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"Purpose Of Cross-Examination Not To Create Indelible Scars": Madras HC Apologises To Women Litigants For Insensitive Questions By A Lawyer

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IN THE HIGH COURT OF JUDICATURE AT MADRAS
D.BHARATHA CHAKRAVARTHY; J.
A.S. No. 61 of 2016 and C.M.P.No.1380 of 2016; 24.11.2022
Leelavathi *versus* **Vennila**

Prayer: Appeal Suit filed under Order XLI Rule 1 read with Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 30.06.2015 made in O.S.No.79 of 2013, on the file of the learned IAdditional District Judge, Dharmapuri District.

For Appellant: Mr.N.Manokaran,

For Respondents: Mr.V.Raghavachari, for Mr.K.S.Karthik Raja, (for R1 to R4)

J U D G M E N T

A.The Appeal :

This Appeal Suit is filed against the Judgment and Decree of the Additional District Judge, Dharmapuri, dated 30.06.2015 in O.S.No.79 of 2013, whereby the suit filed by the respondents herein/plaintiffs for partition and for a declaration that the Partition Deed, dated 22.01.1999 as null and void and for permanent injunction restraining the appellants herein/defendants encumbering the suit property, was decreed.

B. The case of the Plaintiff :

2. The case of the plaintiffs is that the plaintiffs and the defendants Nos.1 and 2 are the legal heirs of one *V.R.Mani*. The third defendant is the Banker of the second defendant. The said *V.R.Mani* is the son of *Ramasamy Gounder*. They were the native of *Vellakalpatti* Village of *Sankagiri* Taluk, Salem District. The said *V.R.Mani* got married to the first plaintiff in the year 1969 and about the year 1970, the second plaintiff was born and in the year 1973, the third plaintiff was born.

2.1. While so, in the year 1975, the said *Ramasamy Gounder* sold all his ancestral property in *Vellakalpatti* Village and purchased lands and shifted to *Indamangalam* Village. The fourth plaintiff was thereafter born to the said *V.R.Mani* and the first defendant at *Indamangalam* village. In the year 1981, out of income from the joint family properties, agricultural lands ad-measuring Ac.3. 79-1/2 Cents was purchased in the name of the said *V.R.Mani.*

2.2. While so, the said *V.R.Mani*, started treating the first plaintiff cruelly as she gave birth to three daughters and the said *V.R.Mani* was insistent upon male descendant and he also treated his daughters/ the second, third and fourth plaintiffs badly. The said *V.R.Mani* proceeded to defy his own father *Ramasamy Gounder* and illegally married the first defendant. Through the first defendant, the second defendant was born. Unable to bear the extreme conduct of his son, the *Ramasamy Gounder* went to his daughter's house and lived with his daughter in his last days and died. The said *V.R.Mani* continued to ill-treat the first plaintiff, his wife and the plaintiffs 2 to 4 daughters and he finally died on 02.09.2005. After the death of the said *V.R.Mani*, in the year 2013, the plaintiffs approached the defendants 1 and 2 for amicable partition of the properties. Even though the second defendant was initially willing to partition the property, thereafter, listening to the ill advice, he refused and evaded. When the plaintiffs, further approached the defendants, they stated that on 22.01.1999 itself, the said *V.R.Mani*, partitioned the suit properties with the second defendant and where under the suit properties are allotted to

the share of the second defendant and therefore, the properties are not available. The said *V.R.Mani* also sold about 62 cents. The plaintiffs were shocked to know about all this, therefore, they issued a legal notice on 14.04.2013 and thereafter, the suit was filed.

3.The second defendant filed a written statement, whereby it was stated that the first plaintiff was a divorced wife. It is further contended that the plaintiffs 2 to 3 are not the daughters of *V.R.Mani*. It was denied that the ancestral property was sold and the family migrated from *Vellakalpatti* to *Indamangalam* Village. The said *V.R.Mani*, purchased 3 Acre $79^{1/2}$ Cents land out of his own funds. Some of the properties were purchased in the name of *Ramasami Gounder* by the said *V.R.Mani*. There is a registered partition on 22.01.1999 between the said *V.R.Mani* and the second defendant and the suit properties allotted to the share of the second defendant.

C. Issues :

4.On the strength of the said pleadings, the Trial Court framed the following issues:-

"1. Whether the plaintiffs are entitled for 19/25 shares in the suit properties as claimed by them?
2. Whether the plaintiffs are entitled to declare that the partition deed executed in between the deceased V.R.Mani and the 2nd defendant as null and void?
3. Whether the plaintiffs are entitled to restrain the defendants from making any encumbrance over the suit property?
4. Whether the plaintiffs are entitled for mesne profits as claimed by them?
5. To what other reliefs the plaintiff are entitled? "

D. The trial:

5. On the said issues, the parties let in evidence. On behalf of the plaintiffs side, the second plaintiff examined herself as P.W.1, the third plaintiff was examined as P.W.2 and One *Chinnasami*, was examined as P.W.3, and ***Exs.A-1 to A-9*** were marked. On the side of the defendants, the first defendant was examined as D.W.1 and ***Exs.B-1 to B-3*** were marked.

6. The Trial Court thereafter proceeded to consider the case of the parties and by the Judgment dated 30.06.2015, found that the contention of the defendants that the first defendant is the divorced wife is totally unsubstantiated. On considering ***Ex.A-7***/Transfer Certificate, the contention that the second plaintiff is not the daughter of the said *V.R.Mani*, was also rejected. Therefore, the Trial Court found that the relationship of the parties that they are legal heirs of the said *V.R.Mani* and the first plaintiff is the legally wedded wife and the first defendant is the second wife and the plaintiffs 2 to 4 are the daughters and the second defendant is the son born through the second marriage of the said *V.R.Mani*. The Trial Court found that when the plaintiffs are not agitating the issue and are ready to allot share to the second defendant, the second defendant need not be presumed as an illegitimate child. When the property to an extent of 60 Cents is already sold to the third parties and since the said person is not impleaded, it will not affect the suit of the plaintiffs, but, it can only result in the plaintiffs giving up their case in respect of said extent. The Trial Court further came to the conclusion that the plaintiffs are entitled to 4/5 shares in the suit properties and accordingly decreed the suit by granting a preliminary decree to divide the suit property into five equal shares and allot four shares to the plaintiffs and declaring that the Partition Deed, dated 22.01.1999, as null and void and permanently injuncting the defendants from making any encumbrances over the suit property and giving liberty to file a separate application for *mesne* profits and costs of the suit. Aggrieved by the same, the defendants 1 and 2 have filed the present Appeal Suit.

E. The Submissions :

7. Heard *Mr.N.Manokaran*, learned Counsel for the Appellants and *Mr.V.Raghavachari*, learned Counsel appearing on behalf of the Respondents.

8. *Mr.N.Manokaran*, learned Counsel for the appellants would submit that a perusal of the plaint it would be clear that there was lack of pleadings in respect of the manner of purchase of the suit properties. ***Exs.A-8 & A9***/Sale Deeds, which were produced in proof of selling the ancestral properties, also mention that the properties sold are self-acquired properties/ancestral properties and therefore, the same cannot conclusively prove that the properties are ancestral in nature. When the properties stand in the name of *V.R.Mani* and *Ramasamy Gounder*, having been purchased by them, it should be treated as their self-acquired property. Upon the death of *Ramasamy Gounder*, the same devolved on Late. *V.R.Mani* and the said Late. *V.R.Mani*, along with his son, the second defendant, had partitioned the property by which, the second defendant is vested with the suit properties and therefore, the plaintiffs' case is unsustainable on the face of it.

8.1. Alternatively, the learned Counsel would submit that even assuming that the property is an ancestral property, it is now held by the Division Bench of this Court that once the Central Act came into force it will govern the field. Therefore, as per the Hindu Succession (Amendment) Act, 2005, Act, the daughters will not be entitled for share in the coparcenary property, if the property had already been partitioned by a registered Partition Deed and in this case, even before the Act came into force, in the year 1990 itself vide ***Ex.A-3***, the partition was effected between the father and the son and the same cannot be unsettled and the plaintiffs are not entitled for any relief.

8.2. In support of his contentions, the learned Counsel relied upon the Judgment of the Division Bench of this Court, in ***R.Deivanai Ammal (died) and Another, Vs. G.Meenakshi Ammal and Others***[1], more specifically relying on the Paragraphs Nos.13 to 17, to contend that it is for the plaintiffs to categorically prove that there was a joint family nucleus for purchase of the suit schedule property and that the property standing in the name of *V.R.Mani* was to be treated as Joint Family Property. The learned Counsel relied upon the Judgment of this Court, in ***Arumugham Vs. Kuppammal***[2], more specifically relying on the Paragraph No.15 for the same proposition. The learned Counsel also relied upon the Judgment of ***Amudha & Ors., Vs. Janardhanan & Ors.***[3]***,*** more specifically relying on Paragraphs Nos.24 & 25 of the said Judgment to contend that unless the evidence is on record to show that there was surplus income from the joint family properties to purchase the other properties, it cannot be concluded that there was a joint family nucleus. The learned Counsel relied upon the Judgment in, ***Pandian Vs. Madhanmohan***[4], more specifically relying on Paragraphs Nos.12 & 13, to contend that the mere recitals in the Sale Deed by itself would not lead to the conclusion that the property is the ancestral property in nature. The learned Counsel further relied upon the Judgment in, ***Sadayappan Vs. Kandasamy (Died) & Ors.***[5]***,*** more specifically relying the Paragraph No.6 for the same proposition. The learned Counsel placed strong reliance on the Judgment of the Division Bench of this Court in, ***P.Hemamalini Vs. K.Palani Malai***[6]***,*** to contend that once the Central Act, came into force, Section 29 A of the Hindu Succession Act, 1989 can no more be relied upon and only the Central Act, which would prevail and therefore, as per the Central Act, since the partition among the parties have

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[1] 2004 (4) CTC 208
[2] CDJ 2010 MHC 624
[3] 2015 (3) MWN Civil 353
[4] MANU/TN/0112/2018
[5] S.A.(MD).No.189 of 2012, dated 18.08.2021
[6] *2021 (6) MAD LJ* 513

already been effected between the existing coparceners by registered partition deed, the plaintiffs are not entitled to the relief. The learned Counsel also relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Shasidhar & Ors., Vs. V. Aswini Uma Mathad***[7], more specifically relying on Paragraph No.20, to contend that the Courts have to examine the nature and character of the property in the suit and then determine the ownership of the properties. The learned Counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Bhagwat Sharan through legal heirs Vs. Purushottam & Ors.***[8], more specifically relying on Paragraph No.21, to contend that even an admission made by a party is only a piece of evidence and is not a conclusive proof of what is stated therein and it has to be specifically proved that the properties are purchased from and out of the joint family income. For the proposition that children born through invalid marriages are also equated with that of the legitimate off-springs of valid marriage and that they will have equal share in the share of the property of the parents which has to be treated as self-acquired property, reliance is placed on the Judgment of the Hon'ble Supreme Court of India, in ***Revana Siddhappa Vs. Mallikka Arjun and Ors***[9].

9. Opposing the above submissions, *Mr.V.Raghavachari*, learned Counsel for the respondents would submit that in this case, through oral and documentary evidence, the parties have proved that the properties were ancestral in nature. In the cross-examination it is categorically admitted that the Late. *Ramasamy Gounder* and *V.R.Mani* were the natives of *Vellakalpatti* Village and ***Exs.A-8 and A-9*** stand proof for selling their ancestral property in *Vellakalpatti* and thereafter, the properties in *Indamangalam* Village were purchased from and out of the said funds. The subsequent purchases were also from the agricultural income out of the said joint family properties and neither the said *Ramasamy Gounder* nor the said *V.R.Mani*, had any other source of income. The same is clearly and categorically recorded. Therefore, the plaintiffs proved that the properties are ancestral in nature. He would contend that even though it is the case of the defendants that the first plaintiff is the divorced wife, absolutely there is no evidence to prove the same. As a matter of fact, very high-handedly questions in the cross-examination were put as if the first plaintiff was of loose character and the defendants 2 and 3 are not even born to the said *V.R.Mani*. All the above are done, only because of the wife and daughters have claimed their legitimate rights of the share in the property. The learned Counsel would submit that even though the second defendant is the illegitimate son and the property is ancestral in nature, he never can be a coparcener and therefore, any partition which is claimed to have happened prior to the Act coming into force in ***Ex.A-3***, is non-est in the eye of law. The Act only saves the valid partition between the existing coparceners.

9.1. In support of his contentions, the learned Counsel also relied upon the Judgment of this Court, in ***Rukmani Ammal Vs. Annamalai Pillai***[10], to contend that the document by itself is the best evidence. The learned Counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Rani Vs. Santa Bala Debnath***[11], more specifically relying on Paragraphs Nos.6 & 7, for the same proposition. The learned Counsel also relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Sunder Das Vs. Gajananrao and Ors.***[12], more specifically in Paragraph No.10, that when there is no explanation for the recitals in ***Exs.A-1*** and ***A-2***/Sale Deeds, the same has to be taken into account as such. The learned Counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in

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[7] (2015) 11 SCC 269
[8] (2020) 6 SCC 387
[9] (2011) 11 SCC 1
[10] (2001) 3 CTC 705
[11] (1970) 3 SCC 722
[12] (1997) 9 SCC 701

Parayankandiyal Eravath Kanapravan Kalliani Amma and Ors., Vs. K.Devi and Ors.[13], for the proposition that legitimacy is a matter of status and Section 16 of the Hindu Succession Act, grants share only in respect of parents' property. The learned Counsel further relied upon the Judgment of Hon'ble Supreme Court of India, in ***M.Yogendra and Ors., Vs. Leelamma N. and Ors.***[14], more specifically relying on Paragraphs Nos.25 & 26 of the said Judgment in respect of the same proposition. The learned Counsel also relied upon the Judgment of this Court, in ***Jayammal and 9 Ors., Vs. V.Kumar and 4 Ors.***[15], morefully relying on Paragraph No.33 of the Judgment, for the proposition that any partition with legitimate children in respect of ancestral property is valid and illegitimate children are entitled to a share only in self-acquired properties. The learned Counsel also relied upon the Judgment of this Court, in ***Kuppan Vs. Muniammal and Anr.***[16], regarding the fact that the second marriage would be illegal and that the second defendant will only be an illegitimate child. For the same proposition, the learned Counsel relied upon the Judgment of the Division Bench of this Court, in ***K.Munuswami Gounder and Anr., Vs. V.M.Govindaraju and Ors.***[17], and ***Rajam and Ors., Vs. Chidambaravadivu and 61 Ors.***[18],.

F. Points for conisderation :

10. Considering the submissions made on behalf of both sides and upon perusal of the material records of the case, the following questions arise for consideration in the instant case :-

"(i) What is the relationship and legal status as between the parties to the suit?
(ii) What is the nature of the suit property?
(iii) To what shares the parties are entitled to in the suit properties?"

Question No.(i):

11. Admittedly, the first plaintiff /*Kamala*, is the legally wedded wife of the Late.*V.R.Mani*. It is stated in the written statement filed by the defendants that she is a divorced wife. Except stating so, neither in the pleadings there is any particulars nor in the evidence any particulars of divorce is even attempted to be given. The plaintiffs side has duly denied the same. The pleading on the side of the defendants is an evasive pleading, bereft of any details. No attempt is even made to let in evidence in respect of the said stand. Thus, the first plaintiff/*Kamala* is the legally wedded wife. Apart from the oral evidence, the second plaintiff's school transfer certificate is marked as ***Ex.A-7***, which clearly proves that the second plaintiff is born to the said *V.R.Mani*. Thus, it would also goes to show that the defendants' case that the daughters viz., *Malarkodi*, *Jothi*, and *Vennila* are not daughters to the said *V.R.Mani*, is a complete falsehood and bereft of any supporting evidence or details. In this regard, it may be seen that a legal notice was issued on 19.04.2013 by the first plaintiff claiming to be a wife and the plaintiffs 2 to 4 claiming to be daughters, which is marked as ***Ex.A5***. Absolutely no reply whatsoever was issued. All these factors, cumulatively establish the following relationship between the parties. One *V.R.Mani* is the son of *Ramasamy Gounder*. *V.R.Mani* married the first plaintiff /*Kamala* in the year 1969 and the plaintiffs 2 to 4, daughters were born through her. Thereafter, even while the first marriage was valid and subsisting, the said *V.R.Mani* married the first defendant illegally and the second defendant/son was born through the second wife/*Leelavathi.* Therefore,

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[13] (1996) 4 SCC 76
[14] (2009) 15 SCC 184
[15] (2008) 3 L.W. 483
[16] (2010) 4 MLJ 981
[17] (1995) 1 L.W. 487
[18] (2002) 3 L.W. 803

the first plaintiff is the legally wedded wife of the said *V.R.Mani*. The plaintiffs 2, 3 and 4 are only the legitimate children of the said *V.R.Mani*. The second defendant being a son born through the voidable marriage with the first defendant, is also a heir to the limited extent of inheritance as per Section 16 of the Hindu Succession Act, accordingly, I answer this question.

Question No.(ii):

13. ***Ex.A-8*** is the Sale Deed, dated 15.09.1975 by which, the father of the plaintiffs' 2 to 4, *V.R.Mani* and their grandfather, *Ramasami Gounder* sold their properties in which, it is clearly mentioned "எங்களுக்கு சுயார்ஜித வகையிலும், பித்ராருஜித வகையிலும் பாத்தியபட்டு" which shows that the properties which are sold are both self-acquired / ancestral properties. In the same sale deed, the purposes of sale is clearly mentioned to purchase the lands (தர்மபுரி ஜில்லா, பாலகோடு தாலுக்கா ஆரியக் குலத்தில், பூமி சுத்த கிரயத்திற்கு), similar averments are there in the yet another sale deed, in favour of one Sengodan, which is also marked as ***Ex.A-9***. The learned Counsel would submit that the recital also mentions that it is self-acquired/ancestral property and therefore, it cannot be concluded that it is an ancestral property. Even though it is mentioned as both ancestral / self-acquired, in this case, there is no specific pleadings or evidence that both *Mr.Ramasamy Gounder* and *Mr.V.R.Mani* had any independent income. Both of them sold the property as coparceners jointly. Therefore, even if there is any self-acquired property, by virtue of *doctrine of blending* if the parties jointly sell the same as joint family properties, it has to be construed that the properties which are sold are only joint family property. A useful reference in this regard can be made to the Judgment in ***Rajanikanta Pal -Vs- Jagmohan Pal***[19]***,*** where it is held that:

"where a member of a joint family blends his self acquired property with property of the joint family, either by bringing his self acquired property into a joint family account or by bringing joint family property into the separate account, the effect is that all the property so blended becomes a joint family property".

Thus, it can be seen that the properties in *Indamangalam* Village are purchased out of the joint family nucleus. Further, in the cross-examination of D.W.1 she had admitted that the letter 'V' in initials of the name of *V.R.Mani* stands for *Vellakalpatti.* This would further buttress the factum of the family migrating from *Vellakalpatti* to *Indamangalam* Village, by selling the ancestral properties and purchasing the agricultural lands in and around of *Indamangalam* Village. Therefore, I hold that the plaintiffs in this case have discharged their onus and the nature of the properties are categorically proved as ancestral properties.

Question No.(iii):

14. The learned Counsel also relying upon the Judgment of the Division Bench of this Court, in ***P.Hemamalini Vs. K.Palani Malai Case cited supra***, contended that even considering that the property is ancestral in nature, once that the Hindu Succession Act is amended by the Central Act of the year 2005, as per Section 6(5), the partition which has been effected by a registered partition deed before the date of 20.12.2004 is saved. ***Ex.A-3***, partition deed is dated 22.01.1999. The two coparceners viz., Late. *V.R.Mani*, the father and the second defendant/the son have partitioned the properties among themselves and all these suit properties fell to the share of second defendant. In this regard, it can be seen

[19] A I R 1 9 2 3 P C 5 7

that the Act only saves any partition between the coparceners effected by the registered partition deed. In view of my findings to Question No.(i), the second defendant who is born through the illegal marriage, though is a legal heir to the limited extent of inheriting the separate share of the deceased *V.R.Mani*, cannot be elevated to the status of coparcener and the deed of partition, cannot confer the status of a coparcener on the second defendant. There were no other coparceners who are parties to the said partition deed in ***Ex.A-3***. Therefore, the same would not fall within the mischief of Section 6(5) of the Act, which only saves the partition. ***Ex.A-3*** cannot be termed as partition at all, as it was not between the two coparceners/sharers of the properties and therefore, the document in ***Ex.A-3*** is null and void on the very face of it and thus, will not come to the aid of the second defendant. Considering that the 2005 Act alone shall prevail, still it is clear that the plaintiffs 2 to 4, daughters are only coparceners by birth along with their father *V.R.Mani*. Thus, they are all entitled for a share in the suit schedule properties. Thus, it can be seen that the suit properties originally belonged to *Ramasamy Gounder* and *V.R.Mani*. Upon the birth of the plaintiffs 2 to 4, daughters, they also become coparceners along with them. After the death of *Ramasamy Gounder*, immediately before the death of *V.R.Mani*, in the year 2005, the suit properties devolved on the said *V.R.Mani* and his three daughters. On the death of the said *V.R.Mani*, his ¼th of the share again devolved on his wife/the first plaintiff and his daughters/the plaintiffs 2 to 4 and his son/the second defendant. Thus, as per law, the first plaintiff is entitled to 1/20th share in the suit property, the plaintiffs 2, 3, 4 are entitled to 6/20th share each, in respect of the suit properties and the second defendants is entitled to 1/20th share in respect of the suit properties. Thus, the plaintiffs will be entitled to a total share 19/20th of the suit property and the second defendant will be entitled to 1/20th shares of the suit property. But, however, the first plaintiff being the wife and plaintiffs 2 to 4 the three daughters are gracious enough by their stand in the plaint to consider the second defendant/*Srinivasan* also as a legal heir, entitled to the share in the ancestral properties. Therefore, they relinquished their rights and claim only lesser extent of 19/25th shares and are willing to grant 6/25th shares in the suit property to the second defendant. Even before this Court *Mr.V.Raghavachari*, learned Counsel appearing on behalf of the respondents specifically pleaded that the daughters have taken a conscious decision to treat the second defendant also as equal to them and restricting their claim only in respect of 19/25th shares. Accordingly, I hold that the plaintiffs will be entitled to 19/25th shares in the suit schedule properties and the second defendant would be entitled to 6/25th shares of the suit schedule property.

15. In view thereof, the findings in respect of issue No.1 framed by the Trial Court as to whether the plaintiffs are entitled to 19/25th share in the suit properties is answered in the affirmative and the Trial Court Judgment and Decree to the extent of directing the division of the property into five equal shares and allotting 4/5th shares to the plaintiffs and 1/5th share to the defendants stands modified to the above extent.

16. In respect of issue No.2, findings and conclusion reached by the Trial Court, that the partition deed, ***Ex.A-3*** is null and void is affirmed. The plaintiffs will be entitled for the relief of permanent injunction and accordingly, the issue No.3 is answered. The Trial Court has given liberty for the plaintiffs in respect of *mesne* profits and the same is also confirmed and the said issue is accordingly answered. The issue No.5 as to what reliefs the parties are entitled, is also answered as above.

17. In the result:

i) The Appeal Suit in A.S.No.61 of 2016 is partly allowed;
ii) The O.S.No.79 of 2013, on the file of the Additional District Judge, Dharmapuri is decreed on the following terms:

a) The suit properties be divided by metes and bounds into 25 equal shares and the plaintiffs are allotted 19/25th shares and shall be entitled to separate possession thereof;

b) That the partition deed registered as document No.52/1999, dated 22.01.1999, marked as ***Ex.A-3*** between the deceased *V.R.Mani* and the second defendant is null and void;

c) That the defendants are hereby restrained by means of permanent injunction from making any encumbrances over the suit property ;

d) That the plaintiffs are directed to take separate action by filing anapplication under Order XX Rule 18 of CPC., for *mesne* profits;

e) That the plaintiffs will be entitled to the costs of the suit;iii) There will be no order as to costs as far as this Appeal Suit is concerned. Consequently the connected miscellaneous petition is closed.

Epilogue :

This case does not end with the grant of the decree and requires this passage. We were a misogynistic society, but, we are fast changing. If the Late.*V.R.Mani*, had a thought / opinion that the female child is of no consequence for him and that he will go on to the second and third children and they again being females, would even abandon his wife and marry illegally for the second time, and once a son is born through the second wife, will even register a partition deed bestowing all his properties upon the said son turning just 18, it is not his individual mistake, but is the reflection of our collective failure. On behalf of the society at large, this Court conveys the due apologies to the plaintiffs 2 to 4, the daughters and that they can be rest assured that they are as good as sons for all purposes and that is the purport of the Hindu Succession (Amendment) Act, 2005.

This apart, when the hapless daughters approached this Court, legitimately knocking its doors for justice, an extremely unreasonable stand is taken that they are not even born to their father. When the second plaintiff, P.W.1 entered in the box, the following cross-examination was made:

"நான் வி.ஆர்.மணி என்பவரின் மகளே இல்லை என்று சொல்வது தவறு. எனது தாயார் தவறான நடவடிக்கைகளில் இருந்ததால் தான். அவருக்கும் எனது தாயாருக்கும் விவகாரத்து இருந்தது என்றால் சரியல்ல".

This kind of insensitivity and mistakes which assassinate the character are generally masked for public consumption in the judgment. But, I am constrained to extract the same, because, such insensitive crossexamination, especially in the absence of any valid material regarding the same, should not be resorted to. A learned brother member of the Bar had done so, which also happened under the supervision of the Court. Therefore, on this score also, this Court conveys its apologies to P.W.1 in particular and the plaintiffs in general. The purpose of the cross-examination is not to create indelible scars in the minds of the litigants or to humiliate them. It is time that we are a little more empathetic to the litigants who approach us.

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