Jayachandran and Another Vs. Valsala and Others

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Court : Kerala

Decided On : Mar-03-2016

Judge : Antony Dominic &Amp; A. Hariprasad

Appeal No. : AS. No. 520 of 2000

Appellant : Jayachandran and Another

Respondent : Valsala and Others

Judgement :

Hariprasad, J.

1. This appeal is boarded before us by way of a reference. In the reference order, the learned Single Judge has observed that the ratio in Shyamalavalli Amma v. Kavalam Jisha (2007 (3) KLT 270) is irreconcilable with that in Narayani v. Aravindakshan (2005 (4) KLT 1) because the learned Single Judge, while disposing of Shyamalavalli Amma's case, did not advert to the judgment in Narayani's case. Learned Single Judge doubted the pronouncement in Shyamalavalli Amma's case, by placing reliance on the decision by the Supreme Court in Kalliani Amma v. K.Devi (1996 (2) KLT 42) too.

2. The defendants in O.S.No.916 of 1995 on the file of the Principal Sub Court, Thrissur are the appellants and the plaintiffs are the respondents.

3. We shall narrate the facts, in nut shell, for a clear understanding of the disputes. The suit is one for partition. There are 32 items of immovable properties scheduled to the plaint. It is averred in the plaint that the properties belonged to Vaikkattil Krishnankutty. Until his death, he was in possession of the properties and was taking income therefrom. Krishnankutty's first wife was Valliyamma. Vaikkattil Madhavan was the son born to Krishnankutty and Valliamma. Shortly after Madhavan's birth, Krishnankutty and Valliamma separated. Later, he married Rugmini. In the said marriage, two children, Jayachandran and Tarabai, were born. They are the original defendants in the suit. Krishnankutty's son Madhavan died. His children are plaintiffs 1 to 4 and his wife is the 5th plaintiff. Pending the appeal, Tarabai died. Her legal heirs are impleaded as additional appellants 3 to 8. Plaintiffs' predecessor-in-interest Madhavan died on 17.01.1973. Before his death, his putative father Krishnankutty died. Parties are Hindus, governed by the Hindu Succession Act, 1956. After the death of Krishnankutty and his son Madhavan, the plaint schedule properties devolved on the plaintiffs and defendants in joint right and they are co-owners. Plaintiffs contended that they have one third right over the plaint schedule properties. As the defendants did not give any share of profits to the plaintiffs for a couple of years before the suit, they demanded partition by sending a registered lawyer notice. The defendants caused to issue a reply notice raising false contentions. The stand taken by the defendants in the reply notice that there was no relationship between Krishnankutty and Valliamma, that Valliamma was not the wife of Krishnankutty, that Madhavan was not the son of Krishnankutty and that Krishnankutty had only one wife by name Rugmini (mother of the defendants) are all false.

4. The defendants filed a written statement. The averment in the plaint that deceased Krishnankutty had married Valliamma is untrue. Krishnankutty had only one wife and that was Rugmini, mother of the defendants. Krishnankutty had no relationship with Valliamma and Madhavan was not born to Krishnankutty through Valliamma. There was no occasion for Krishnankutty to desert Valliamma, as he had no relationship with her. During the life time of Krishnankutty, deceased Madhavan never raised a claim attributing paternity to Krishnankutty. Plaintiffs have no right over the plaint schedule properties. They are not entitled to get partition of the properties. The defendants, at no point of time, shared profits with the plaintiffs. The averments in the plaint are intended to obfuscate the real matters. Out of 32 items mentioned in the plaint, which items belonged to Krishnankutty and which belonged to Rugmini has not been clearly stated. That is done with an intention to defeat the rights of the defendants. The defendants and their successors-in-interest have partitioned the properties as per registered partition deeds. The suit is bad for non-joinder of necessary parties. The suit is filed without any bonafides and it is liable to be dismissed.

5. Before the trial court, four witnesses were examined on the side of the plaintiffs and two witnesses on the side of the defendants. Exts.A1 to A5 and B1 to B10 are the documents produced and proved on the respective sides. Exts.X1 and X2 series were also marked. Trial court, on an evaluation of the evidence, found that deceased Madhavan is the son of deceased Krishnankutty. Other contentions raised by the defendants were also repelled and a preliminary decree for partition was passed.

6. We heard Sri.Narayanan, the learned counsel for the appellants and Sri.Sreekumar G., the learned counsel for the respondents.

7. After hearing the learned counsel on both sides and on a careful scrutiny of the evidence in this case, we, with tremendous respect to the learned Single Judge, are of the considered opinion that the reference itself was unnecessary in the factual and legal background of this case. We shall state the reasons therefor in the succeeding paragraphs.

8. Let us examine the facts and the law in Shyamalavalli Amma's case. Padmanabhan Nambiar married the 1st appellant in 1966. Appellants 2 to 4 (defendants 3 to 5) were born in the wedlock. 5th respondent is the mother of Padmanabhan Nambiar. Appellants 6 to 8 are assignees of properties from appellants 1 to 5. 1st respondent is the daughter of 2nd respondent, who was the 1st defendant in the suit. According to the respondents, Padmanabhan Nambiar married the 2nd respondent on 21.06.1975 at her residence and the 1st respondent is the child born in that wedlock. The plaint schedule properties originally belonged to deceased Padmanabhan Nambiar. On his death, it devolved on appellants 1 to 5 and respondents as his legal heirs. With these averments a suit for partition was filed. The 2nd respondent also claimed a share in the property of deceased Padmanabhan Nambiar, contending that she was his legally weded wife. It was also contended that Padmanabhan Nambiar's marriage with the 1st appellant was not in accordance with the custom and, therefore, she was not entitled to a share. Appellants contended that there was no marriage between Padmanabhan Nambiar and the 2nd respondent. It was their definite contention that the 2nd respondent was not the legally weded wife of Padmanabhan Nambiar. It was further contended that the 1st respondent is not the legitimate daughter of deceased Padmanabhan Nambiar. She was not entitled to any share as legal heir of deceased Padmanabhan Nambiar. Trial Judge, after considering the evidence, dismissed the suit. First appellate Judge, on a re-appreciation of evidence, upheld the finding of the trial court that there was no marriage between deceased Padmanabhan Nambiar and the 2nd respondent. But, the first appellate court held that the 1st respondent, although an illegitimate daughter, is entitled to a share in the plaint schedule properties. Hence, a preliminary decree was accordingly passed. The matter was brought up before this Court in a second appeal. Learned Single Judge formulated substantial questions of law and the one relevant for us is thus: Whether the lower appellate court was correct in granting a share to the first respondent after holding that there was no solemnization of marriage between deceased Padmanabhan Nambiar and the 2nd respondent? While answering the above question, the learned Single Judge, based on Section 16 of the Hindu Marriage Act, 1955 (in short, the Act hereinafter) held as follows:

In law, in order to attract S.16(1)of the Act there should have been a solemnization of marriage between Padmanabhan Nambiar and second respondent and that marriage should have been null and void for contravention of any of the conditions specified in clause (i) or clause (iv) or clause (v) of S.5 as provided under S.11 of the Act. When on the evidence, Courts below found that there was no solemnization of marriage whatsoever between Padmanabhan Nambiar and second respondent, first respondent is not entitled to claim that she is entitled to inherit to the properties of the father as provided under S.16(1) of the Act. She would have been entitled to a share if there was a solemnization of marriage between Padmanabhan Nambiar and second respondent and that marriage was void as provided under S.11 for the reason that it violated either of the conditions specified in clauses (i),(iv) or (v) of S.5. When there was no solemnization of marriage at all, S.16(1) has no application.

Accordingly, this Court found that the 1st respondent was the illegitimate daughter of deceased Padmanabhan Nambiar and she was not entitled to a share in his property. The decree passed by the lower appellate court was reversed and that of the trial court was restored.

9. While making the reference, learned Single Judge doubted the proposition of law extracted above. It is also observed that the ratio in the above decision goes against the principles in Narayani's case. Narayani's case also came up before this Court in the form of a second appeal. Facts therein show that one Ramunni died intestate on 25.02.1974. Deceased 1st defendant was his widow. Defendants 2 to 4 are their children. Plaintiff and defendants 5 to 8 are admittedly the children of Ramunni born through one lady by name Kallyani, who was not a party to the suit, but was examined as a witness. The suit was one for partition. The appellants contended that there was no valid marriage between Ramunni and Kallyani and therefore, the plaintiff and defendants 5 to 8 were illegitimate children of Ramunni. Hence, they were not entitled to succeed to his estate. It is mentioned in the judgment that on the basis of evidence on record, the trial court found that Ramunni and Kallyani (PW2) had undergone the ceremonies of a marriage in the year 1957. However, it was held that the same was void by operation of Section 11 read along with Section 5(1) of the Act. It was an undisputed fact that Ramunni had a spouse living at the time of his marriage with Kallyani. In the light of these facts, the questions posed in the second appeal were answered. The learned Single Judge discussed the legal effect of Section 16 of the Act and held that status of legitimacy of a child is part of the incidents of birth. It is not the ratio in Narayani's case that the factum of a void or voidable marriage need not be proved for attracting Section 16 of the Act. The principle of law in Shyamalavalli Amma's case, that in order to get the benefit of Section 16 of the Act, the factum of marriage, either void or voidable, has to be proved, never goes against the legal principles stated in Narayani's case. On a careful examination, we are unable to find any incongruity or irreconcilability between these decisions.

10. Section 16 of the Act, as it stood originally, read as follows:

16. Legitimacy of children of void and voidable marriages:

Where a decree of nullity is granted in respect of any marriage under S.11 or S.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 it had been dissolved instead of having been declared null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity:

Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared null and void or annulled by a decree of nullity 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.

At present, ie., after substitution of the provision by Act 68 of 1976, the Section reads as follows:

16.Legitimacy of children of void and voidable marriages.- (1) Notwithstanding that the 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, 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.

The Law Commission of India, in its 59th report on Hindu Marriage Act, 1955 and Special Marriage Act, 1954 had revisited various provisions interalia Section 16 of the Act and observed that it should not be a condition precedent to the applicability of the beneficial provision in Section 16 of the Act that there must have been actual legal proceedings resulting in a decree. Therefore, it was recommended that condition in the original Section 16 of the Act, that a decree of nullity must have been granted in order to apply the Section, should be removed. Various views on these aspects were considered and a comprehensive report was submitted. Pursuant to that, Section 16 was substituted.

11. Supreme Court in Kalliani Amma's case has held that the mischief or vice, which was the basis of unconstitutionality of the original Section 16 of the Act, has been effectively removed by the present provision. In the said decision, the Apex Court considered Section 16 of the Act in its original form and also the present Section and further, the judicial pronouncements touching upon the subject. Following excerption therefrom is profitable:

50. The requirements for the applicability of S. 16 (as originally enacted), which protected legitimacy, were that:

(i) there was a marriage;

(ii) the marriage was void under S. 11 or voidable under S. 12.

(iii) there was a decree annulling such marriage either under S. 11 or under S. 12.

(iv) the child was begotten or conceived before the decree was made.

51. A marriage would be null and void if it was solemnized in contravention of clauses (i), (iv) and (v) of S. 5. Cl. (i) prohibits a marriage if either party has a spouse living at the time of marriage. Cl. (iv) prohibits a marriage if the parties are not within the degrees of prohibited relationship while cl. (v) prohibits a marriage between parties who are in the 'sapindas' of each other. A marriage in any of the above situations was liable to be declared null and void by a decree of nullity at the instance of either party to the marriage. S. 16 was intended to intervene at that stage to protect the legitimacy of children by providing that children begotten or conceived before the making of the decree would be treated to be legitimate and they would inherit the properties of their parents, though not of other relations.

Supreme Court noticed the non-obstante clause occurring in the present Section 16 of the Act and held that a non-obstante clause is some times appended to the Section in the beginning with a view to give the enacting part of the Section, in case of conflict, an overriding effect over the provision or Act mentioned in that clause. The Supreme Court further observed:

78. The words "notwithstanding that a marriage is null and void under S. 11" employed in S. 16 (1) indicate undoubtedly the following:-

(a) Section 16(1) stands delinked from S. 11. (b) Provisions of S. 16(1) which intend to confer legitimacy on children born of void marriages will operate with full vigour in spite of S. 11 which nullifies only those marriages which are held after the enactment of the Act and in the performance of which S. 5 is contravened.

(c) Benefit of legitimacy has been conferred upon the children born either before or after the date on which S. 16 (1) was amended.

(d) Mischief or the vice which was the basis of unconstitutionality of unamended S. 16 has been effectively removed by amendment.

(e) S. 16(1) now stands on its own strength and operates independently of other sections with the result that it is constitutionally valid as it does not discriminate between illegitimate children similarly circumstanced and classifies them as one group for conferment of legitimacy.

79. S. 16, in its present form, is, therefore, not ultravires the constitution.

80. S. 16 contains a legal fiction. It is by a rule of fictio juris that the legislature has provided that children, though illegitimate, shall nevertheless, be treated as legitimate notwithstanding that the marriage was void or voidable.

12. The pronouncement in Kalliani Amma's case was in the factual background that the dispute related to succession of deceased Raman Nair. Facts revealed that deceased Raman Nair married the 1st appellant and the marriage took place at a time when his first wife Ammu Amma was alive. The resultant question was whether appellants 2 to 6, who were children born in the second marriage, would inherit any share in the properties of deceased Raman Nair. It is very important to note that the facts in Kalliani Amma's case clearly show that deceased Raman Nair had married Kalliani Amma (1st appellant) and the factum of a second marriage was not in dispute. In the said factual matrix, the law mentioned above was laid down by the Supreme Court. The Apex Court had made no observation in the above decision to deduce that in respect of a claim under Section 16 of the Act the fact of solemnization of a marriage - whether void or voidable - need not be proved.

13. Sri.Sreekumar, the learned counsel for the respondents, supported the view expressed by the learned Single Judge in the reference order by contending that Section 16 of the Act would operate even in the absence of proof of a void marriage. In other words, it is the contention of the respondents that since a void marriage is a nullity from its inception and does not exist in the eye of law, the question whether a void marriage had taken place or not is inconsequential, insofar as a claim of right under Section 16 of the Act is concerned. According to Sri.Sreekumar, the view expressed by the learned Single Judge in Shyamalavalli Amma's case is not correct. Sri.Sreekumar further contended that as a void marriage does not exist in the eye of law, insistence on the ceremony of an invalid marriage is futile.

14. For a host of reasons, we are unable to accept these contentions of the learned counsel for the respondents. Firstly, Section 16 of the Act confers legitimacy of children of void and voidable marriages. In other words, Sub-section (1) of Section 16 of the Act deals with a marriage, which is null and void under Section 11 of the Act and Sub-section (2) therein deals with a voidable marriage annullable under Section 12 of the Act. The legal distinction between void and voidable marriages will have to be borne in mind. It may be true that a void marriage does not exist in the eye of law. Nevertheless, a voidable marriage operates with full vigour and has legal effect, if not annulled by taking recourse to Section 12 of the Act. These two types of marriages are dealt with in Section 16 of the Act. Well settled principle of interpretation of statute is that the intention of the legislature must be found in the words used by the legislature itself. Supreme Court in Reserve Bank of India v. Peerless General Finance and Investment Co.(AIR 1987 SC 1023) held:

Interpretation must depend on the text and context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best, which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.

Viewing from any perspective, we are unable to think that the legislature intended no legal consequence for using the expression marriage , which may be null and void, in Section 16 of the Act.

15. Secondly, the Hindu Marriage Act, 1955 is an Act to amend and codify the law relating to marriage among Hindus. The legislature did not venture to define the expression marriage in the Act, rightly so, because the intent and purport of the term was well known to a civilized society. Section 4 of the Act speaks about the overriding effect of the Act on 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 the Act. It declares that they shall cease to have effect with respect to any matter for which provision is made in the Act. Section 5 of the Act deals with the conditions for a Hindu marriage. Section 7 of the Act says about the ceremonies for a Hindu Marriage. It says that a Hindu marriage may be solemnized in accordance with the customary rites or ceremonies of either party thereto. If such rites and ceremonies include saptapadi , the marriage becomes complete and binding when the seventh step is taken. On a reading of Section 11 of the Act, it is clear that any marriage solemnized after the commencement of the Act shall be null and void, if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the Act. It further says that it may be so declared by a decree of nullity on a petition presented by either party to the marriage. It is fundamental that for declaring a thing to be non est in the eye of law, the thing must exist. Conversely, no legal declaration can be made in respect of a thing which does not exist. For example, an assignment deed executed by a person who is not sui juris, either on account of his minority or mental illness, is undoubtedly a void document. To declare that it is a void document, it must have been executed. Black hole theory in the realm of Astronomy that no matter, including an electromagnetic radiation, such as light, can exist in a black hole due to strong and excessive gravitational effect, has no application in the field of law. Therefore the contention of the learned counsel for the respondents that whether a void marriage is performed or not is immaterial for the purpose of Section 16 of the Act is unacceptable.

16. Thirdly, the proposition that no marriage need be pleaded or proved to attract Section 16 of the Act is paradoxical to the object of the enactment. Even though Section 16 of the Act is held to be a beneficial legislation, it cannot be stretched that far. The object of the Act is to protect children born to Hindus, once it is proved that they performed the ceremony of a marriage, in whatever form it be, although ultimately it may later turn out to be a void marriage.

17. Fourthly, object of the Act to amend and codify the law relating to marriage among Hindus. As mentioned earlier, we are unable to think for a moment that the expression marriage occurring in Section 11 of the Act denotes a non-existing marriage. Marriage, according to Hindu Law, is a sacrament. Until the Protection of Women from Domestic Violence Act,2005 was enacted, the ethos of Indian Society never accepted the living in relationship between a man and a woman. Even in the 2005 Act, only some restricted rights are conferred on women in such relationships. At any rate, the concept in the said secular enactment cannot be imported to Hindu Marriage Act being a personal law. When a marriage is performed between two Hindus and when there arises a dispute relating to its validity with reference to Section 5 of the Act, then only the question of granting a declaration claimable under Section 11 of the Act arises. In order to have a legal effect to the expressions void occurring in Section 11 of the Act, voidable mentioned in Section 12 of the Act and divorce explained in Section 13 of the Act in respect of a Hindu marriage, essentially there must be a marriage between two persons. Section 11 of the Act declares the nullity of marriage, if it contravenes the relevant provisions in Section 5 of the Act. Section 12 of the Act enables a party to seek annulment of a marriage, if any of the grounds mentioned therein are established. Section 13 of the Act deals with the concept of divorce, which can be claimed by any of the parties to a valid marriage. In the case of a void marriage, although it does not exist in the eye of law, to dispel a cloud or blemish on the status of the parties, a declaration to the effect

that the marriage performed between them is null and void, is obtainable under Section 11 of the Act. In the case of a voidable marriage coming under Section 12 of the Act, if the parties do not seek its annulment, it remains a valid marriage for all legal purposes. However, a party who has an option to avoid a marriage, may take recourse to Section 12 of the Act. In order to get a divorce under Section 13 of the Act, one of the enumerated grounds should exist in favour of a party to a valid marriage. Therefore, there is no provision in the Act enabling a party to get either declaration or annulment or divorce without proving the factum of marriage.

18. Lastly, the precedential principles also fortify our view. Supreme Court in Surjit Kaur v. Garja Singh (AIR 1994 SC 135), although in a different factual setting, has held that living together as husband and wife by itself would not confer the status of husband and wife. There exists a proposition that long co-habitation of a man and a woman may give rise to a presumption of marriage. But, that principle has no application after the commencement of the Act if a Hindu co-habits with a lady for a long time during the subsistence of his first marriage. A Division Bench of the High Court of Madras in G.Sekar v. Geetha ((2007) 3 MLJ 1029) has observed thus:

..... Merely on the basis of the assertion made in the written statement filed by him alleging that Govinda Singh had married for second time and had begotten three children is not sufficient to come to the conclusion that in fact there was a second marriage. In view of this, the question of applying Section 16 of the Hindu Marriage Act does not arise at all for consideration.

Another Division Bench of the Madras High Court in M.Muthayya v. Kamu and others ((1981) 1 MLJ 107) has categorically held that in the absence of proof of solemnization of a marriage, children born in the relationship cannot be treated as legitimate children in the purview of Section 16 of the Act. In the same lines, Delhi High Court in Sudershan Karir v. State (AIR 1988 Delhi 368) and the Orissa High Court in Laxmi Sahoo v. Chaturbhuj Sahoo (AIR 2003 Orissa 8) have rendered decisions. For the above reasons, we are of the firm view that the proposition propounded by the respondents that for attracting Section 16 of the Act, no void marriage need be proved is totally unacceptable.

19. Facts unfolded in this appeal, through the pleadings and oral evidence, show that no question under Section 16 of the Act does arise in this case. It is the case of the respondents/plaintiffs that deceased Madhavan was born to Vaikkattil Krishnankutty through his first wife Valliamma. Ext.X2 birth register shows that he was born in 1927. Section 11 of the Act declares that any marriage solemnized after the commencement of the Act (18.05.1955) shall be null and void, if it contravenes any one of the enumerated conditions in Section 5 of the Act. So, a marriage said to have taken place before 1927 is unaffected by Section 11 of the Act. So much so, a question under Section 16 of the Act does not arise in this case.

20. Another reason to hold that a reference was unnecessary is that deceased Madhavan's mother claimed to be the first wife of deceased Krishnankutty. Appellants' predecessor Rugmini, according to the contesting respondents, was the second wife. So, if at all a question under Section 16 of the Act did arise, that can only be in respect of Rugmini's marriage with Krishnankutty, in case the first marriage was established. None of the parties has raised a pleading in this regard. It is, therefore, clear that what is to be legally pleaded and proved in this case is that Madhavan was born to Krishnankutty through Valliamma in a lawful wedlock. The question of attracting Section 11 or Section 16 of the Act does not arise in this case going by the pleadings and evidence. Therefore, viewing from this angle also, the reference was unnecessary.

21. At the time of hearing, learned counsel on both sides admitted that the parties are governed by customary law and in the absence of pleading and proof of custom, the principles of Hindu Mithakshara Law will be applied to them as customary law. Pleadings in this regard are unsatisfactory. We find from Exts.B1 and B2 that the appellants/defendants and other persons, who claimed right over the properties, had entered into registered partition deeds and thereby divided the properties. None of the other sharers was impleaded in the suit. Apparently, the suit is hit by non-joinder of necessary parties. Further, we find that the court below

has not framed an issue regarding non-joinder of necessary parties. In spite of a specific pleading, the trial court failed in its duty in framing proper issues. That apart, the pleadings in the plaint and evidence are evasive as to which of the properties, out of 32 items, belonged to deceased Krishnankutty. It is rudimentary principle that a plaintiff claiming partition of a property should establish that he has a partible interest in the property. If the properties belonged to deceased Rugmini, certainly the respondents/plaintiffs have no right to get a partition. In this context, the derivation of title in respect of each item in the plaint schedule becomes important. We find no satisfactory pleadings and evidence to effectively adjudicate the issue. Still, the trial court passed a preliminary decree. We are aware of the principle that remand of a case shall not be done for trivial reasons. But, we are constrained to remand the case to the court below because of the failure on the part of it to raise and consider proper issues. Therefore, we answer the reference as follows: There is no conflict between the legal principles stated in Shyamalavalli Amma and Narayani's cases. The principles in Shyamalavalli Amma's case do not militate against the ratio in Kalliani Amma's case. We also find that the principles in Shyamalavalli Amma's case, that in order to attract Section 16 of the Act, a ceremony of marriage, whether void or voidable, will have to be pleaded and proved, are correctly laid and we approve the same. However, we find for the aforementioned reasons that factually and legally those questions do not arise in this case. We set aside the impugned judgment and decree of the trial court and remand the matter to the court below for raising proper issues and allowing the parties to adduce fresh evidence, if any, on the additional issues and dispose of the case in accordance with law, as expeditiously as possible, at any rate, within a period of six months from the date of receipt of the records. Parties are directed to appear before the court below on 28.03.2016.

All pending interlocutory applications will stand closed.