

### Vasumathi and Another v. R Vasudevan and Others

- ❖ **TOPIC :** Hindu Succession Act, 2005 Amendment Giving Equal Rights To Daughter Resulted in Reducing Shares of Mother & Widow
- ❖ **BENCH :** : Justice N Seshasayee



- ❖ **FORUM:** Madras High Court
- ❖ **MAIN ISSUE**
  - Whether the amendment says that daughter's got a share in the ancestral property or not.
- ❖ **OBSERVATIONS**
  - While discussing the 2005 amendments to the Hindu Succession Act, Justice N Seshasayee of the Madras High Court observed that while the amendment ensured that daughter's got a share in the ancestral property, it also took away the quantum of property that would otherwise vest with the widow and the mother of a deceased.
  - The court added that the effect of a notional partition was two fold. Firstly to interfere with the right of the surviving coparceners to succeed to the share of the deceased coparcener by survivorship and secondly to reduce the combined holding to the extent of the property that became allottable to Class I female heirs.
  - The court remarked that the Parliament, while enacting Section 6, had merely experimented with the idea of empowering a class of female heirs economically, but was hesitant to bring the daughters of a male coparcener to the level of a coparcener.
  - The court added that notional partition was a way by which the legislature ensures that a balance was brought between its intent to preserve the legal incidence of ancestral property in the hands of coparcenary along with its intent to vest some right in the ancestral property to the female heirs of the deceased coparcener.

- Stressing on the need to ensure the right to property to daughter's, the court also remarked that the right to a dignified life is only achieved if it is backed by a right to property. The court added that without ensuring economic freedom, it was futile to presume that women could enjoy any other personal rights effectively.
- The court was hearing a second appeal preferred by two daughters challenging the order of the Additional District Judge, Coimbatore through which an order of the Principal Subordinate Judge was reversed.
- The Subordinate Judge had decreed a suit for partition in favour of the daughters which was overturned and this was under appeal before the High Court. The first respondent was the father of the petitioners and the other respondents were their brothers.
- The suit property was allotted to the first defendant's father in a partition between him and his brother in 1986.
- The petitioner daughters argued that the properties were ancestral in character and thus claimed that they were coparceners along with their father and brothers. The daughters had thus demanded a share of 1/5th each in the suit, relying on Section 6 of the Hindu Succession Act.
- The respondent father, on the other hand, argued that after the notional partition which took place between him, his brother and sisters, the property was vested with the respondent in his personal capacity and it did not retain the character of ancestral property.
- The petitioners however countered this argument and submitted that the recitals in the partition deed, through which the property were allotted to the father, described all the properties as a whole as ancestral property.
- The court agreed with this contention and observed that when the father had consciously subscribed to the deed, treating the property as ancestral, he was estopped from resiling from his stated position as to the description of the property.
- The court observed that the property held by the father was an ancestral property and what emerges from the ancestral property will be necessarily ancestral property and what remains after providing for female heirs will also remain as ancestral property.
- The court thus held that the father's undivided 1/3rd share in the property, along with the 1/18th share which he obtained from his father would constitute ancestral property and thus, the daughters, as coparceners, were eligible to the same.

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- The court thus held that the settlement deed executed by the father in favour of the petitioner's brother would not hold ground as the daughters were already entitled to a share in the suit property. Thus, allowing the appeal in favour of the daughters, the court set aside the judgment of the Additional District Judge.

**Rajesh Kewat Managing Director, Fast Info Legal Services Private Limited v. The State of West Bengal & Another**

- ❖ **TOPIC :** Calcutta HC Declines To Quash Case Against 'Online Legal Services' Company For Allegedly Cheating Lady Who Sought Advice On Credit Card Scam
- ❖ **BENCH :** Justice Ajay Kumar Gupta



- ❖ **FORUM:** Calcutta High Court
- ❖ **MAIN ISSUE**
  - Whether a criminal case can be quashed or not against the proprietors of a 'legal services' online company who allegedly duped a lady who had been a victim of a credit card scam.
- ❖ **OBSERVATIONS**
  - The Calcutta High Court has declined to quash a criminal case against the proprietors of a 'legal services' online company who allegedly duped a lady who had been a victim of a credit card scam and had approached them through Google to help her report the same.
  - A single bench of Justice Ajay Kumar Gupta held:
  - It appears that under the banner of one Website, namely, <https://www.onlinelegalindia.com>, the said company has cheated so many persons in the manner as cheated the Opposite Party No. 2.
  - The complainant tried to contact the company further but they did not agree to talk with her and further used slang languages to her.
  - She has been duped by the said company...Caller

- stated that they have their own cyber cell, where they will register the FIR and for that they will charge a sum of Rs. 1,179/-.
- The said amount has been paid from her Bank Account, but, despite assurance, neither copy of FIR was provided to her nor any action has been taken by them. No service was provided to her for what they have charged for.
- The Victim lady/Opposite Party No. 2, lodged a written complaint before the Officer-in-Charge, Bidhan Nagar Cyber Crime Police Station accusing to the effect that she received a phone call to her mobile number from an unknown number, where the caller told her that a gift voucher worth Rs. 4,000 had been issued to her.
- It was further alleged that the caller introduced himself as a bank employee and asked her to activate the card as per his instructions over the phone to receive the aforesaid amount. She followed his instructions and during the process, a sum of Rs. 12,000 was allegedly debited from her Credit Card.
- She realized she had been cheated by the caller and started searching on Google Chrome for a way to report such an incident, during her search, she came across one website, namely, "Online Legal India", where there was an option to fill up the Customer Information Form on its portal.
- It is further alleged that another phone call was received by her from a phone number belonging to the website and the caller instructed her to provide some personal information and the bank account details related to fraud and cheating committed upon her.
- Caller further assured they would help her to get back her money which was cheated. It was further alleged the caller asked her not to approach any police station for lodging a complaint.
- The caller claimed that they have their own cyber cell, where they will register FIR and for that, they will charge a sum of Rs. 1,179/-. The said amount was paid from her SBI Bank Account.
- Despite their assurance, neither a copy of FIR was provided to her nor any action has been taken by them. No service was provided to her though they have charged for it.
- Petitioner contends that the company has a business to provide legal advice and legal assistance upon charging some fees from the client.
- The company has immediately taken steps to fill up an online complaint before Bidhan Nagar Commissionerate by filling up the necessary

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proforma.

- It was stated that the company had charged a sum of Rs. 1,179 for the service rendered to her. The company has rendered its service legally to her without duping her in any manner.
- It was stated that their company had been sealed even though the Petitioner was absolutely innocent and he has not committed any offence as alleged and had been falsely implicated in this case.
- It was argued that she had paid a fee amounting to Rs. 1,179 for rendering legal services to the Opposite Party No. 2. as the Company is a legal service provider through online services and charged service fees from the client.
- Counsel for the state argued that the company and its Director are very much involved in duping innocent people by way of cyber-crime. During the investigation, the Investigating Officer recorded the statements of several witnesses under Section 161 of the CrPC. Huge numbers of relevant documents, incriminating articles and gadgets were seized.
- It was stated that though it claims to be a legal services company, after payment of fees charged by them, no appropriate action or steps were taken by the company. As a result, the complainant did not get any redressal on time from any authority and faced a loss of their hard earned savings.
- Accordingly, it was stated that an investigation was underway and there is a strong prima facie case against the present petitioner.
- Upon hearing the arguments, the court noted that the company, under its banner, had not only stopped the complainant from approaching the cyber cell of the state police, but also had cheated many persons in the same manner as the Opposite Party No. 2.
- Thus, it was held that: "Court is of the view that at this initial stage of investigation, it would not be appropriate and proper to quash the proceedings without justified reasons.
- The Court cannot embark upon an inquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR/complaint."
- Accordingly, the revision plea was dismissed.

**XXX v. XXX**

- ❖ **TOPIC:** Post – Partum Depression is common,  
Temporary : Kerala HC sets Aside Family Court's order Granting Permanent Custody of child to Father

- ❖ **BENCH:** Justice Devan Ramachandran and Justice M.B. Snehalatha



- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**

- Whether the orders of the Family Court can be set aside or not which grant permanent custody of a one-and-a-half-year-old daughter to the father on the prima facie finding.

- ❖ **OBSERVATIONS**

- The Kerala High Court set aside the orders of the Family Court granting permanent custody of a one-and-a-half-year-old daughter to the father on the prima facie finding that the mother was suffering from psychiatric disorders from her old medical records indicating post-partum depression.
- The Court further stated that scientific studies are proving that post-partum depression is relatively common in some women and is typically a temporary condition and not permanent.
- The Division Bench of Justice Devan Ramachandran and Justice M.B. Snehalatha observed that the Family Court should not have granted permanent custody of the daughter to the father merely based on the mother's medical records which indicated post-partum depression shortly after giving birth to the child.
- The petitioner and respondent were married and they have a one and half year old child. After their divorce, the respondent-father filed a petition before the Family Court seeking permanent custody of their child.
- The Family Court granted the custody of the child to the father on the prima facie finding that the mother was suffering from psychiatric disorders. The review filed by the mother was also dismissed.
- The Family Court also issued an order directing a woman police officer to take and hand over the custody of the child to the father. The petitioner-mother challenged all the above orders before the High Court.

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- The mother submitted before the Court that there was no factual basis for alleging that she was suffering from psychiatric issues. She also submitted that the child is unwilling to go with the father and is still being breastfed by her. It was submitted that removing the child from the mother who is nursing would cause her severe trauma.
- The Court stated that it could not find in favour of the order of the Family Court granting custody to the child merely based on the mother's old medical records indicating post-partum depression.
- Court stated, "When one examines the said records – even assuming that legal validity can be attached to it – it is luculent that they are of February 2023, immediately after the petitioner gave birth to the child; and it only indicates that she was suffering from postpartum depression, thus showing some alienation to the baby at that time."
- Pursuant to the mother's insistence, the Court ordered her medical evaluation to prove that she was not suffering from any psychiatric issues.
- The Court referred to the medical evaluation report of the mother which stated that she was not suffering from any major psychiatric disorder.
- The court stated, "It is thus obvious that the presumption of the learned Family Court regarding the alleged psychiatric issues of the petitioner cannot be found favour with, at least as of now, without further evidence and assessment."
- The Court observed prima facie that they were not agreeable to the father's argument that the child's life would be in danger since the mother was unable to take care of the child by relying upon the medical report.
- However, the Court stated that the parties were free to choose any medical assessment suitable to them to litigate the matter before the Family Court.
- As such, the Court quashed the orders issued by the Family Court granting permanent custody of the child to the father. The Court also directed the Family Court to grant opportunity to both parties while hearing the petition.

**X v. Y**

- ❖ **TOPIC** : Station Master's Heated Exchange With Wife, Sends Train To Maoist – Affected Region
- ❖ **BENCH** : Justice Rajani Dubey and Justice Sanjay Kumar Jaiswal
- ❖ **FORUM**: Chhattisgarh High Court



#### ❖ **MAIN ISSUE**

- Regarding divorce on the basis of cruelty

#### ❖ **BACKGROUND**

- The marriage between the appellant-husband and the respondent-wife was solemnised on 12.10.2011 according to Hindu rituals and customs. The appellant belonged to Vishakhapatnam, Andhra Pradesh and the respondent hailed from Durg, Chhattisgarh. The appellant was working as a Station Master with the East Coast Railway at Vishakhapatnam.
- After a year of marriage, i.e. from 12.10.2012, the couple started living separately and subsequently, the appellant filed a petition for divorce in the Family Court, Vishakhapatnam. However, as per the order of the Supreme Court, the divorce proceeding was transferred to Durg, Chhattisgarh.
- The Family Court, Durg, after taking into account the evidence of both the sides, testimony of witnesses and arguments, held that the appellant-husband failed to prove that his respondent-wife meted out any treatment to him which would amount to mental or physical cruelty.

#### ❖ **OBSERVATIONS**

- The Chhattisgarh High Court has recently granted divorce to a station master-husband against his wife on the ground of 'cruelty' as the latter not only raised severe allegations on the character of the former but also her casual approach towards her on-duty husband led a goods train to a prohibited maoist-affected region.
- Setting aside the order of the Family Court, which denied divorce to the appellant-husband, the Division Bench of Justice Rajani Dubey and Justice Sanjay Kumar Jaiswal held that making severe allegations against the appellant and his relatives for dowry as well as physical and mental torture by the respondent-wife so also assailing the character of the appellant amounts to cruelty.
- After perusing the case records, the Court found that after the appellant-husband filed the petition for divorce, the respondent-wife filed a case against him and his relatives under Section 498-A,

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IPC in a planned manner.

- So far as the respondent threatening the appellant at his workplace is concerned, a senior employee of the appellant supported such allegation levelled by the appellant against the respondent.
- He also stated about the unfortunate incident which resulted in a goods-train reaching a maoist-affected area during the prohibited time.
- The Court also verified the tickets purchased by the appellant and opined that the appellant in fact took the respondent to Bengaluru for her amusement and that shows that he was deeply in love with her and therefore, the allegations levelled by the respondent regarding dowry seems to be incorrect.
- The Bench held that no evidence was put forward by the respondent to prove that the appellant indeed had illicit relationship with his sister-in-law. It also underlined that during the marriage of the parties, the elder brother and the sister-in-law of the husband acted as father and mother for observing the rituals. Therefore, in absence of any evidence, it is baseless to hold that the appellant had an extra-marital relationship with his sister-in-law.
- Resultantly, considering all the above relevant facts and circumstances, the Court was of the view that the acts of the respondent-wife amount to cruelty against the appellant-husband and therefore, the Family Court faulted in not granting divorce to the appellant. Accordingly, the order of the lower Court was set aside, granting a decree of divorce in favour of the appellant-husband.

### Mohan Lal Sharma & Ors. v. State of Rajasthan & Anr. and other connected petitions

- ❖ **TOPIC :** Preferential Treatment In Selection Based On Present Place of Posting Discriminatory, Violates Right To Equality : Rajasthan High Court
- ❖ **BENCH :** Justice Anoop Kumar Dhand
- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
  - Regarding Rajasthan Government's decision to grant bonus marks in teacher selection exam.
- ❖ **OBSERVATIONS**
  - Rajasthan High Court has ruled that Rajasthan Government's decision to grant bonus marks in teacher selection exam to those opting for posting in the districts in which they were currently posted in government employment was not only against the statutory rules but also violative of Articles 14, 15 and 16 of the Constitution of India.
  - The bench of Justice Anoop Kumar Dhand opined that such a rule created a class of un-equals

amongst equals which was not justified. States could not create artificial classification which results in discrimination between two equals and similarly situated persons. It amounted to impermissible discrimination since there was no rational basis for such preferential treatment.



- “The offending part of Condition No.9 of the advertisement dated 11.07.2024 has the effect of diluting merit, without in any way promoting the objective. The impugned condition No.9 of the advertisement is violative of Articles 14, 15 and 16 of the Constitution of India.”
- The Court was hearing a bunch of petitions against Condition 9 in the advertisement for recruitment of teachers in which it was provided that if the candidate gave the option of posting to the district where he/she was currently posted, 10 additional bonus marks would be given to him/her for selection in the said district.
- It was argued by the petitioners that there was no provision for granting bonus marks under the Rajasthan Civil Services (Special Selection and Special Conditions of Service for Appointment of Personnel in the English Medium Schools) Rules, 2023 (“the Rules”) and without there being any such provision, the condition was not in consonance with the Rules.
- Further, it was also argued that granting of bonus marks caused distinction between equals because no particular benefit should be granted based on opting the place of posting and granting additional marks for such opting amounted to violation of Article 14 and 16.
- The Court perused the entire scheme of selection under the Rules and opined that there was no indication of such a provision that allowed granting of bonus marks as per the Condition in the advertisement.
- The Court held that there could not be any distinction based on the choice of posting

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particularly when the teaching and working experience acquired by each one of the candidates was same and common.

- It was highlighted that it was a settled principle that if there was a conflict between the terms and conditions of any advertisement and the Rules and Regulations of service and appointment, the provision contained under the Rules or Regulations shall prevail. "no distinction has been made by the Rule making authority between different personnel, posted in different schools, in different districts of the State of Rajasthan... Hence, the act of granting 10 additional bonus marks to personnel of a particular district is arbitrary, wholly unjustified and contrary to the scheme of Rules of 2023. Hence, the condition No.9 of the advertisement is not sustainable in the eyes of law."
- On the question of fundamental rights, the Court held that being a resident of a particular area or posted in a particular place itself could not be a ground to accord preferential treatment or reservation as the same was violative of Articles 14 and 16 of the Constitution of India. The Court referred to the case of Kailash Chand Sharma v State of Rajasthan & Others in which the Apex Court dealt with the issue of granting bonus marks to the candidates of particular districts and rural areas.
- The Supreme Court held that the suggestion that residence within a district or rural areas of that district could be a valid basis for classification for public employment had the overtones of parochialism and had to be rejected on the plain terms of Article 16 as it ran counter to our constitutional ethos founded on unity and integrity of the nation. "residence by itself - be it be within a State region district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalise the State into Districts with a view to offer employment to the residents of that District on a preferential basis."
- In this background, the Court held that the provision of granting bonus marks to a particular group of personnel of the district, if they opted their present place/district of posting, was violative of Articles 14, 15 and 16 when tested on the anvil of Right to Equality and it created a class of un-equals amongst equals.
- Accordingly, the Condition 9 of the advertisement

was held to be illegal and unconstitutional and the petitions were allowed.

### Raikishore Jena v. State of Odisha

- ❖ **TOPIC:** Wife Asking Hungry Husband To Wait For Preparation of food Not 'Grave & Sudden Provocation': Orissa high court upholds Murder Conviction
- ❖ **BENCH :** Justice Sangam Kumar Sahoo and Justice Chittaranjan Dash



- ❖ **FORUM:** Orissa High Court
  - Regarding Murder Conviction
- ❖ **MAIN ISSUE**
  - On the noon of 25.09.2008, the appellant-Raikishore Jena returned home from his cultivable land and asked his wife (the deceased) to serve him food. As the food was yet to be completely prepared, the deceased-wife asked the appellant to wait for some time.
  - Being enraged by such a response, the appellant went inside their house and brought a katuri (a sharp edged weapon) and assaulted the deceased repeatedly on vital organs like head, face, neck, ear etc. by means of such a weapon. As a result of such brutal assault, the deceased succumbed at the spot.
  - Subsequently, an FIR was registered and investigation was carried out. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of the offence of murder.
  - Basing upon the evidence of the minor daughter of the appellant and the deceased, the post-mortem report and testimony of the medical officer, the trial Court came to the definite conclusion that the appellant is guilty for the commission of murder.
- ❖ **OBSERVATIONS**
  - The Orissa High Court has recently held that a wife asking her husband to wait for some time to have food, as preparation of food was underway, is not grave and sudden provocation which would lead

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- him to cause injuries to her and take away her life.
- While upholding the conviction of the appellant-husband for murder of his wife, the Division Bench of Justice Sangam Kumar Sahoo and Justice Chittaranjan Dash held “Neither there is any quarrel nor fight in this case. A housewife cannot be said to have caused grave and sudden provocation to her hungry husband when she requests her to wait for a while as the preparation of food is under process.”
  - At the outset, the Court examined whether the deceased died a homicidal death. For that purpose, it pursued the post-mortem examination.
  - The cause of death was opined to be 'hypovolemic shock' caused by extensive cut injuries to the head, face and neck by a heavy sharp cutting weapon. Further, this evidence was also corroborated by the inquest report. Therefore, the Bench came to the conclusion that the death of the deceased was homicidal in nature.
  - The Court found the minor daughter of the appellant and the deceased to be the star witness for the prosecution.
  - She deposed that her appellant-father returned from the cultivable land and asked her deceased-mother to serve him food but when the deceased asked him to wait for a while as the food was not completely prepared by then, he got enraged and fatally assaulted the deceased with a sharp edged weapon, i.e. katuri.
  - The said witness also stated that nobody except herself was present at the spot at the time of incident but many other persons came to that place after she raised hulla.
  - The Court was of the view that the minor witness had no reason to falsely implicate her father for murder of her mother.
  - “The evidence of P.W.12 having not been shaken in the cross-examination and more particularly when her evidence is getting corroboration from the finding of the dead body of the deceased in the courtyard and seizure of blood stained earth and blood stained katuri and the medical evidence adduced by the doctor (P.W.9) and the chemical examination report (Ext.8) ... we are of the view that the learned trial Court is quite justified in accepting her evidence and holding the appellant is the author of the crime,” it held.

- Lastly, the Court considered the argument on behalf of the appellant that his act comes under the purview of culpable homicide not amounting to murder.
- Considering the factual scenario, the Court observed that no grave or sudden provocation was caused to the appellant by the deceased by merely asking him to wait for food as the same was yet to be fully cooked.
- “The appellant might have been hungry when he returned from the field and it is said in Panchatantra Verse 4.16 that 'Bubhuksitah Kim Na Karoti Papam i.e. a hungry person can commit any sin' and Jean de La Fontaine quotes, 'a hungry stomach has no ears', but the manner in which the appellant reacted and brought the 'katuri' from inside the house and assaulted the deceased on the vital parts of her body like face, head, neck, ear etc., and caused as many as nine numbers of extensive cut injuries which were sufficient in ordinary course of nature to cause death, show his intention to commit the murder,” it added.
- The Court emphasised that there was no quarrel or fight between the appellant and the deceased in this case and therefore, a wife cannot be said to have caused grave and sudden provocation to her hungry husband by merely requesting him to wait for some time to have food.
- Accordingly, it was held that the act of the appellant cannot be covered under any of the exceptions under Section 300 of the IPC and the same amounts to commission of murder punishable under Section 302. Resultantly, the appeal was dismissed.