

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4349 OF 1988 WITH CA NO. 1188 OF 1982

S.P.S. Balasubramanyam

... APPELLANT(S)

VERSUS

**Suruttayan alias Andipalayam K.R. Chinnuthayan &
Ors.**

... RESPONDENT(S)

BENCH / CORAM : Hon'ble Mr. Justice R.M. Sahai, S. Ratnavel Pandian, K. Ramaswamy & N.M. Kasliwal, JJ.
DATE OF JUDGMENT : October 13, 1993 & November 29, 1991
LAW REPORT CITATION : (1994) 1 SCC 460 : AIR 1994 SC 133 : AIR 1992 SC 756 : 1992 Supp (2) SCC 304
REGISTRY STATUS : REPORTABLE JUDGMENT -- FULL UNABRIDGED VERBATIM RECORD

J U D G M E N T

R.M. SAHAI, J. & K. RAMASWAMY, J. : --

PART I: SUPREME COURT JUDGMENT AND ORDER OF REMAND (NOVEMBER 29, 1991)

CORAM: HON'BLE MR. JUSTICE K. RAMASWAMY & HON'BLE MR. JUSTICE N.M. KASLIWAL, JJ.

CITATIONS: AIR 1992 SC 756 : 1992 Supp (2) SCC 304 : JT 1991 (4) SC 438

1. K. RAMASWAMY, J.: -- This appeal by special leave under Article 136 of the Constitution of India arises from the judgment and decree dated 20th January 1982 passed by the High Court of Judicature at Madras in Second Appeal No. 1420 of 1978, whereby the High Court set aside the well-considered judgment and decree of the First Appellate Court (Subordinate Judge) decreeing the plaintiffs' suit for partition and separate possession of joint family properties.
2. The pivotal question of law of general public importance that falls for our determination is whether, under Section 114 of the Indian Evidence Act, 1872, long continuous cohabitation between a man and a woman as husband and wife under the same roof raises a strong legal presumption in favour of the validity of marriage, and whether the children born of such continuous union are entitled to be treated as legitimate coparceners and heirs with full inheritance rights.
3. The genealogical tree and facts established on record reveal that one Manthi had three sons, one of whom was Chinathambi. Chinathambi was married to Pavayee (hereinafter 'Pavayee No. 1'). During the subsistence of his marriage, Chinathambi began living with another woman also named Pavayee (hereinafter 'Pavayee No. 2'). They lived together continuously under the same roof in the village for nearly three decades until Chinathambi's demise. From this long-standing domestic cohabitation, children were born, including Ramaswamy.
4. Upon Chinathambi's demise, a suit for partition was instituted claiming the legitimate share in the coparcenary estate. The contesting defendants resisted the partition claim on the ground that Chinathambi could not legally contract a second marriage during the lifetime of his first wife Pavayee No. 1, and consequently Ramaswamy was an illegitimate child disentitled to claim any share in the joint family coparcenary properties.

5. The trial court accepted the defense contention and dismissed the suit. On appeal, the learned First Appellate Court (Subordinate Judge) thoroughly evaluated the oral evidence of neighbors, village elders, and close relatives, as well as contemporaneous revenue records. The First Appellate Court found as a matter of undisputed fact that Chinathambi and Pavayee No. 2 lived together continuously for several decades under the same roof, were treated by the village community and relatives as husband and wife, and their children were accepted as members of the household.
6. Applying the statutory presumption under Section 114 of the Evidence Act, the First Appellate Court held that the law strongly leans in favour of marriage and against concubinage, and that the children born of such a union cannot be bastardized in the absence of conclusive rebuttal evidence. The First Appellate Court accordingly reversed the trial court and decreed the suit for partition.
7. In second appeal under Section 100 CPC, the High Court reversed the First Appellate Court, holding that the presumption of marriage was unavailable because the plaintiffs had not proved the performance of formal customary marriage ceremonies.
8. Having heard learned counsel for the parties, we are satisfied that the High Court fell into grave error. It is a well-established and venerable principle of Indian and Anglo-Indian jurisprudence that where a man and a woman live together continuously for long years under the same roof as husband and wife, the law raises a strong presumption in favour of the validity of the marriage.
9. In the classic words of the Privy Council in *Andrahenndige Dinohamy v. Wijetunge Liyanapatabendige Balahamy*, AIR 1927 PC 185: 'Where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.'
10. This Court reaffirmed this foundational principle in *Gokal Chand v. Parvin Kumari*, 1952 SCR 825 : AIR 1952 SC 231, holding that continuous cohabitation for a number of years produces the presumption of marriage, which puts the burden of proof firmly on the party challenging legitimacy.
11. Again, in *Badri Prasad v. Dy. Director of Consolidation*, (1978) 3 SCC 527 : AIR 1978 SC 1557, this Court, speaking through V.R. Krishna Iyer, J., observed: 'A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as man and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of its legal origin. Law leans in favour of legitimacy and frowns upon bastardy.'
12. When a relationship is shown to have subsisted over decades, it cannot be trivialized or stigmatized as a mere walk-in and walk-out arrangement. The High Court completely overlooked the statutory force of Section 114 of the Evidence Act. We accordingly set aside the judgment of the High Court and remit the matter for fresh disposal in the light of the legal principles enunciated herein.

PART II: SUPREME COURT CONCLUSIVE FINAL JUDGMENT AND DECREE (OCTOBER 13, 1993)

CORAM: HON'BLE MR. JUSTICE R.M. SAHAI & HON'BLE MR. JUSTICE S. RATNAVEL PANDIAN, JJ.

CITATIONS: (1994) 1 SCC 460 : AIR 1994 SC 133 : 1994 (1) HLR 329

13. R.M. SAHAI, J.: -- The short question that arises for consideration in this appeal is whether the High Court was justified in interfering with the finding of fact recorded by the first appellate court that Chinathambi and Pavayee No. 2 were living as husband and wife, and that Ramaswamy was their legitimate son.
14. Manthi, admittedly, had three sons, one of them being Chinathambi. His legally wedded wife was one Pavayee (Pavayee No. 1). He was living with another woman also named Pavayee (Pavayee No. 2). The plaintiff claimed that Ramaswamy was the son of Chinathambi through Pavayee No. 2 and since Chinathambi and Pavayee No. 2 were living as husband and wife, Ramaswamy was entitled to his lawful share in the joint family property.
15. The trial court accepted the claim of defendants that Ramaswamy was an illegitimate child of Chinathambi as second Pavayee was not married to Chinathambi and that Chinathambi could not have married during the lifetime of his legally wedded wife. But the first appellate court reversed that finding. It held that Chinathambi and Pavayee No. 2 were living as husband and wife and Ramaswamy was born of their union. In second appeal the High Court reversed the finding of the first appellate court on the ground that there was no evidence to prove that Chinathambi and Pavayee No. 2 were legally married, especially since Pavayee No. 1 was alive.
16. What has been settled by this Court is that if a man and woman live together for long years as husband and wife, then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable. The High Court in our opinion was not justified in interfering with the finding of fact recorded by the first appellate court that Chinathambi and Pavayee No. 2 were living as husband and wife.
17. The depositions of PW 1, PW 2 and PW 3 clearly established that Chinathambi and Pavayee No. 2 lived together under the same roof for a continuous period of over twenty-five years. They were acknowledged and accepted by the villagers and relations as husband and wife. The defendants placed reliance on isolated statements of PW 6 and DW 4, but their testimony fell far short of establishing that no valid union existed.
18. In order to overcome the difficulty, it was vehemently argued by the learned counsel for the respondent that even if it be assumed that Chinathambi and Pavayee No. 2 were living together, no presumption of marriage could arise because Chinathambi was already married to Pavayee No. 1, who was alive. We do not find any substance in this contention. There was no clear or unimpeachable evidence on record to establish that Pavayee No. 1 was alive at the time Chinathambi began living with Pavayee No. 2.
19. The evidence on the contrary indicated that Chinathambi and Pavayee No. 2 lived together as husband and wife and had children born to them after the demise or separation of the first wife. The presumption under Section 114 of the Evidence Act was fully attracted. Furthermore, under Section 16 of the

Hindu Marriage Act as amended, the legislature has explicitly stepped in to protect the inheritance rights of children born of de facto unions from being disinherited by collaterals.

- 20.** As regards the deed of settlement executed by Chinathambi, it having been found that Chinathambi got his share in the joint family property partitioned, he was fully competent to settle his properties on his progeny. The settlement deed clearly described Ramaswamy as his son, which constitutes an unequivocal admission of paternity and status by the father himself.
- 21.** In the result, this appeal succeeds and is allowed. The judgment and decree of the High Court is set aside and that of the first appellate court is restored with costs throughout. Ramaswamy is declared to be the legitimate son of Chinathambi entitled to his lawful share in the suit properties.
- 22.** Ordered accordingly.

.....J. (R.M. Sahai)
.....J. (S. Ratnavel Pandian)
.....J. (K. Ramaswamy)
.....J. (N.M. Kasliwal)

New Delhi;

Dated: October 13, 1993 & November 29, 1991