

1998 SCeJ 001

1998 SCeJ 003 (AP)

Andhra Pradesh High Court

Before : Hon'ble Mr. Justice P V Reddi, Hon'ble
Mr. Justice K S Shrivastav and Hon'ble Mr.
Justice A Hanumanthu, JJ.

Abbayaolla M. Subba Reddy

Versus

Padmamma

27.07.1998

**Hindu Adoption and Maintenance Act, 1956,
Section 18 - A Hindu Woman who is married
after coming into force of the Hindu Marriage
Act, 1955 to a Hindu male, having a lawfully
wedded wife cannot maintain a claim for
maintenance under Section 18 of the Hindu
Adoption and Maintenance Act, 1956. [Para 30]**

Judgment

Hon'ble Mr. Justice A. Hanumanthu

1. The legal point involved in this appeal is whether a Hindu Woman who is married, after coming into force the Hindu Marriage Act, 1955 (hereinafter called as 'Act'), to a Hindu male having a living lawfully wedded wife, can maintain a claim for maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter called as 'Maintenance Act').

2. Having disagreed with the view expressed by a single Judge of this Court in C. Obuta Konda Reddy v. Pedda Venkala Lakshamma, , that the 'Hindu wife' contemplated by Section 18 of the Maintenance Act means, a Hindu wife whose marriage is solemnized, though void under the Hindu Marriage Act, she is entitled to claim maintenance from the

husband, our learned brother Ramesh Madhav Bapat-i made this reference to lay down the correct position of law to the Division Bench/Full Bench/Larger Bench. This is how this appeal has come up before this Full Bench.

3. In the reference order, our learned brother has narrated the facts leading to filing of this appeal and briefly stated, they are as under :

The appellant herein is the defendant and the respondent herein is the plaintiff in O.S. No.131 of 1987 on the file of the Principal Subordinate Judge, Chittoor. The respondent-plaintiff filed the said suit *informa pauperis* claiming maintenance from the appellant at the rate of Rs.1,000/- per month and Rs.13,000/- towards the cost of gold chain and other ornaments gifted to her by her father at the time of her marriage with the appellant herein, and also to create a charge over the 'B' schedule property for the amount that may be decreed against the appellant-defendant. The case of the respondent-plaintiff is that the appellant married her according to Hindu rites and customs on 1-7-1984 in Kasi Vishwanada Svami Devasthanam, Palamaner, that the marriage was also registered before the Sub-Registrar, Palamaner on 7-11-1984, that after consummation of the marriage in the plaintiffs parents' house, she was taken by the appellant to his village and there she came to know that the appellant was already married to one Parvathamma who begot two daughters through him and the said two daughters were already married and that the first

wife Parvathamma was residing in the appellant's house in the village. It was also her case that during the negotiations for her marriage, the appellant did not inform the respondent and her parents that he was already married and his first wife was living and that the plaintiff was made to believe as if it was his first marriage. It was also the case of the plaintiff that she reconciled herself on the advice of the elders and lived with him discharging her conjugal responsibilities till the middle of 1985 and that differences arose between the plaintiff and the defendant's first wife Parvathamma and on the instigation of the first wife, the appellant began to ill-treat her and neglected to maintain her and beat her on two or three occasions and drove her out of the house on 30-12-1985 after snatching away gold chain worth Rs. 13,000/- which was presented to her at the time of her marriage by her father, and that the plaintiff returned to her parents and since then she is residing with them. It is also the case of the plaintiff that she would not have agreed to marry the appellant if he had divulged the fact that he was a married man having his first wife living. The plaintiff filed the said suit for the reliefs stated supra.

The plaintiff also contended that the appellant gets an annual income of Rs.20,000/- from his agricultural lands, that he has money lending business and that the plaintiff does not have separate property or any independent source of income

and that the plaintiff is entitled to get maintenance from the defendant who is her husband.

4. The appellant-defendant resisted the claim of the respondent-plaintiff. He categorically disputed the allegation that he married the plaintiff. He also pleaded that his first wife was living and that he has got two married daughters and that he has no reason to marry the plaintiff. He also denied the income as alleged in the plaint. The defendant also pleaded that the plaintiff is living in adultery and that she is not entitled to claim maintenance.

5. The trial Court settled the necessary issues and allowed the parties to lead the evidence. The respondent plaintiff examined PWs.1 to 5 and marked Exs. A-1 A-2, A- 2(a) and A-2(b). The appellant-defendant examined DWs.1 to 3, but no documents were marked on his behalf. The first wife of the defendant was examined as DW-2 and she deposed with regard to her marriage with defendant and begetting two daughters through him. She also denied the marriage of the plaintiff with the defendant. The trial Judge on a consideration of the oral and documentary evidence placed before him, held that the solemnization of the marriage of the plaintiff with the defendant has been established, and as such, she is the legally wedded wife of the defendant and that the defendant neglected to maintain her without any reason and that the defendant snatched away the gold chain, and other ornaments of the plaintiff. The learned trial Judge relying on the decision in , held that the plaintiff is entitled to claim maintenance under Section 18(2) of Maintenance Act. Hence, the plaintiff 's suit has been decreed as prayed for, but without costs. Aggrieved of that judgment and decree, the defendant has preferred the appeal.

6. It may be stated here, as a fact, that the plaintiff examined as PW-1 stated in her crossexamination thus:

"It is true that I became pregnant about one and half years after I filed this suit. The defendant used to visit my house. It is not true to suggest that I did not (sic) become pregnant through somebody else."

The father of the plaintiff examined as PW2 stated in his cross-examination thus: "The defendant used to visit our house for about 6 months now and then after he drove away PW1. He was coming even for one year after he drove away PW1."

This evidence of PWs.1 and 2 is also relevant in the light of the plea taken by the defendant that the plaintiff is living in adultery. The trial Judge has not considered this aspect.

7. The learned Counsel Sri S. Ramamitrthy Reddy appearing for the appellant-defendant raised the sole contention that the alleged marriage of the appellant with the respondent even if it is admitted to have been solemnized, is null and void in view of the provisions of Section 5 read with Section 11 of the Hindu Marriage Act and such a marriage, therefore, cannot confer status of a wife on the respondent

plaintiff which would entitle her to make a claim for maintenance under Section 18 of the Maintenance Act. He further elaborates that in order that a woman is entitled to claim maintenance under the said provision, she must satisfy the Court that she is the 'legally wedded wife' and a woman whose marriage contravenes the provisions of Section 5 read with Section 11 of the Hindu Marriage Act cannot claim the status of a

'wife' and the mere fact that necessary ceremonies of a marriage under the customary Hindu Law have been gone into, cannot confer on her the status of a "legally wedded wife" which is a condition precedent for claiming maintenance under Section 18 of the Maintenance Act. The learned Counsel further submitted that a marriage if void ab initio does not alter or affect the status of parties and does not create between them any rights and obligations which must normally arise from a valid marriage.

8. On the other hand, Sri C. Pattahhi Rama Rao, appearing for the respondent-wife raised the following contentions:

(i) The Maintenance Act does not define "Hindu Wife" and subsection (1) of Section 18 says that a "Hindu Wife" married either before or after the commencement of the Act shall be maintained by her husband and subsection (2)(d) of Section 18 says that a "Hindu wife" shall be entitled to live separately from her husband without forfeiting her claim for maintenance if he has any other wife living and reading of the two subsections together, a "Hindu wife" whether married either before or after the commencement of the Act is entitled to live separately from her husband without forfeiting her claim for maintenance if he has any other wife living and as the first wife of the appellant-defendant is living, the respondent-plaintiff is entitled to live separately and claim

maintenance from her husband, the appellant herein.

(ii) Section 18 of the Maintenance Act confers a statutory right of maintenance on every wife irrespective of her marriage being legal or void and there is no valid reason to restrict the application of such right only to a legally wedded wife.

(iii) All that a wife has to establish in such a case is that her marriage was performed after going through the necessary ceremonies as per the customary Hindu Law and once that is established, it would not make any difference whether her marriage with the appellant contravenes Sections 5 and 11 of the Hindu Marriage Act.

(iv) The marriage of the respondent with the appellant is a voidable marriage under Section 12 of the Marriage Act as the appellant suppressed the fact that he was already married and his first wife is living and suppression amounts to playing fraud on the respondent and her father and if that fact had been divulged by the appellant to the respondent, the latter would not have agreed to marry him and therefore, the marriage is voidable under Section 12 of the Act and as no steps were taken either by the appellant or respondent to annul that voidable marriage, it remains valid and continues to subsist for all purposes unless a decree is passed by a Court annulling the same. Hence, the marriage of the respondent with the appellant is subsisting and by virtue of her status as wife of the appellant, she is entitled for maintenance.

(v) The Maintenance Act is a piece of beneficial and social legislation, it must be liberally construed in the context of present social changes and the intention of the Legislature to confer additional rights on women and children. Therefore, even if the marriage is void ab initio, the respondent is entitled for maintenance as she continued to lead conjugal life with the appellant as a married wife.

(vi) Section 25 of the Hindu Marriage Act confers jurisdiction on the Court to grant permanent alimony and maintenance to a wife or a husband while passing any decree for restitution of conjugal rights, judicial separation, dissolution of the marriage by divorce, etc. and that even a woman, whose marriage is declared, to be null and void under Section 11 of that Act, is entitled to get alimony and maintenance and therefore, it has to be inferred that Legislature intended to confer statutory right for maintenance and alimony even in cases where her marriage contravenes the conditions prescribed under Section 5 and is declared to be null and void under Section 11 of that Act.

9. It is not in dispute that the parties to the proceedings are Hindus and they are being governed by their personal laws. The Hindu Marriage Act, 1955, The Hindu Adoption and Maintenance Act, 1956. The Hindu Minority and Guardianship Act, 1956 and the The Hindu Succession Act, 1956 are package of enactments being part of socio-legal scheme applicable to Hindus. In view of the divergent schools governing the

personal laws of the Hindus, the Parliament codified the personal law relating to the Hindus and enacted the said four Acts. Hindu Marriage Act codifies the law relating to marriages, and the Hindu Adoption and Maintenance Act, 1956 codifies the law of maintenance applicable to Hindus.

10. In the instant case, it is not disputed that the appellant had a legally wedded wife living with him at the time when he married the respondent on 01-07-1984 as per the Hindu rites and customs. Though the appellant had disputed the said marriage of the respondent with him, the trial Court, on an appreciation of the oral and documentary evidence on record, has rightly held that the marriage of the respondent with the appellant had taken place on 01-07-1984 as per Hindu customs and the said marriage was also registered on 11-7-1984 as seen from Ex.A2. i.e. the Register of Marriages maintained in the office of the Sub- Registrar, Palamaner and there is an entry with regard to the marriage of the appellant with the respondent in that Register and the same has been marked as Ex.A2(a) and the signature of PW4 in the said Register has also been marked as Ex.A2(b). PWs.3 and 5 have proved the said documents. Thus, the respondent has, factually, established her marriage with the appellant. It is also the case of the respondent plaintiff that the appellant had a living wife DW2 at the time of her marriage. The respondent-plaintiff, both in her plaint as well as in her evidence as PW1 admitted that when she was taken to the house of the appellant, she found, to her surprise, that he had already married one Parvathamma (DW2) and he got two daughters through her. She has also not disputed the validity of the marriage of the appellant with his first wife

Patvathamma. Therefore, the next aspect to be considered is what is the status of the respondent vis-a- vis her marriage with the appellant and whether she could get the status of a legally wedded wife of the appellant.

11. For appreciating the status of a Hindu woman marrying a Hindu male having a spouse living, some of the provisions of the Hindu Marriage Act, 1955 have to be examined. Section 5 of the Act lays down conditions for a Hindu Marriage solemnized after the commencement of the Act. Clause (I) of that Section lays down the necessary condition that "neither party has a spouse living at the time of the marriage". Section 11 of the Act declares such a marriage solemnized in contravention of clause (i) as null and void in the following terms:

"Section 11.

Void marriages :-Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party be so declared by a decree of nullity if it contravenes any of the conditions specified in clauses (i), (iv) and (v) of Section 5."

"Section 17 reads thus:

Section 17. Punishment of bigamy .--Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of Indian Penal Code, 1860 (45 of 1860), shall apply accordingly,"

Thus, Section 17 not only, declares such a marriage as void, but the parties to that marriage are also liable for bigamy. Section 12 of the Act relates to voidable marriages and it reads as follows:

"Sec. 12, Voidable marriages :--

(1) Any Marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree- of nullity on any of the following grounds, namely:

(a) that the marriage has not been consummated owing to the impotence of the respondent; or (b) that the marriage is in contravention of the condition specified in clause (ii) of Section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner (was required under Section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978) the consent of such guardian was obtained by force (or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent); or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1) no petition for annulling a marriage (a) on the ground specified in

clause (c) of sub-section (1) shall be entertained if

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (b) of sub-section (1) shall be entertained unless the Court is satisfied;--

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the

consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground."

Provisions under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 may also be extracted as the respondent herein is claiming maintenance under the said Act. It reads thus :

"Section 18-

Maintenance of wife ;-(1) Subject to the provisions of this Section, a Hindu Wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life- time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance (a) (b) (c) not relevant.

(d) if he has any other wife living;

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to other religion."

(c), (f), (g) not relevant.

12. Section 5(i) of the Hindu Marriage Act which lays down that the marriage will be solemnized between any two Hindus if neither party has a spouse living at the time of the marriage, introduces monogamy in the Hindu Law. The word 'spouse' used in this Section means, a "lawfully married husband or wife". Therefore, before a valid marriage can be solemnized after

the commencement of the Act, it must be shown that the parties to the marriage must be either single or divorcee or a widow or widower and then only, they are competent to enter into a valid marriage. If at the performance of the marriage rites and ceremonies, one or other had a spouse living and the earlier marriage had not already been set aside, the later marriage is no marriage at all and being in contravention of the condition laid down in Section 5(i) of the said Act, it is void ab initio. Section 11 of the Act as quoted earlier, lays down that any marriage solemnized after the commencement of this Act is null and void if it contravenes conditions specified under Section 5(i) and may, on a petition presented by either party thereto, so be declared by a decree of nullity. It has been consistently held by this Court and various other High Courts and Supreme Court that under the provisions of the Hindu Marriage Act, a second marriage contracted while the first marriage is subsisting, is void.

13. The learned Counsel appearing for the respondent submitted that the marriage of the respondent with the appellant, in the instant case, comes under "voidable" marriage described under Section 12 of the Act as the respondent was not informed about the appellant's earlier marriage when she was married to him and thus, the appellant obtained her consent by playing fraud on her, and that till the marriage is annulled, that marriage is a valid one and the respondent gets all the rights as a wife under a valid marriage. We are unable to accept this contention of the learned Counsel for the respondent.

14. Sections 11 and 12 of the Act as quoted earlier, deal with cases where a marriage is void and cases where a

marriage is voidable at the option of either of the party to the marriage respectively. In Section 11, the expression used is "null and void" while the word "voidable" is used in Section 12. This indicates the intention of the Parliament that they wanted to make a distinction between a void marriage and a voidable marriage. The distinction is further indicated by Section 17 which makes the parties to void marriage criminally liable, while there is no such penalty for the parties to a voidable marriage. Of course, both Sections 11 and 12 speak of a decree of nullity; but Section 11 speaks of only declaration of the marriage as null and void by such a decree, while Section 12 speaks of the annulment of a voidable marriage by a decree. As a void marriage is non-existent in the eye of law, only a declaration is sufficient, but an annulment of a voidable marriage is necessary because such a marriage shall be deemed to be valid until it is annulled by a decree of nullity. Further, the marriage which is null and void for contravening the provisions of Section 5(i) of the said Act cannot be treated as voidable under Section 12. We get support for this view from the decision of Supreme Court in *Smt. Yamunabai Anant Rao Adhav v. Ananta Rao Shivram Adhav and another*, . It is also held in the same decision that the fact that the wife was not informed about the husband's earlier marriage when she married him would be of no avail and the wife cannot rely on the principle of estoppel so as to defeat the provisions of the Act. Thus, there can be no doubt that the words "void" and "voidable" have been used in the Act in two distinct senses. The argument that after solemnisation of marriage, the appellant treated her as his wife is again of no avail as the issue lies to be settled under the provisions of the Act, It is the intention of the Legislature as

could be seen from the provisions of the Act which is relevant and not the attitude of the party.

15. A Hindu is under an obligation to maintain his wife, his minor sons, unmarried daughters and aged Parents. The obligation is personal. It arises from the very nature of the relationship and exists whether he possesses any property or not. The Maintenance Act gives statutory form to that obligation. The right of a Hindu wife for maintenance is an incident of the status of matrimony. Subsection (1) of Section 18 of the Act substantially reiterates that right and lays down the general rule that a Hindu wife whether married either before or after the commencement of the Act is entitled to be maintained by her husband during her life time. The rule laid down in this Section is subject to the exceptions stated in sub-section (3) which lays down that she cannot claim separate residence and maintenance if she is unchaste or ceases to be a Hindu by conversion to another religion. Under sub-section (2) of Section 18 wife is entitled to live separately from her husband without forfeiting her claim for maintenance, in the circumstances stated in clauses (a) to (g) mentioned in that subsection. Under clause (d), wife is entitled for separate residence without forfeiting her claim for maintenance if her husband has any other wife living. The claim for maintenance is maintainable under this Section irrespective of the fact that the marriage had taken place after or before the marriage of the applicant wife, provided the other wife is living. The ground laid down in this Section can, obviously exist only in case of any marriage solemnized before the Hindu Marriage Act came into operation. It is obviously for the reason that the Hindu Marriage Act, 1955 laid down monogamy as a rule of law and Hindu

husband cannot marry another wife after the commencement of that Act. A bigamous marriage contracted after the coming into force of that Act, would be null and void and no question of having another wife can arise. Therefore, the word "Hindu wife" in Section 18(1) connotes only a legally wedded wife of Hindu and such wife alone is entitled to claim maintenance from her husband under this Section. If her marriage is void ab initio, she is not entitled to claim maintenance under this Section. "Hindu wife" in this Section, we reiterate, only means a wife whose marriage is valid under the provisions of the Hindu Marriage Act, 1955. The wife whose marriage has been solemnized, but is void on the ground that the first wife of the husband is living at the time of the marriage is not entitled to claim maintenance under this provision.

16. The expression "any other wife" in Section 18(2)(d) of the Act came up for consideration before Karnataka High Court in **Subbe Gowda v. Hanamma**, and it is held by that Court that: 'The expression 'any other wife' in Section 18(2)(d) means, any other legally wedded wife.

Therefore, even if the husband is living with another woman treating her as his wife, it cannot be said that he has any other wife living within the meaning of Section 18(2) (d)."

While the personal law governing the parties prohibits bigamous marriage, on a parity of reasoning, it can also be stated that the expression 'Hindu wife' in Section 18 means only a legally wedded wife and not a wife whose marriage is void under the provisions of the Hindu Marriage Act. The second marriage/ bigamous marriage being void

cannot create a legal statute of "husband" and "wife" between the parties. That marriage is void ab initio and the woman cannot get the status of a wife nor the male gets the status of husband to her. Therefore, she cannot get a right to claim maintenance under Section 18 of the Act.

17. It is also significant to note that no attempt was made to amend or make provision in the Act to include the case of a woman whose marriage is void by reason of provision of Section 5(i) of the Hindu Marriage Act, for claiming maintenance against a person with, whom she underwent illegal marriage. Even though the Parliament in its anxiety to protect the legitimacy of the paternity of the child born out of that void marriage made a provision in Section 16 of Marriage Laws (Amendment) Act, 1976, it has not extended similar protection in respect of the mother of that child. Further, in our considered opinion it does not appear to be the intention of the Act while such marriage is rendered void, nevertheless, the bigamous relationship should be recognised for purpose of maintenance.

18. It is no doubt true that Maintenance Act is a piece of beneficial legislation conferring additional rights on women and children. But, it cannot be construed as conferring maintenance rights on a woman whose marriage is void under Hindu Marriage Act. While a legislative enactment may be liberally construed, the liberality cannot overstep the legislative limits of interpretation, putting to the legislation something which is not there. If it is felt that a particular enactment causes hardship or inconvenience, it is for the Legislature to redress it, but, it is not open to the Court to ignore the legislative injunction.

19. Now, we will refer to some of the decided cases on the point. In **Bami Dharjha v. Chabbi Chaltherji**, AIR 1967 Pat. 217, Division Bench of Patna High Court while dealing with the claim of a woman for maintenance under Section 125 Cr.PC and such a woman being married to a married man whose wife was living at the time of her marriage, held that if the petitioner on the date of marriage with the claimant woman had already wedded wife, his marriage with the claimant woman is void under Section 11 of the Hindu Marriage Act and a marriage void ab initio does not alter or affect the status of parties nor does it create between them any rights and obligations which must normally arise from valid marriage and a void marriage is non-existent in the eye of law.

20. In **Pothula Manika Reddy and Another v. Govt of A.P, rep. by the Special Tahsildhar, land Reforms, Ranga Reddy**, 1978 (1) APLJ 360. a learned single Judge of our High Court, while considering the status of a second wife who was married to a person while his first wife was living, held that a woman who is married to a party who has already living spouse cannot be treated as his spouse in the legal sense and such a second marriage is null and void and it does not create any rights and obligations.

21. While considering the scope of Section 11 of the Hindu Marriage Act, the Division Bench of Patna High Court in AIR 1967 Patna 277 (supra) held thus: "A marriage which contravenes the conditions referred to in Section 5 is in law no marriage at all being void ipso jure and it is open to the party to the marriage even without recourse to the Court to treat it as a nullity. Neither party is under any obligation to seek the declaration of nullity under this Section though such a declaration may

be asked for the purpose of pre-caution or record."

22. At page 687 of Mulla's Hindu Law 14th Edition a passage reads thus:

"The person, an innocent party to a bigamous marriage, may go to a Court for declaration that a bigamous marriage is null and void. That would be for the purpose of precaution or record or evidence. That the bigamous marriage is a nonexistent and simply because there is no recourse to the Court, it cannot be said that it exists unless and until a decree is passed declaring it to be null and void."

Therefore, the mere fact that the parties had not approached the Court for declaration as contemplated under Section 11 does not in any way alter the conditions and thereby, it cannot be said that the marriage is a valid and subsisting one.

23. In **Baji Rao Gagoba Thambra v. Ms. Tholan Bhai and another**, 1980 Cri. LJ 473, a Division Bench of Bombay High Court while considering the claim of a woman whose marriage was void, for maintenance under Section 125 Cr.PC held thus.

"A woman whose marriage was void cannot get the legal status of a wife and therefore, if the marriage is void by reason of contravention of Section 5 read with Section 11 of Hindu Marriage Act, she is not competent to make an application under Section 125 of the Cr.P.C That provision merely speaks of a "Wife" and its

meaning cannot be extended to a case of a void marriage."

24. In Smt. **Yetmtnabai Anantha Rao Adhav v. Anantha Rao Shivram Adhav and another**, (supra) while considering the question whether a Hindu woman who is married after coming into force of the Hindu Marriage Act, 1955, to a Hindu male having a living lawfully wedded wife, can maintain an application for maintenance under Section 125 Cr.P.C. the Supreme Court held thus:

"Section 5(i) of Hindu Marriage Act lays down, for a lawful marriage, the necessary condition is that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition therefore, is null and void. The plea that the marriage should not be treated as void because such a marriage was earlier recognised in law and customs cannot be accepted. By reason of the over riding effect of the Act as mentioned in Section 4 no aid can be taken of the earlier Hindu Law or any custom or usage as a part of that Law inconsistent with any provision of the Act, such a marriage also cannot be said to be voidable by reference to Section 12. So far as Section 12 is concerned, it is confined to other categories of marriages, and it is not applicable to one solemnized in

violation of Section 5 (i) of the Act."

It is further observed by the Supreme Court thus:

"It is also to be seen that while the Legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child"

The Court further observed thus:

"For the purpose of extending the benefit of the Section to a divorced woman and to an illegitimate child, the Parliament considered it necessary to include in the Section specific provisions to that effect, but it has not done so with respect to woman not lawfully married."

The above decision of the Supreme Court will apply in all fours to the case on hand arising under the Hindu Marriage Act.

In **Sayatma v. Lakshmi Bhai Alias Hanuma Bhai and another**, this Court while relying on the decision of the Supreme Court in (supra) observed:

"When the Legislature itself incorporated in the Hindu Marriage Act that a second marriage contracted while the first marriage is subsisting is void, it cannot be comprehended how the

second wife is entitled for maintenance."

25. Thus, the Supreme Court and various High Courts including Andhra Pradesh High Court had taken the view that a woman whose marriage is valid under the provisions of the Hindu Marriage Act alone is entitled to claim maintenance from her husband and the woman whose marriage is void ab initio cannot make any claim for maintenance; as such a marriage cannot create a legal status of husband and wife between the parties. We are also of the firm view that the words "Hindu Wife" appearing in Section 18 of Hindu Adoption and Maintenance Act has to be interpreted as a wife whose marriage is valid according to the provisions of the Hindu Marriage Act. We do not agree with the observations of the learned single Judge in "" (supra) that the provisions of Hindu Adoption and Maintenance Act do not warrant interpretation of such a Hindu wife and such an interpretation renders the provisions of Section 18 of Maintenance Act otiose.- In our view such an interpretation stands to reason when we take into consideration all these four Acts which were passed as a package of enactments being part of one Socio-legal scheme applicable to Hindus and codifying the various laws prevailing in various parts of the country before that codification. By codifying the personal laws prevailing and applicable to Hindus, the Parliament intended to have monogamy among the Hindus and therefore, Hindu Marriage Act was passed to prevent bigamous marriages and for that purpose, it is enacted that a bigamous marriage is void and also constituted such a marriage as a crime for which punishment has been provided. Therefore, it does not appear to be the intention of the Parliament

that while such a bigamous marriage is rendered void, the bigamous relationship should be recognised for purpose of maintenance. Further, as observed earlier, the Parliament while passing Marriage Laws Amendment Act, 1976 (68/76) has considered it advisable to uphold the legitimacy of the paternity of children born out of a void marriage; it has not extended a similar protection in respect of the mother of such children.

Further, if the bigamous relationship should be recognised for the purpose of maintenance of a woman, the very purpose of introducing the provisions in the Hindu Marriage Act while introducing monogamy among the Hindus will be defeated.

26. The learned Counsel for the respondent submitted that under Section 25 of the Hindu Marriage Act, a wife whose marriage is void would be entitled, as of right, of relief of permanent maintenance once her marriage is annulled by a decree of nullity under Section 11 or passing a decree of a kind envisaged under Sections 9 to 14 of the Hindu Marriage Act, and therefore, it allows that the Hindu Marriage Act, 1955 recognizes notwithstanding the fact that the marriage is null and void, that the wife has the status atleast for limited purpose of applying for alimony and maintenance. This statutory intention, according to the learned Counsel for the respondent, has to be borne in mind in considering the claim of the respondent in this case to maintenance. The support of this contention the learned Counsel relied on the decision of a learned single Judge of Bombay High Court in **Smt. Rajesh Bai and others v. Shantha Bai**, AIR 1982 Bom. 331. In that case, the first wife of the deceased filed a suit for partition

against the brothers of her deceased husband and the 2nd wife of her husband by name Rajesh Bai. The defendants in that suit took the plea that the plaintiff was divorced by her husband as per the caste custom and after divorce, he married 2nd wife Rajesh Bai. The learned single Judge while holding that the marriage of Rajesh Bai is void in view of the subsisting first marriage of the deceased with Shantha Bai, granted maintenance to 2nd wife Rajesh Bai relying on the part materia provisions of Section 25 of the Hindu Marriage Act and also relying on the inherent powers of the Court under Section 151 C.P.C. to meet the ends of justice. The learned single Judge observed thus:

"The rights recognised by Section 25 of the Hindu Marriage Act can clearly be worked out in any civil proceedings subject to consideration of facts and circumstances so as to meet the ends of justice by resort to the inherent powers conferred upon the Courts by Section 151 C.P.C. The statutory references do not indicate that there is any prohibition or any specific Provision in this regard. On the other hand, the principle is statutorily recognised that upon a decree being passed for nullifying the marriage as void de jure, the Court is possessed with ample power to make order as to alimony and maintenance. What could, therefore, be available in special

proceedings cannot be said to be not available when the same issue is involved collaterally in competent civil proceeding."

The learned Judge further observed:

"Ultimately, having based the relief under Section 151 C.P.C. with the aid of inherent powers and drawing upon the principle underlying Section 25 of the Hindu Marriage Act, it is implicit that before maintenance is granted, the need to grant such must exist as well as the grantee must fulfil the ordinary conditions like that of chastity, not being married with any other person and further of not being in a position to maintain herself."

With due respect, we are not in a position to accept the said reasoning of the learned Judge. Firstly, the assumption that Section 25 recognizes the right of a woman bigamously married to claim maintenance at the time when a decree of nullity is passed is not correct. Secondly in the absence of a proceeding under Sections 9 to 14 such a relief cannot be granted by invoking Section 151. Section 151 could have no application to such a situation.

27. Section 25 of the Hindu Marriage Act as it now stands after amendment by Act 68/76 is reproduced hereunder:

"25. Permanent alimony and maintenance :-

(1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or any time subsequent thereto, on application made to it for the purpose of either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum. of such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property if any, the income and other property of the applicant (the conduct of the parties and other circumstances of the case), it may seem to the Court to be just and any such payment may be secured, if necessary by a charge on the immovable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1) it may at the instance of either party, vary modify or rescind any such order in such manner as the Court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under the Section has remarried, or if such party is the wife that she has not remained chaste,

or if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just."

It is clear from this provision that it confers a statutory right on the wife and the husband and confers jurisdiction on the Court to pass an order of maintenance and alimony in proceedings under Sections 9 to 14 of the Hindu Marriage Act. At any time before or after the decree is passed in such a proceeding, therefore, the wife or husband could make such a claim and the conditions of Section 25(1) will have to be satisfied. There must be a matrimonial petition filed under the Hindu Marriage Act, then, on such a petition, a decree must be passed by the Court concerning the material status of the wife or husband. It is only when such a decree is passed that the right accrues to the wife or the husband and confers jurisdiction on the Court to grant alimony. Till then, such a right does not take place. Not only that the Court retains the jurisdiction even subsequent to passing of such a decree to grant permanent alimony when moved by an application in that behalf by a party entitled to, the Court further retains the power to change or alter the order in view of the changed circumstances.

Thus, the whole exercise is within the gamut of a broken marriage. Thus, the Legislature

while codifying the Hindu Marriage Act, reserved the right of permanent maintenance in favour of the husband or the wife as the case may be depending on the Court passing a decree of the kind as envisaged under Section 14 of the Act. Thus, Section 25 should not be construed in such a manner as to hold that notwithstanding the nullity of the marriage, the wife retains her status for purposes of applying for alimony and maintenance. In our view, the proper construction of Section 25 would be that where a marriage admittedly is a nullity, this Section will have no application. But, where the question of nullity is in issue and is contentious, the Court has to proceed on the assumption until the contrary is proved, that the applicant is the wife. It is in that sense Section 25 should be appreciated. Further, in the instant case, there are no proceedings between the parties and there is no decree of the kind as envisaged under Section 14 of the Act disrupting the material status of the respondent with appellant. Hence, the respondent is not entitled to invoke the provisions under Section 25 of the Act. On the other hand, the respondent is seeking maintenance under Section 18 of Hindu Adoption and Maintenance Act. When the marriage of the respondent is void ab initio, she is not entitled to claim maintenance under the said Act. Hence, it is not open to the Court to grant relief of maintenance under Section 25 of Hindu Marriage Act in the proceedings initiated under the provisions of Hindu Adoption and

Maintenance Act, as held by the Apex Court in *Smt. Chand Dhawan v. Jawaharlal Dhawan*, 1993 (3) Scale 1. As is evident, both these statutes are codified laws on the respective subjects and by liberality of interpretation, inter-changeability cannot be permitted so as to destroy the distinction on the subject of maintenance.

28. We are also of the opinion that even the principles of justice, equity and good conscience do not come to the rescue of the respondent as the subject of maintenance is covered by statute law and there is no scope to invoke those principles where the legislative enactments on the subject do not permit the grant of maintenance to a woman who was a party to a bigamous marriage.

29. Moreover on the facts of the case also, the chastity of the respondent is doubtful as she admits in her evidence that she became pregnant after she was driven out of the matrimonial home of her husband, the appellant herein. Thus, viewed from any angle, the respondent is not entitled to maintenance.

30. In the light of the foregoing discussion, we hold on the point that a Hindu Woman who is married after coming into force of the Hindu Marriage Act, 1955 to a Hindu male, having a lawfully wedded wife cannot maintain a claim for maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956. In view of this decision, the decision of the learned single Judge of this Court is liable to be over-ruled. Accordingly, the said decision is over-ruled.

31. In view of the above decision taken by us, the claim of the

respondent for maintenance, whose marriage is void ab initio, against the appellant is not maintainable of 1987 on the file of the Principal Subordinate Judge, Chittoor, is liable to be set aside.

32. In the result the appeal is allowed. The judgment and decree in O.S.No.131 of 1987 on the file of the Principal Subordinate Judge, Chittoor, is set aside and the suit O.S.No.131 of 1987 is dismissed.

In the circumstances of this case, parties are directed to bear their costs through out.