Ramachandran & Ors. V. Vijayan & Ors.

- **TOPIC :** Marumakkathayam Law - Property Obtained By Hindu Woman Post-Partition Without Legal Heir Would Be Her Separate Property & Not Joint Property : Supreme Court
- **BENCH :** Justice CT Ravikumar and Justice Sanjay Karol
- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Regarding appeal concerning property devolution under Kerala's traditional Marumakkathayam law
- **OBSERVATIONS**
  - The Supreme Court, in an appeal concerning property devolution under Kerala's traditional Marumakkathayam law, ruled that property acquired by a woman and her children post-partition does not become their separate property but remains part of the tharwad (joint property).
  - The bench comprising Justice CT Ravikumar and Justice Sanjay Karol held so while deciding a question of ''whether the property obtained by a female and her children after partition would be considered their separate property or would it belong to her tharwad.''
  - Moreover, the Court in this regard also discussed a question of whether the property obtained by a female post-partition, without a legal heir, would still be considered as tharwad property or her separate property.
  - The judgment authored by Justice Karol discarded the majority opinion in this regard and instead approved the minority opinion. Giving credence to the Mitakshara school of law, the Court ruled that the property held by the female without a legal heir after partition would be her separate property and not tharwad property.
  - The Court reasoned that partition fundamentally alters the nature of property ownership. It described partition as a process by which joint ownership is reduced to individual ownership. It puts an end to the joint status, separating members who hold their respective shares, which, on their death, will devolve upon their heirs. It held that once a partition occurs, the joint nature of the property is dissolved, and any property allocated to a Hindu female becomes her separate property.
  - This holds good even if she later has children, as the partition establishes her individual ownership of the property going forward.
  - Since, in the present case the property allocated to the female had a legal heir i.e., she wasn't single during partition, hence the Court considered the property as tharwad, and not her separate property.

Kallakuri Pattabhiramaswamy (Dead) Through Lrs. V. Kallakuri Kamaraju & Ors.

- **TOPIC :** S. 14 HSA | Hindu Woman Can Claim Absolute Ownership Of Property Possessed Under Her Antecedent Maintenance Right: Supreme Court
- **BENCH:** Justice CT Ravikumar and Justice Sanjay Karol
- **FORUM:** Supreme Court
- **MAIN ISSUE**
  - Whether a Hindu woman can claim absolute ownership if the property is tied to her antecedent maintenance right.
- **OBSERVATIONS**
  - The Supreme Court observed that a Hindu woman can claim absolute ownership if the property is tied to her antecedent maintenance right.
  - The bench comprising Justice CT Ravikumar and Justice Sanjay Karol observed that under Section 14(1) of the Hindu Succession Act, 1956 ("HSA"), for a possessory right to be transformed into full ownership, it must be established that the Hindu woman holds the property in lieu of maintenance.
  - However, the bench clarified that if a Hindu woman acquires property through a written instrument or a court decree, and such acquisition is not linked to any antecedent right, Section 14(2) would apply, disqualifying her from claiming absolute ownership of the property. ''the very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance.'', the court said.
  - The Court observed the aforesaid while deciding whether a Hindu woman whose life interest was created in the property through a partition deed would be entitled to absolute ownership over the said property under Section 14(1) of HSA.
  - Answering negatively, Justice Sanjay Karol's judgment clarified that a Hindu woman is entitled to absolute ownership of property only if she acquired or received it in lieu of maintenance as part of her antecedent right.
  - The Court said that ''the right of maintenance is sufficient for the property given in lieu thereof to transform into absolute ownership, by way of

Section 14(1) of the HSA, 1956.''

- Applying the law to the facts of the case, the Court held that since the woman acquired possessory rights under a partition deed for a limited period, rather than in lieu of maintenance, she could not claim absolute ownership of the property.

Punita Bhatt Alias Punita Dhawan v. Bharat Sanchar Nigam Limited (Bsnl) New Delhi

- **TOPIC:** 'Widowed Daughter Falls Within Definition Of Dependent Family', Allahabad HC Directs Compassionate Appointment
- **BENCH** : Justices Rajan Roy, and Om Prakash Shukla
- **FORUM:** Allahabad High Court
- **MAIN ISSUE**
  - Regarding relief to a widowed daughter seeking appointment to the post her deceased father based on compassionate grounds.
- **OBSERVATIONS**
  - A Division Bench of the Allahabad High Court comprising Justices Rajan Roy, and Om Prakash Shukla granted relief to a widowed daughter seeking appointment to the post of her deceased father based on compassionate grounds.
  - The Court held that even after marriage or widowhood, a woman would continue to be a daughter. Moreover, if she was widowed before the death of her father, she would for all legal and practical purposes be included in the definition of 'daughter', although widowed, on the date of her father's death.
  - The Petitioner, a widowed daughter, sought appointment in place of her deceased father on compassionate grounds. Her father used to serve the post of T.O.A. (T.L.) in the office of General Manager (Telecom) and expired on 12.11.2011.
  - She submitted affidavits of her family members stating that they had no objection if the Petitioner was appointed to the post of her deceased father.
  - Along with that, she also submitted an affidavit stating that she used to live with her father and her minor son after being widowed and appointing her to the post would enable her to take care of her family members to the best of her capability.
  - Moreover, she also was a Graduate and had a Library Science Certificate.
  - It was conveyed to her by the Assistant General Manager (HR), Office of General Manger (Telecom) that as a widowed daughter, she could not find a place in the eligibility criteria and accordingly her application was rejected.
  - Aggrieved, the Petitioner approached the Central Administrative Tribunal. Relying on the decision taken in U.P. Power Corporation Ltd. Vs. Smt. Urmila Devi, The Tribunal perused the guidelines/schemes issued by the Bharat Sanchar Nigam Limited for compassionate appointment and held that as per the eligibility criteria, the Petitioner was not entitled to compassionate appointment.
  - It also held that the Tribunal could not perform executive functions and frame rules and guidelines. Accordingly, the Tribunal dismissed the application.
  - It was also submitted that the case of the Petitioner was to be placed before the Circle High Power Committee as mandated by guidelines of the respondents, however, the same was not done.
  - On the other hand, the Respondents argued that as per the Scheme for Compassionate Appointment under The Central Government, the deceased widow was not a 'Dependent Family Member' of the deceased employee. It was submitted that since the policy did not make an inclusion of such nature, the Tribunal or Court could not interfere with the same.
  - The Court held that it was to be determined whether a "widowed daughter" of a deceased family member fell under the definition of 'Dependent Family Members' as per the Scheme of the Compassionate Appointment.
  - Primarily, it was to be assessed as to whether the Petitioner was dependent upon the deceased family member and secondly the economic or financial condition of the family also needed to be determined to establish whether the Petitioner could claim entitlement to the post on the ground of Compassionate Appointment.
  - The Court perused the Office Memo dated 09.10.1998 of the Government of India, Office Memo dated 27.06.2007 and the main guidelines dated 09.10.1998 and observed that the main guidelines contained the provisions for entitlement to compassionate appointment, and not the Office Memorandum.
  - As mentioned in Note-I of the Guidelines, a married daughter was included, however, such married daughter was to be dependent upon her father/mother on the date of his/her death.
  - In relation to whether a 'widowed daughter' could be included in the definition of 'married daughter', the Court opined that there was nothing to negate that a widowed daughter could be considered within the definition. It was held that in case of a widowed daughter, the Petitioner would have also

lost her source of livelihood and therefore it could be inferred that she was dependent on her father unless there was evidence to prove that she had other sources of income.

- Observing that 'widowed daughter' would be covered in the definition of 'daughter' contained in Note-I of the Guidelines dated 09.10.1998 if she was dependent upon her deceased father or mother on the date of his/her death, the Court allowed the Petition and directed the competent authority to consider the claim of the petitioner for compassionate appointment.

Rajive Nandan Mourya v. State of Bihar & Ors

- **TOPIC** : 'Candidate Cannot Be Dismissed From Service If Certificates In Dispute Are Not Cancelled', Patna High Court Sets Aside Order Of Dismissal
- **BENCH** : Justices P. B. Bajanthri and S. B. Pd. Singh
- **FORUM:** Patna High Court
- **MAIN ISSUE**
  - Regarding an order of dismissal observing that as long as the certificates in dispute were not cancelled
- **OBSERVATIONS**
  - A Division Bench of the Patna High Court comprising Justices P. B. Bajanthri and S. B. Pd. Singh set aside an order of dismissal observing that as long as the certificates in dispute were not cancelled, the Authorities could not initiate Disciplinary Proceedings or impose penalty in the form of a dismissal order.
  - The Appellant was appointed as an Assistant Engineer on 23.06.1987 in Bihar under Bihar Public Service Commission. His father belonged to Uttar Pradesh but he was posted in the State of Bihar. The Appellant had claimed that he belonged to 'Chamar' caste and his candidature thus came under Scheduled Caste category. He had procured a residential certificate on 3rd September 2014 and a Scheduled Caste Certificate on 04th September 2014 in Bihar so that he could avail service benefits including monetary benefits.
  - Later in 2017, the Authorities noticed that the Appellant was not a permanent resident of Bihar and thus the certificates obtained by him were not in accordance with law. A Departmental Inquiry was initiated against the Appellant and it was found that the certificates were false.
  - However, as per the law named law called The Bihar Reservation of Vacancies in Posts & Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act 1991, enacted by the State Government of Bihar, there was no provision by which the Caste Certificate obtained by the Government Servant could be cancelled. Thus, the Domicile certificate as well as the Scheduled Caste Certificate of the Appellant could not be cancelled.
  - The Respondents thus initiated Disciplinary Proceedings against the Appellant dismissing him from service. The Appellant approached the Single Bench of the High Court wherein by virtue of an order dated 08.10.2021, his Petition was dismissed.
  - Aggrieved by the same, the Appellant filed an appeal.
  - The Court observed that the certificates were not cancelled before dismissing the Appellant from service as per the decision passed in Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development and Others (1994) 6 SCC 241. Apart from this, even the caste certificate verification was pending before the authorities, the report was awaited and no further action was taken, the Court added.
  - The Court expressed dissatisfaction with the decision of the Single Judge stating that if the Caste Certificate dated 03.09.2014 hadn't been cancelled, imposing a penalty of dismissal from service would be premature.
  - Quoting Rules under Section 15 of The Bihar Reservation of Vacancies in Posts & Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act 1991, the Court held that after the rules were framed, it became mandatory for the State Government to identify the competent authority for cancellation of the certificate in dispute.
  - It was observed that as per several Supreme Court decisions, if a certificate needed cancellation, the State Government was supposed to form a committee for verification and cancellation of Caste Certificate and the Committee would be headed by a District Magistrate.
  - The Court further held that before initiating Departmental Proceedings against the Appellant, the authorities should have established that in obtaining the certificates, the Appellant had misrepresented himself which amounted to misconduct resulting in furnishing a ground to be dismissed from service as per Bihar C.C.A. Rules, 2005.
  - Furthermore, the Court perused the order of the Co-ordinate Bench dated 06.02.2023 and concluded that initiating disciplinary proceedings and

imposing the penalty of dismissal from service while the Certificates were still not cancelled was clearly immature.

- With these observations, the order of dismissal as well as the order of the Single Judge was set aside.
- Relying on these points, the Court held that in the absence of cancellation of the certificates, neither departmental proceedings could be initiated, nor could the authorities impose a penalty. Making these observations, the Court concluded that the order of dismissal was premature.
- Consequently, the Court directed the Respondents to take action to cancel both the certificates within six months of receiving the order. It observed that in case the Authorities were unable to cancel the certificates, any actions against the Appellant would be terminated.
- Additionally, the respondents were instructed to settle all due monetary and service benefits for the Appellant including pay fixation, within three months after the six- month period.

XXX v. Union of India

- **TOPIC:** Mental Trauma Not Irrelevant Consideration: Kerala High Court Permits Medical Termination Of 26- Week Pregnancy Of Minor Rape Survivor
- **BENCH :** Chief Justice Nitin Jamdar and Justice S. Manu
- **FORUM:** Kerala High Court
- **MAIN ISSUE**
  - Regarding the mental trauma undergone by the minor girl who had been stated to be subjected to "repeated sexual assault.
- **OBSERVATIONS**
  - While permitting a 16-year-old school going girl to terminate her over 26-week-pregnancy, the Kerala High Court said that the mental trauma undergone by the minor girl who had been stated to be subjected to "repeated sexual assault", cannot be an irrelevant consideration.
  - In doing so the court allowed an appeal by the survivor's mother challenging a single judge's order which had rejected her request for medical termination of her daughter's pregnancy. The court further noted that the medical board's report submitted before the single judge already confirmed that the girl was experiencing mental trauma.
  - A division Bench of Chief Justice Nitin Jamdar and Justice S. Manu in its November 8 order allowed the writ appeal of the mother after the report of the psychiatrist stated that the minor does not have the mental capacity to continue with the pregnancy and that would adversely affect her mental health.
  - As per the facts, the petitioner mother contended that the minor was subjected to repeated sexual assault and they were unaware of the pregnancy until a gynaecologist confirmed it. It was contended that by that time, the foetus had reached a gestational age of 25 weeks and 6 days, and it was not possible to medically terminate the pregnancy without intervention of the Court. It was submitted that continuing pregnancy would cause psychological trauma and that the minor was not ready to deliver and accept the child.
  - It was contended that the single judge refused to permit medical termination of pregnancy without considering the mental health of the minor girl on the ground that the medical board which examined the minor lacked a psychologist. The single judge had refused medical termination on the finding that the foetus showed no anomalies in the scan and had surpassed 26 weeks of gestation.
  - The single judge also ordered that authorities should provide all assistance if the minor and family wants to put the child up for adoption. Aggrieved by this, the mother moved an appeal before the division bench.
  - The High Court analysed Section 3(2) of the Medical Termination of Pregnancy (MTP) Act which deals with termination of pregnancies by registered medical practitioners.
  - Under Section 3(2) medical termination of pregnancy can be carried out up to 24 weeks of gestation, based on the opinion of two medical practitioners, if there is a risk of serious harm to the physical or mental health of the woman or if the there is substantial risk that the child who were to be born would suffer from any serious physical or mental abnormality.
  - Notably, explanation 2 to the provision states that when a pregnancy allegedly results from rape, "the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman".
  - In the facts of the case, at the time of the division bench's order, the minor girl was 26-weeks-pregnant. Referring to Section 3(2) the Court observed that the mental health of the minor girl must be given relevant consideration.
  - This being the position, the bench said that when the Medical Board had already opined that the minor would suffer mental trauma, if the Single Judge was of the view that the opinion of the Medical Board could not be considered due to the

absence of a Psychiatrist on the panel, a direction could have been issued for an examination by a Psychiatrist.

- When the matter came up on November 7, the bench directed for a suitable Psychiatrist to examine the minor and submit a report regarding her mental health in relation to the distress caused by the pregnancy. The Court observed that the psychiatrist who had conducted the examination, stated that the minor was experiencing an "adjustment disorder with a depressive reaction".
- The Court thus permitted the minor to undergo termination of pregnancy based on the opinion of the Medical Board and that of the Psychiatrist.
- Additionally, the Court stated that if the child was born alive after the procedure, the Medical Practitioner carrying out the procedure shall ensure that necessary facilities are provided to such child to save its life. Additionally, the Court directed that the State and its agencies assume full responsibility for the child if the minor and her family are unwilling to care for it.

Farzana Bano V. Union of India and Others

- **TOPIC** : Criminal Antecedents Of Family Members Can't Be Taken Into Account To Assess Applicant's Character For Issuing Passport: MP High Court
- **BENCH :** Justice Subodh Abhyankar
- **FORUM**: Madhya Pradesh High Court
- **MAIN ISSUE**
  - Regarding criminal antecedents of family members in assessing applicant's character and application for the issuance of passport.
- **OBSERVATIONS**
  - In a recent ruling, the Indore Bench of Madhya Pradesh High Court held that criminal antecedents of family members cannot be taken into account in assessing applicant's character and application for the issuance of passport.
  - The single-judge bench of Justice Subodh Abhyankar observed, ‘‘...the impugned order cannot be sustained in the eyes of law as the petitioner also enjoys all the fundamental rights as any other citizen of this Country, and the criminal antecedents of her husband and father- in-law cannot be taken into account to assess her character and her application for issuance of passport, as the respondents are required to pass the order only on the basis of the petitioner's character verification, and not that of her husband or father-in-law's criminal antecedents.’’
  - In the present case, the grievance of the petitioner was that despite being entitled to obtain a passport to travel abroad, the Regional Passport Authority rejected her application on the ground that her husband and father- in-law were offenders under the Narcotic Drugs and Psychotropic Substances Act, 1985 and other offences, and her father-in-law is still absconding in many cases.
  - Therefore, since she had a criminal family background, she was not recommended for issuance of passport.
  - A co-ordinate bench of the High Court in a writ petition (W.P. No.10154/2021) filed by the petitioner had earlier directed the respondents to decide the petitioner's application afresh without taking into account the grounds of earlier rejection. However, respondents again communicated to the petitioner through the impugned order dated 17.11.2022, that she cannot be issued the passport on account of the pre police verification, which is non-recommendatory.
  - The counsel for the petitioner submitted that despite a specific order being passed by the High Court, the respondents again passed the same order and therefore, the impugned order deserves to be quashed.
  - Additional Solicitor General submitted that on account of the criminal background of the husband and father-in law have petitioner, as her indulged in cases
  - relating to Narcotic drugs, she is also denied the facility of passport. However, he conceded that there are no criminal cases registered against the petitioner herself.
  - The court said that in W.P. No.10154/2021, the respondents were specifically directed not to consider the grounds, on the basis of which, the earlier application of the petitioner was rejected. However, the respondents did not comply with the order passed by the Court in its true letter and spirit, and passed the impugned order in a "cavalier manner".
  - The court concluded that the impugned order that rejected petitioner's application on the ground of criminal antecedents of family members cannot be sustained in the eyes of law.
  - Thus, it allowed the present petition and the impugned was set aside, with a direction to the respondents to re- assess the petitioner's case within four weeks' time and pass the appropriate order in accordance with law.