



CHILDREN BORN FROM A VOID SECOND MARRIAGE: RIGHTS IN PARENTAL, ANCESTRAL AND COPARCENARY PROPERTY UNDER HINDU LAW

Hanamant Karanure* Vikrant Surya*

ABSTRACT

Section 16 of the Hindu Marriage Act, 1955 protects the legitimacy of children born from void and certain voidable marriages. The difficult question is the extent of the property rights created by that statutory legitimacy. Earlier Supreme Court decisions restricted such children to the self-acquired property of their parents. A three-Judge Bench in Revanasiddappa v Mallikarjun reconsidered that approach in 2023 and clarified that the child is entitled to a share in the parent's property, including the parent's ascertainable share in Hindu joint family property, but does not become a coparcener by birth in the larger Hindu Undivided Family. This article examines the distinction between the status of a second wife and the rights of her children, the effect of Section 16 of the Hindu Marriage Act and Sections 6 and 8 of the Hindu Succession Act, 1956, and the relevance of Karnataka decisions reported in ILR. It argues that the present position is best understood by separating legitimacy, coparcenary status and succession to parental property.

Keywords: Hindu Marriage Act, Section 16, Void Marriage, Second Marriage, Children of Void Marriage.

INTRODUCTION

A second Hindu marriage solemnised while a valid first marriage subsists is ordinarily void under Sections 5(i) and 11 of the Hindu Marriage Act, 1955 (HMA). The invalidity of the marriage, however, is not treated as a basis for depriving the child of legal status. Section 16(1)

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declares such a child legitimate, while Section 16(3) limits the statutory property protection to the property of the parents and excludes property of persons other than the parents.¹

The central question is therefore narrower than whether a child of a void marriage is “legitimate”. The real issue is: what constitutes the “property of the parents” when the parent has an interest in ancestral or coparcenary property? The answer has evolved considerably. The Supreme Court’s earlier decisions in *Jinia Keotin v. Kumar Sitaram Manjhi*, *Neelamma v. Sarojamma* and *Bharatha Matha v. R. Vijaya Renganathan* adopted a restrictive approach.² The subsequent three-Judge Bench decision in *Revanasiddappa v. Mallikarjun* provides the controlling framework today.³

STATUTORY SCHEME AND THE STATUS OF THE CHILD

Section 5(i) of the HMA requires that neither party to a Hindu marriage have a spouse living at the time of the marriage. A marriage contracted in breach of this condition is void under Section 11. Section 16 nevertheless creates a statutory fiction of legitimacy for children who would have been legitimate if the marriage had been valid.⁴

The legal status of the second wife and the legal status of the child must be kept separate. The voidness of the marriage does not confer on the second wife the same succession rights as a legally wedded wife merely because she cohabited with the man. The child, however, receives the statutory protection of Section 16. In *Parayankandiyal Eravath Kanapraavan Kalliani Amma v. K. Devi*, the Supreme Court recognised the significance of this statutory protection in relation to succession to parental property.⁵ Thus, the law does not simply transfer the disability of the parents’ marriage to the child. At the same time, Section 16(3) prevents the statutory fiction from creating a claim against property belonging to grandparents or other relatives.

EARLIER SUPREME COURT POSITION

The earlier line of authority interpreted Section 16(3) narrowly. In *Jinia Keotin*, the Supreme Court held that statutory legitimacy did not place children of a void marriage on the same

¹ Hindu Marriage Act, 1955, U/sec. 5(i), 11, 16.

² *Jinia Keotin v. Kumar Sitaram Manjhi*, (2003) 1 SCC 730; *Neelamma v. Sarojamma*, (2006) 9 SCC 612; *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483.

³ *Revanasiddappa v. Mallikarjun*, 2023 SCC OnLine SC 1087 (India).

⁴ Hindu Marriage Act, 1955, § 16(1)–(3).

⁵ *Parayankandiyal Eravath Kanapraavan Kalliani Amma v. K. Devi*, (1996) 4 SCC 76.

footing as children of a valid marriage for inheritance in ancestral property.⁶ Neelamma followed that approach.⁷ In *Bharatha Matha*, the Court reiterated that a child of a void or voidable marriage could succeed to the parents' self-acquired property but could not claim inheritance in ancestral coparcenary property.⁸ This position produced a sharp distinction between self-acquired and ancestral property. It also generated a doctrinal question: Section 16(3) refers to the "property of the parents", without expressly adding the words "self-acquired". The conflict became particularly significant in Karnataka, where the High Court had adopted a broader interpretation.

KARNATAKA HIGH COURT: SAROJAMMA AND KENCHEGOWDA

In *Smt. Sarojamma v. Smt. Neelamma*, the Karnataka High Court considered children born from a void second marriage and held that the expression "property of the parents" could not simply be confined to self-acquired property. The Court treated the statutory purpose of Section 16 as requiring protection in the parents' joint family property, subject to the statutory limitations.⁹ The decision is reported as ILR 2005 KAR 3293 and 2005 (5) Kar LJ 66.¹⁰ The issue was also considered in *Sri Kenchegowda v. K.B. Krishnappa*, reported at ILR 2008 KAR 3453. The case became part of the background to the Supreme Court's reference in *Revanasiddappa*.¹¹ These Karnataka authorities are important historically, but their propositions must now be read subject to the later three-Judge Bench judgment of the Supreme Court.

REVANASIDDAPPA v MALLIKARJUN: THE PRESENT POSITION

In 2011, a two-Judge Bench in *Revanasiddappa v. Mallikarjun* questioned the correctness of *Jinia Keotin*, *Neelamma* and *Bharatha Matha* and referred the issue for consideration by a larger Bench.¹² The reference was finally answered by a three-Judge Bench on 1 September 2023.¹³ The Court drew a crucial distinction between a child's right to the parent's property and a birth-based coparcenary right in the larger HUF. A child covered by Section 16 is entitled to the

⁶ *Jinia Keotin v. Kumar Sitaram Manjhi*, (2003) 1 SCC 730.

⁷ *Neelamma v. Sarojamma*, (2006) 9 SCC 612.

⁸ *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483.

⁹ *Smt. Sarojamma v. Smt. Neelamma*, ILR 2005 KAR 3293.

¹⁰ *Smt. Sarojamma v. Smt. Neelamma*, 2005 (5) Kar LJ 66.

¹¹ *Sri Kenchegowda v. K.B. Krishnappa*, ILR 2008 KAR 3453; see also *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1.

¹² *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1.

¹³ *Revanasiddappa v. Mallikarjun*, 2023 SCC OnLine SC 1087; 2023 INSC 783.

parent's share in Hindu joint family property, but the child does not become a coparcener by birth in that HUF. The reason is that conferring an independent birth interest in the entire coparcenary would affect the rights of persons other than the parents, contrary to Section 16(3). Accordingly, the correct formulation is not that such children are wholly excluded from ancestral property, nor that they become coparceners in the entire ancestral estate. Their entitlement is through the property or share attributable to the parent.

ANCESTRAL AND COPARCENARY PROPERTY: HOW THE SHARE IS WORKED OUT

Where the father is a Mitakshara coparcener, the first task is to identify the father's legally ascertainable share. The Hindu Succession Act, particularly Section 6 as amended in 2005, governs the devolution of a deceased coparcener's interest. The notional-partition mechanism is used to determine the interest that would have devolved on the father immediately before death.¹⁴

Once that parental share is identified, succession to it is governed by the applicable provisions of the Hindu Succession Act. A child whose legitimacy is protected by Section 16 may therefore participate in succession to the father's property, but the child does not claim the whole joint family property as a coparcener. This distinction is especially important in partition suits. A pleading that merely asserts "coparcenary rights by birth" may inaccurately describe the present legal position. The safer formulation is to identify the father's share, determine whether it has devolved, and then assert the child's succession rights in that parental share.

CAN THE CHILD CLAIM THE GRANDFATHER'S PROPERTY DIRECTLY?

Section 16(3) expressly prevents a child from claiming rights in property of a person other than the parents merely because the child is treated as legitimate. Therefore, a child of a void second marriage cannot ordinarily claim a direct share in the grandfather's property solely through the relationship with the father.¹⁵

The position becomes more nuanced where property once held by the grandfather has devolved upon the father. In such a case, the legal character of the property and the manner of devolution must be determined. The court must identify what actually became the father's property and

¹⁴ Hindu Succession Act, 1956, U/Sec.6.

¹⁵ Hindu Marriage Act, 1955, U/Sec.16(3); Revanasiddappa, 2023 SCC OnLine SC 1087.

what remained joint family property with other coparceners. The 2023 Revanasiddappa judgment makes the parental-property limitation central to this inquiry.

SELF-ACQUIRED PROPERTY OF THE FATHER

The position concerning the father's separate or self-acquired property is comparatively straightforward. Section 16 protects the child's legitimacy for succession to parental property. If the father dies intestate, the child can participate in succession to his estate under the Hindu Succession Act, subject to the facts and the other surviving heirs.¹⁶ The invalidity of the father's second marriage therefore does not, by itself, exclude the child from succession to the father's separate property. The critical statutory limitation is that the claim is against the parent's property and not against property belonging to another relative.

CONCLUSION

The judicial history of Section 16 shows a movement from a restrictive understanding of the child's proprietary rights to a more precise distinction between parental property and the larger coparcenary. The 2023 three-Judge Bench decision in *Revanasiddappa v Mallikarjun* is now the central authority.

The present position may be stated in four propositions. First, a child covered by Section 16 is treated as legitimate for the statutory purposes contemplated by the provision. Second, the child can inherit the father's separate property in accordance with the Hindu Succession Act. Third, where the father has an interest in coparcenary property, the child may claim through the father's ascertainable share, but does not become a coparcener by birth in the entire HUF. Fourth, Section 16(3) does not create a direct claim against the property of grandparents or other persons.

For litigation, the distinction between "coparcenary right by birth" and "succession to parental property" is therefore decisive. The present law protects the child without enlarging Section 16 into a statutory source of direct rights against property belonging to persons other than the parents.

¹⁶ Hindu Succession Act, 1956, U/Sec. 8, 10; Hindu Marriage Act, 1955, U/Sec.16.