (a) read with the words at the end of Sub-section (1) "then and in such a case, but not otherwise" makes it abundantly clear that the court cannot pass a decree granting any relief under the Act in favour of a petitioner who is in any way taking advantage of his or her own wrong or disability for the purpose of such relief and it is not enough that the petitioner has established the ground on which relief is sought; and if that is so his or her own wrong or disability is an absolute bar to the relief sought by the petitioner. The rule is based on the principle of justice that a wrongdoer should not be permitted to take advantage of his or her own wrong or disability while seeking relief at the hands of the court in any matrimonial proceeding.

(Mulla's Principles of Hindu Law, 16th Edn. Page 713)

37. Interestingly this Court also applied the latin maxim 'qui approbation reprobat' (one who approbates cannot reprobate) in Indian conditions as a basic inhibitory principles of law. (see in this context New Bihar Biri leaves Co. and Ors. v. State of Bihar and Ors.).

38. The present case is not strictly concerned with petitions for determination of status under the Hindu Marriage Act but rather with questions of Hindu personal inheritance in the context of the

conduct of one of the parties. No doubt the 'doctrine of insincerity' must be applied with great care and even where approbation is proved, the Court has discretion as to what weight is to be given to it.

39. The contention on behalf of the respondent as regards the marriage being void in terms of the provisions of the Act of 1949 on the wake of the observations as above, thus, cannot hold good in any event. Voidness of a marriage cannot be termed to be an absolute nullity. A lucid discussion on the topic is available in Wade's Administrative Law 7th Ed. Wherein it is stated as below:

...Here also there is a logical difficulty, since unless an order of the court is obtained, there is no means of establishing the nullity of the list. It enjoys a presumption of validity, and will have to be obeyed unless a court invalidates it. In this sense every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage Lord Radcliffe said:

An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

Void is therefore meaningless in any absolute sense. Its meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, confusion over 'void or voidable' can be avoided.

40. The passage above stands approved by this Court in R. Thiruvirkolam v. Presiding Officer and Anr., .

41. In the case of State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil (dead) and Ors., this Court in no uncertain terms laid down that the word 'void' has a relative rather than an absolute meaning. This Court observed:

It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity, as to whether it is fundamental or otherwise...

42. It is in this context one may also consider that Hindu Marriage Act provides annulment of the marriage under Section 11 and the same statute under Section 16 legitimised the children of otherwise void marriages. It is thus a statutory recognition of limited voidness and not a nullity. The reliance was placed on the decision of this Court in the case of Bhaurao Shankar Lokhande and Anr. v. The State of Maharashtra and Anr . , wherein this Court while dealing with the prosecution under Section 494 read with 114 I.P.C. observed that in the event the marriage is not a valid marriage, it is no marriage in the eye of law. The Court was considering as to whether the subsequent marriage needs to be a valid marriage in order to impose punishment under Section 494 I.P.C, In paragraph 15 of the report this Court observed:

(15) It follows, therefore, that the marriage between appellant No. 1 and Kamlabai does not come within the expression 'solemnised marriage' occurring in Section 17 of the Act and consequently does not come within the mischief of Section 494, I.P.C. even though the first wife of appellant No. l was living when he married Kamlabai in February,1962.

43. The decision in our view does not lend any support to the contention of the respondent herein and the same is clearly distinguishable on facts. The observations of this Court were made in the context of a prosecution, wherein the punishment would be seven years imprisonment together with fine and it is in this perspective that the nitti natti of marriages were dealt with and the Court came to a conclusion that marriage was not properly solemnised and as such the accused cannot be said to be guilty of an offence under Section 494. The liability is criminal and the burden of proof is beyond all reasonable doubts- such however is not the case presently under consideration. It is this perspective that the matter has to be considered as to whether prohibitive statute ought to be read as conferring statute and in view of the discussion above we answer the first and the second point of reasons as noted above so as not to confer any entitlement in favour of Lakshmamma.

44. On the third count also let it be noted that this prohibitive statute can not possibly have its operation extended in the contextual facts as otherwise the same would lead to a total absurdity in the facts of the present case and which in any event ought always to be avoided.

45. Finally and in any event this issue however cannot be re-agitated at this juncture by reason of the fact that the same stands concluded by the Trial Court as well as by the first appellate court. It may also be noted that in the companion Letters Patent Appeal No. 19 of 1977, the Division Bench has confirmed the finding that 1st defendant remarried in 1953 and hence she could not validly adopt defendant No.

2. Accordingly, Letters Patent Appeal No. 19 of 1977 was dismissed. This judgment inter parties has become final. No Special leave Petition is filed by the appellants against the said decision even though they claim their interest through defendant No. 1. Hence, the finding that defendant No. l remarried in 1953 has become res judicata between the parties. In any case at this point of time no factual controversies can be raised, neither can be decided in the jurisdiction conferred onto this Court by the Constitution. In that view of the matter, we are also not inclined to lend any concurrence to the submissions on behalf of the respondents.

46. Turning attention to the issue of vesting of the property and subsequent dive station if there be any, by reason of any unchastity or re-marriage, it would be profitable for us to notice the decision of the Madras High Court in the case of Ramaiya v. Mottayya . In a very illuminating judgment, in paragraph 12 Viswanatha Sastri, J. observed:

It is a well settled rule of Hindu Law- a rule that is inconformity with popular sentiment that- unchastely disqualifies a widow from succession to her husband's estate. The textual authorities on this point will be found assembled in the judgment in keri Kolitany v. Monseram Kolita, 13 Beng. L.B.I. the text requires that the widow must be chaste not only when the inheritance of her deceased husband opens but also thereafter. A text attributed to Vridha Manu says:

The wife alone, being sonless and keeping the bed of her lord unsullied and leading a life of religious observance, may take his entire estate.

Katyayana also declares:

Let the sonless widow, preserving unsullied the bed of her lord and bidding with her venerable protector, enjoy with moderation the (husband's) property until her death

Other texts state as "half the body" of her deceased husband the widow takes his property in default of male issue. The above text show that not only that the sonless widow's right in her husband's property is a mere right of enjoyment but that the exercise of that right is dependent on her chastity. The use of the present participle form implies that chastity is imposed as a permanent condition of the widow's enjoyment of her husband's estate and that a violation of that condition would involve a forfeiture of the right. But European writers, like Colebrooke and English Judges who had to administer the Hindu law, in their concern for ensuring certainty of titles to property and their leanings against a divestiture of estates once vested, declared the law to be that a sonless widow who was chaste at the time of her husband's death inherited his estate and that a widow who had once inherited the estate of her husband was not liable to forfeit it by reason of her subsequent unchastity. The law was thus settled by the Judicial Committees in Maniram Kolita v. Keri Kolitany 5 Cal. 776 P.C. and this has been the accepted rule of Hindu law ever since. Unchastity disentitles a Hindu widow to maintenance. Maintenance being a recurring right her continued chastity is a condition of her right to receive maintenance and she would forfeit her right by reason of her unchastity even though maintenance has been decreed to her by a Court. Lakshmichand v. Mt. Anandi 57 All 672 P.C. Kandasami v. Murugammal 19 Mad. 6 and Nagamma v. Virabhadra 17 Mad. 392. If there has been a lapse from chastity the widow would be entitled only if she reforms her ways, and even then only to a starving maintenance. Satyabhama v. Kesavacharya 39 Mad. 658. The widows of coparceners in a joint Hindu family are in fact and in law members of the family with rights in or over the family property by way of maintenance. Raghunanda Deo v. Brozokishore Patta Deo 1 Mad 69 at p.81; Kalyani Vittaldas v. Commissioner of income-tax I.L.B. (1937) 1 Cal 653 (PC) and Vedathunni v. Commissioner of Income-tax 56 Mad 1 at pp.4, 5. The requirement of Chastity as a condition of their maintenance from the family property is therefore intelligible.

47. The observations of the learned Judge in paragraph 13 of the judgment pertaining to the issue as regards the effect of unchastity vis a vis the husband's separate or self acquired property under the Shastric Law and the effect of subsequent legislation thereon are also worth noting. Paragraph 13 reads as below:

13. The Act was doubtless intended to "give better rights to women in respect of property" as stated in the preamble. But in what cases and to what extent? The rights of a Hindu widow in relation to the property or interest of her husband, as they stood before the Act, and as they now stand, have to be considered. A Hindu widow succeeded to the self-acquired property of her husband or the property held by him as the last surviving coparcener or as the holder of a share on partition if he happened to die without leaving sons (including in that term grandsons and great grandsons). The sonless widow was disqualified from inheriting her husband's separate or self acquired property if she was unchaste or living in adultery at the time the inheritance opened. The Act did not touch this class of cases and did not abrogate the rule of Hindu law as to disqualification of a widow arising out of her unchastity in such cases. If in the cases above mentioned the husband had left sons (in comprehensive sense) the widow would before the Act have been excluded by the sons from inheriting her husband's estate and would only be entitled to maintenance for her life out of that estate. If her husband had died as a member of a joint Hindu Family owning property, his interest in the family property ceased on his death. The widow would but for the Act; be excluded from succession to the undivided interest of her husband which passed by survivorship to the remaining coparceners. She would have had a right, however, to be maintained from the joint family property in the hands of the surviving coparceners, who might be her son or her husband's uncles, brothers, nephews or other agnatic relations. With reference to these two classes of cases above specified, S. 3

of the Act conferred new rights of succession on widows in supersession of the above mentioned rules of Hindu law. The rule that a widow succeeded only on failure of male issue was abrogated and she was given the same share as a son in her husband's separate or self acquired property. Where the husband died a member of an undivided Hindu family, his undivided interest in the family property passes to his widow even if he left male issues. The rule of survivorship was to this extent abrogated. The interest taken by a widow in her husband's estate by virtue of S. 3 of the Act was the same as the interest which she look in her husband's separate or self acquired property in the absence of male issue, that is to say a Hindu widow's estate with all the incidents attached by law to that estate. The liability to forfeiture on remarriage would attach to that estate from its commencement and continue throughout the widow's life. The condition of chastity however attaches to the estate only at its commencement. Through the Act conferred new rights of succession on Hindu widows in the two classes of cases referred to above it did not purport to abrogate the pre-existing rule of Hindu law excluding an unchaste widow from succession to the property of her husband. It would be a queer state of law that sonless widow has to be chaste in order to inherit her husband's separate or self acquired property but a widow need not be chaste if she happens to have sons or other coparceners of her husband in competition with whom she claims to take her husband's estate. This however, would be the result of the argument of the appellant as regards the construction of Ss.2 and 3 of the Act.

48. Be that as it may the law as declared by Privy Council has been consistently followed that subsequent unchastity will not make a widow forfeit the property which she has succeeded to her husband on his death neither we express any contra view in regard thereto. In the contextual facts of the matter under consideration however, and since the factual situation of re-marriage of Lakshmamma in the year 1953, stands proved, it has to be held that Section 2 of the Hindu Widow's Re-marriage Act, 1956 gets attracted. As a result thereof, Defendant No. 1's right to get maintenance from their deceased husband's property came to an end on civil death qua her ex-husband's estate latest by 1953. Hence there was no subsisting legal right of maintenance available to Defendant No. 1 qua her deceased husband's estate in any of his properties nor was there a subsisting limited interest of hers in any of those properties which get matured into full ownership under Section 14(1) of the Hindu Succession Act when it came into force. As such the legal situation is different in the present case and the law as laid down and as noticed above does not render any assistance to the Respondent herein. Similar is the situation in regard to another decision of the Madras High Court in the case of Chinnappavu Naidu v. Meenakshi Ammal and Anr. . The decision last noted dealt with the effect of Section 2 of the Hindu Widows Re-marriage Act, 1856 and the Division Bench of the Madras High Court came to a conclusion that by reason of Section 4(1)(b) of the latter Act, of the Hindu Succession Act, 1956. Section 14 prevails over Section 2 of the 1856 Act and as such re-marriage will not create any divestation. The re-marriage spoken of in the Madras High Court decision however, did take place after introduction of the Succession Act of 1956, as such this decision also does not lend any assistance to the respondent by reason of the factual differentiation in the matter presently before us.

49. Incidentally, be it noted that the Succession Act of 1956 obviously is prospective in operation and in the event of a divestation prior to 1956, question of applicability of Section 14(1) would not arise since on the date when it applied, there was already a re-marriage disentitling the widow to inherit the property of the deceased husband. The Act of 1856 had its full play on the date of re-marriage itself, as such Succession Act could not confer the widow who has already re-married, any right in terms of Section 14(1) of the Act of 1956. The Succession Act has transformed a limited ownership to an absolute ownership but it cannot be made applicable in the event of there being a

factum of pre divestation of estate as a limited owner. If there existed a limited estate or interest for the widow, it could become absolute but if she had no such limited estate or interest in lieu of her right of maintenance from out of deceased husband's estate, there would be no occasion to get such non-existing limited right converted into full ownership right.

50. Strong reliance was also placed on the decision of this Court in the case of C. Masilamani Mudaliar and Ors. v. The Idol of Shri Swaminathaswami Swaminathaswami Thirukoli and Ors. . The facts in the last noted decision depict that Somasundaram Pillai died in September, 1950. The Legatees Sellathachi and another had come into possession of the properties. Janaka Thathachi died in the year 1960. In 1970, Sellathachi had appointed a power of attorney-holder who had alienated the suit properties and the appellants had purchased them under registered sale deed. The suit was filed for declaration that the legatees having succeeded to limited estate under the will, the alienations made by Sellathachi were illegal. The Trial Court decreed the suit. The learned Single Judge allowed the appeal and dismissed the suit and in LPA No. 161/88 dated July 2, 1992, the Division Bench of the High Court set aside the decree of the single Judge holding that the legatees had succeeded to restricted estate under Sub-section 2 of Section 14 of the Hindu Succession Act. 1956 (for short, the "Act") and that, therefore, their rights have not blossomed into absolute estate. The question before this Court was whether the widow had become the absolute owner under Section 14(1). This Court held that the right to maintenance stands as a charge on her husband's property and can be termed to be pre-existing legal right which stands transformed into absolute right in terms of Section 14(1) of the Act (of 1956. This Court held that the right to maintenance to a Hindu female receives statutory recognition under the Hindu Adoption and Maintenance Act, 1956 and she is entitled to realise maintenance from the property of her husband and even in the hands of stranger except the bonafide purchaser for value.

51. It may be noted here that even though strong reliance was placed on this decision but by reason of the contextual facts as noticed above the decision is clearly distinguishable since re-marriage in 1953 as noted above makes all the difference having due regard to the Act of 1856.

52. In Lakhmi Chand v. Mt. Anandi AIR (1935) Privy Council 180 similar is the treatment of Hindu Law about the widow's estate by reason of subsequent unchastity. The law as declared by the Privy Council in ILR 5 Calcutta thus stands well accepted.

53. Two other decisions of this Court were strongly relied upon by the Respondent. The first of the two is the decision in the case of Vimala (K) v. Veeraswamy (K). . This Court while dealing with an application under Section 125 of the Criminal Procedure Code observed that the object of Section 125 is to prevent vagrancy and destitution and provides a remedy for supply of food, clothing and shelter to the deserted wife and when an attempt is made by the husband to negative the claim of a neglected wife depicting her as a kept-mistress on the subsequent specious plea that he was already married, the Court would insist on strict proof of earlier marriage. This Court observed: "Therefore, the law which disentitles the second wife from receiving maintenance from her husband under Section 125 Cr.P.C. for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children. We are unable to find that the Respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. We are, therefore, unable to agree that the appellant is not entitled to maintenance." Relying upon the observation of this Court the learned Advocate contended that the social obligation to maintain the

wife thus, cannot be negated. We, however, while concurring with the broad principles of law, express our inability to agree with the contentions as raised in the present appeal in the present factual situation as discussed above. The observations of this Court were made vis-a-vis Section 125 of Cr.P.C. and cannot possibly lend any assistance in the matter of interpretation of Section 14(1) of 1956 Act or Section 2 of the Act of 1856.

54. Incidentally, Section 24 of the Succession Act of 1956 placed certain restrictions on certain specified widows in the event of there being a remarriage: while it is true that Section speaks of a pre-deceased son or son of a pre-deceased son but this in our view is a reflection of the Shastric law on to the statute. The Act of 1956 in terms of Section 8 permits the widow of a male Hindu to inherit simultaneously with the son, daughter and other heirs specified in class I of the Schedule. As a matter of fact she takes her share absolutely and not the widow's estate only in terms of Section 14. Re-marriage of a widow stands legalised by reason of the incorporation of Act of 1956 but on her re-marriage she forfeits the right to obtain any benefit from out of her deceased husband's estate and Section 2 of the Act of 1856 as noticed above is very specific that the estate in that event would pass on the next heir of her deceased husband as if she were dead. Incidentally, the act of 1856 does not stand abrogated or repealed by the Succession Act of 1956 and it is only by Act 24 of 1983 that the Act stands repealed. As such the Act of 1856 had its fullest application in the contextual facts in 1956 when Section 14(1) of the Hindu Succession Act was relied upon by Defendant No. 1.

55. The other ground of objection raised by Mr. Nageshwara Rao i.e. the plea of limitation: Limitation is a mixed question of law and fact and on the issue of limitation B.P. Jeevan Reddy, J. as the first appellate Court in the instant matter had the following to state:

The last question that remains to be considered, pertains to bar of limitation. This issue has been considered by the trial court under issue No. 12 and it found that the suit is not barred, in-so-far as defendants 1-7 are concerned, but that it is barred as against the 8th defendant (alleged adopted son of the 1st defendant) and 9th defendant. This is for the reason that the 8th defendant was not originally impleaded only on 29.12.1971 in pursuance to an order of the court in IA No. 2657/71. But it must be noticed that the alleged adoption was made on 30.11.1965, while the present suit was instituted on 1.10.1965. The sale deed in favour of defendants 3,4 and 9, is dated 10.1.1966 under a notice (Ex.B-36) and that, once they came to know of the adoption, they ought to have filed a suit for declaration (that the said adoption is not true or valid) within three years of the adoptions or at any rate, within three years of their knowledge of the adoption; since the 8th defendant has been impleaded only on 29.12.1971, and because of Section 21 of the Limitation Act the suit must be deemed to have been instituted as against the 8th defendant only on the date of such impleading, the suit must be held to be barred as against the 8th defendant. The said argument, however, fails to take notice of the provisions contained in Sub-section (2) of Section 21, which provides that nothing in Sub-section (1) of Section 21 shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit. Since the adoption has been made pending the suit, and also because the alienation in favour of the 9th defendant is pending the suit, the provisions contained in Sub-section (1) of Section 21 that the suit shall be deemed to be instituted as against the impleaded party only on the date of such impleadings, is inapplicable. If so, it cannot be said that the suit is barred by Article 113 of the Limitation Act. In fact, the Trial Court has found that no such adoption ever took place, and which finding is not questioned in this appeal. It cannot therefore, be said that the suit is barred by limitation.

56. We do feel it expedient to record our concurrence therewith and as such come to the conclusion

that the suit cannot be termed to be barred by the laws of limitation.

57. Having considered the matter from all perspectives, we do feel it expedient to record that the Division Bench of the Andhra Pradesh High Court clearly fell into an error in not considering the true effect of Section 2 of the Act of 1856. According to us final decision rendered by the learned Single Judge on non-applicability of Section 14(1) of the Hindu Succession Act remains well sustained, though on a different line of reasoning as indicated hereinabove. Accordingly, it must be held that the Division bench was in error in applying Section 14(1) of the Hindu Succession Act on the fact situation in the present case.

58. We, therefore, allow this appeal and set aside the order of the Division bench. The order as passed by the learned Single Judge stands restored. No order as to costs.