

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE SATHISH NINAN
&**

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

Friday, the 11th day of July 2025 / 20th Ashadha, 1947

MAT.APPEAL NO. 1093 OF 2014

OP 1042/2007 OF FAMILY COURT, THIRUVANANTHAPURAM

APPELLANT/CLAIM PETITIONER:

**SULOCHANA, D/O KARTHIAYANI, ORUMUKHATHU PUTHEN VEEDU, PLAVODE,
KODUNGANNOOR P.O, THIRUVANANTHAPURAM**

BY ADVS.SRI.S.BALACHANDRAN (KULASEKHARAM),SRI.V.R.GOPU

RESPONDENTS/COUNTER PETITIONERS:

- 1. ANITHA, AGED 42 YEARS, W/O SHAJIMON, MEKKUMKARA VEEDU, CHIRAKKONAM,
PARASSALA-695502**
- 2. MALAVIKA (MINOR),D/O ANITHA, AGED 15 YEARS, MEKKUMKARA VEEDU,
CHIRAKKONAM, PARASSALA-695502, REPRESENTED BY HER MOTHER AND
GUARDIAN IST RESPONDENT**
- 3. MAYOOKHA (MINOR), D/O ANITHA, AGED 13 YEARS , MEKKUMKARA VEEDU,
CHIRAKKONAM, PARASSALA-695502, REPRESENTED BY HER MOTHER AND
GUARDIAN IST RESPONDENT**
- 4. SHAJI MON, S/O HARIS, IDATHARA PUTHEN VEEDU, KOLLOTTU MURI,
KULATHUMMEL VILLAGE, ANTHIYOORKONAM, ANTHIYOORKONAM P.O, KATTAKKADA,
THIRUVANANTHAPURAM-695572**

**BY ADVS.SRI.K.SATHEESH KUMAR,SRI.T.A.UNNIKRISHNAN for R1
and SMT.G.KRISHNAKUMARI for R2**

**This Matrimonial appeal having come up for orders on 11.07.2025, the
court on the same day passed the following:**

p.t.o

SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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Mat.Appeal No.1093 OF 2014

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Dated this the 11th day of July, 2025

REFERENCE ORDER

P.Krishna Kumar, J.

This appeal is by the claim petitioner in an application under Rule 58 of Order XXI of the Code of Civil Procedure before the Family Court, Thiruvananthapuram. His contention is that he is a bona fide purchaser for valuable consideration of a property that was subsequently attached in a proceeding initiated by the first respondent, claiming maintenance from her husband, the second respondent.

2. The property in question was originally owned by the husband, who sold it to the claim petitioner prior to the order of attachment. The attachment in the original petition was effected on 14.11.2007. The original petition was decreed in favour of the wife on 12.03.2009. The sale deed had been executed by the husband in favour of the claim petitioner on 16.07.2007. The property purchased by the claim petitioner

comprised of 5 cents out of the 11 cents of land owned by the husband.

3. The Family Court dismissed the claim petition, holding that the wife was entitled to enforce her right of maintenance against the property, as she had a charge upon it. The Court relied on the decision of this Court in ***Ramankutty Purushothaman v. Amminikutty*** (AIR 1997 Ker 306).

4. The claim petitioner contended that the wife had no right to receive maintenance from the profits of the immovable property in question, as none of the provisions of the Hindu Adoptions and Maintenance Act, 1956 (“the Act, 1956”, for short) confer any such right upon her. It was further contended that, since the sale was effected at a time when even the petition claiming maintenance had not yet been filed, the order for maintenance could not be enforced against the said 5 cents of land.

5. Sri S. Balachandran Kulasekharam, the learned counsel appearing for the claim petitioner, placed reliance on the decision of the Division Bench of this Court in ***Vijayan v. Sobhana and Others*** [ILR 2007 (1) Ker 822] to substantiate

the petitioner's claim. The learned counsel appearing for the husband supported the stand taken by the claim petitioner. The wife, however, did not appear to contest the matter.

6. The relevant portion of the judgment in *Vijayan v. Sobhana* is extracted below:

"4. Obviously, the entitlement of respondents 1 to 3 before the Family Court was asserted based on Section 28 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred as 'Act 1956') and Section 39 of the Transfer of Property Act, 1882 (hereinafter referred as 'T.P.Act'). Section 28 of Act, 1956 provides as follows:

x x x x x x

A bare reading of the Section would show that the benefit of the Section is available only to a dependent, who has a right to receive maintenance out of an estate. Section 28 of Act, 1956 occurs in Chapter III of the Act and Section 21 of Act 1956 defines dependents for the purposes of Chapter III. On a reading of Section 21 of Act 1956, it is to be noticed that the categories enumerated as dependents in the Section do not include wife or children. Since wife and children are not included among the various categories of dependents, they cannot claim the benefit of Section 28 of Act 1956. Therefore, the plaintiffs in the suit being the wife and children of the fourth respondent, they are not entitled to invoke Section 28 of Act 1956 and raise the claim on that basis.

x x x x x x

An analysis of Section 39 of the T.P. Act extracted

above would show that where a third person has right to receive maintenance from the profits of immovable property and if such property is transferred, he is entitled to enforce his right against the transferee subject to the other conditions mentioned therein. In so far as the facts of this case is concerned, the wife and the children, who are plaintiffs, are entitled to be included in the category of third person. However, their claim to receive maintenance is only against the fourth respondent. They do not have any right to claim maintenance from the profits of the immovable property held by him. They also have not set up such a case in their pleadings. Unless they have a right to receive maintenance from the profits of the immovable property transferred in favour of the appellant, even if the remaining conditions mentioned in Section 39 of Act 1956 are satisfied, they cannot claim the benefit of Section 39 or Act 1956.”

7. The right of a Hindu wife to receive maintenance from the property of her husband has been considered in various decisions of this Court as well as by other High Courts. One of the earliest precedents available in this matter is ***Lakshman Ramachandra v. Satyabhama*** [(1877) ILR 2 Bom 494], wherein it was held that:

“Through her marriage a Hindu woman, according to Jimuta Vahana, acquires an interest in her husband's property, though only, according to some writers, of a secondary kind, such as may be divested by a gift by the husband to a third party. A higher interest could certainly not be assigned to her consistently with that text

of Manu (chap. VIII, pl. 416), which ranks her along with a son and a slave as incapable of having wealth exclusively her own, but this interest has been deemed enough to entitle her to an equal share with sons when her husband makes a partition of his property.”

Most of these decisions have upheld such rights of the wife. In some of those decisions, reference was made to ancient Hindu texts and Smritis to formulate a legal principle that a Hindu wife has a right to claim maintenance from her husband's property. Considering the relevance of the questions involved in this matter, we requested Sri T. Krishnanunni, learned Senior Counsel, to assist the Court as Amicus Curiae.

8. Explaining the historical development of this principle, the learned Amicus Curiae brought to our attention a series of precedents. According to the learned Amicus, a contrary view appears to have been taken for the first time in *Pavayamal and Another v. Samiappa Goundan and Others* [AIR 1947 Mad 376], where it was held that, in order to attract Section 39 of the Transfer of Property Act (‘T.P.Act’, for

short), the wife or daughter must have *a right* to receive maintenance “*from the profits of the immovable property*” in question. The Court further held that mere knowledge on the part of the purchaser of the wife’s legal right would not be sufficient. If it were otherwise, no sale by a husband of his properties to third parties would be secure, as the wife could later assert that the transferee had notice of her right and was therefore bound to recognise it, it was held.

9. In ***Banda Manikyam v. Banda Venkayamma*** [AIR 1957 AP 710], Andhra High Court did not follow the above view, by referring to the provisions of the Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946 (which was subsequently repealed by Section 29 of the Act, 1956). The Court held that the reasoning in ***Pavayammal*** would lead to considerable hardship if a husband were permitted to transfer all his properties, even gratuitously. It was observed that a Hindu joint family comprises both male and female members and that women who marry into the family are equal members, though entitled only to maintenance, unlike coparceners who have a right to partition. The Court further noted that while

the rights of coparceners accrue by birth, the rights of their wives arise upon marriage and that the maintenance of a wife and minor children is an obligation inherent in the very existence of the jural relationship, quite independent of the possession of any property, whether ancestral or self-acquired, by the husband or father.

10. The Court further held that, where property from which a wife or widow has a right to claim separate maintenance is alienated to defeat that right, and the alienee has notice of such right, the alienation would constitute a fraud upon persons whom Hindu law regards as deserving of special protection. Accordingly, the Court held that this is the principle underlying Section 39 of the T.P. Act. The Court further clarified that the personal liability of the husband is in addition to the liability to maintain his wife out of his property and that this personal obligation does not negate the wife's right to be maintained from the husband's assets.

11. The learned Amicus Curiae further guided us through the decisions of various other High Courts, in which a

similar view was expressed, mostly following the line of reasoning adopted in *Banda Manikyam* (supra) or *Chandramma v. Maniam Venkatareddi and Others* (AIR 1958 AP 396). The decisions referred to are as follows:

Vellayammal v. Srikumara Pillai (AIR 1960 Madras 42), Ramaswamy Goundar and Another v. Baghyammal and Others [(1966) 2 MLJ 579], Alluri Bala Satya Krishna Kumari and Others v. Alluri Varalakshmi and Others (AIR 1976 AP 365), Raghavan and Another v. Nagammal and Another (AIR 1979 Madras 200), Siddegowda v. Lakkamma and Others (AIR 1981 Kant 24), Basudeb Dey Sarkar v. Chhaya Dey Sarkar (AIR 1991 Cal 399), C. Yemuna and Another v. P. Manohara (AIR 2004 AP 317), and Sarwan Singh v. Jagir Kaur and Another (AIR 2006 Punjab & Haryana 171).

12. The learned Amicus Curiae further invited our attention to the decision in *Hadiya (Minor) v. Shameera M.M.* (2025 (3) KHC 131), wherein a Division Bench of this Court held that, in terms of Section 39 of the T.P.Act, a woman and children of all religions, including Muslims, are entitled to enforce their right to maintenance against the immovable

properties of the husband or father. It was further held that where a person entitled to such rights seeks to enforce them over the property, any transfer effected is subject to the said right.

13. We also note that a learned Single Judge of this Court, in *Divakaran v. Chellamma* (1985 KLT 1001), following the decision of the Madras High Court in *Raghavan v. Nagammal* (AIR 1979 Mad 200), held that a charge will be fastened upon the property of a Hindu husband dehors the provisions of the Act, 1956, by the operation of Section 39 of the T.P. Act. This view was followed by this Court in *Lakshmi v. Valliyammal* (1992 (2) KLT 873) and *Ramankutty v. Amminikutty* (AIR 1997 Ker 306), both of which were decided by single Benches. In *Kaveri Amma v. Parameswari Amma* (1971 KLT 299), another single Bench incidentally referred to the above principles. In *Sathiyamma v. Gayathri and Others* (2013 (3) KHC 322), a Division Bench of this Court also laid down the law in similar terms, following the decision in *Divakaran v. Chellamma*. Similarly, in *Nysha v. P.Suresh Babu* (MANU/KE/2266/2019), following *Lakshmi v. Valliyammal*

(supra), another Division Bench of this Court held that Section 39 of the T.P.Act creates a charge on the property of the husband if there is a claim for maintenance, and the transferee with notice is bound by it. The Court held:

“In the light of Section 39 of the Act, if there is a claim for maintenance, it will be a charge on the property of the husband and the transferee, if he has notice. Apparently, this is a case where the claim is for arrears of maintenance and therefore even if there is a transfer, the transfer will not affect the right of the petitioners/appellants to recover the amount by seeking sale of the property in terms with the charge created thereon.”

14. As we have noticed that there are conflicting views expressed by different Division Benches of this Court on the issue, we are of the considered view that the matter requires to be referred to a full Bench for an authoritative pronouncement.

15. We are also mindful of certain legal aspects involved in this matter, which may have a bearing on the subject. Section 39 of the T.P.Act reads as follows:

“39. Transfer where third person is entitled to maintenance - Where a third person *has a right to receive maintenance*, or a provision for advancement or marriage,

from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.”

(emphasis added)

On a closer reading of Section 39, it appears that the said provision, in itself, does not create any charge or *any right* in a person *to receive maintenance from the profits of immovable property*. Section 39 merely declares that *where a third person has a right to receive maintenance from the profits of immovable property*, such right may be enforced against the property even after it is transferred, subject to the conditions specified therein. In other words, the existence of a person's right to receive maintenance from the profits of immovable property depends upon the substantive law applicable to him or her, or upon the acts of the parties, by which such a right is created, and Section 39 of the T.P. Act only prescribes the consequences when a transfer is made in disregard of *such a right*.

16. As the parties in the present case are governed by

Hindu law, the substantive provisions contained in the Act, 1956 have crucial importance. Section 27 of the Act, 1956 declares the circumstances in which maintenance becomes a charge. The said provision reads as follows:

“27. Maintenance when to be a charge.—A dependant’s claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.”

The Section provides that a claim for maintenance shall not, by itself, amount to a charge upon the property of the deceased. However, it may be made a charge if one has been created: (a) by the will of the deceased; (b) by a decree of a competent court; (c) by an agreement between the dependant and the owner of the estate or any portion thereof; or (d) otherwise. Thus, the right to maintenance of a dependant becomes a charge only when such a charge has been expressly created.

17. Section 28 deals with the effect of the transfer of property on the right to maintenance of a dependant. It reads as follows:

“28. Effect of transfer of property on right to maintenance.—Where a dependant has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.”

This provision is comparable to Section 39 of the T.P. Act. Under Section 28, where a dependant has a right to receive maintenance out of an estate (not limited to “from the profits of immovable property,” as provided under Section 39 of the T.P. Act), such right may be enforced against a transferee if the transferee has notice of the right or if the transfer is gratuitous. Nevertheless, it is significant to note that Section 28 also, by itself, does not create any right in the dependant to receive maintenance out of the properties of the deceased. Similar to Section 39 of the T.P. Act, this provision also deals only with the consequences of the transfer of such an estate. However, Section 22 of the Act, 1956 creates a right in the dependants over the estate of the deceased. Section 22 reads

thus:

“22. Maintenance of dependants.—(1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.”

18. That apart, the term “dependant” as used in Sections 27 and 28 of the Act, 1956 is defined under Section 21. As per the said provision, the expression “dependant” includes the father, mother, widow, son, and unmarried daughter of a deceased male or female. Notably, it does not include the wife of a living husband. Therefore, during the lifetime of the husband, the wife does not fall within the ambit of

Sections 21, 27, and 28 of the Act, 1956. Section 21 reads as follows:

“21. Dependants defined.—For the purposes of this Chapter “dependants” mean the following relatives of the deceased:—

- (i) his or her father;
- (ii) his or her mother;
- (iii) his widow, so long as she does not re-marry;
- (iv) his or her son or the son of his predeceased son or the son of a predeceased son of his pre-deceased son, so long as he is a minor: provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father’s or mother’s estate, and in the case of a great-grandson, from the estate of his father or mother or father’s father or father’s mother:

- (v) his or her unmarried daughter or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a granddaughter from her father’s or mother’s estate and in the case of a great-grand-daughter from the estate of her father or mother or father’s father or father’s mother;

- (vi) his widowed daughter; provided and to the extent that she is unable to obtain maintenance—

- (a) from the estate of her husband; or (b) from her son or daughter if any, or his or her estate; or (c) from her father-in-law or his father or the estate of either of them;

- (vii) any widow of his son or of a son of his predeceased son, so long as she does not remarry; provided and to the extent that she is unable to obtain maintenance from her husband’s estate, or from her son

or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;

(viii) his or her minor illegitimate son, so long as he remains a minor;

(ix) his or her illegitimate daughter, so long as she remains unmarried.”

Significantly, Section 18(1) of the Act, 1956 declares that a Hindu wife shall be entitled to be maintained by her husband during her lifetime. Section 18(1) reads as follows:

“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 lifetime.*”

Section 19 provides that a Hindu wife shall be entitled to be maintained after the death of her husband by her father-in-law. In contradistinction to Section 18 of the Act, 1956, Section 19 specifically stipulates that the father-in-law is liable to maintain the Hindu wife only out of the estate of her deceased husband. Further, the obligation under Section 19 shall not be enforceable unless the father-in-law has the means to discharge the liability from any coparcenary property in his possession. Section 19 reads:

“19. Maintenance of widowed daughter-in-law.—(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance—

(a) from the estate of her husband or her father or mother, or

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law.”

19. Under Section 18 of the Act, 1956, a husband's obligation to maintain his wife is absolute and arises regardless of whether he is possessed of any property or not. However, Section 18 does not provide a right for the wife to receive maintenance from the immovable property of the husband. Apart from the aforementioned principles of ancient Hindu law, right over an immovable property can be created only by the operation of a statute, by an act of parties or by the order of the court. As noted above, as per Section 27 of the Act, 1956, a charge on the immovable property in

respect of a maintenance right can be created only as prescribed. Thus, the question that arises for consideration is whether Section 39 of the T.P. Act is attracted only where the wife has such a specific and crystallised right to receive maintenance from the husband's property.

20. Indeed, if such a view is adopted, a husband may attempt to transfer his immovable property with the intention of defeating the wife's right to maintenance. However, in that situation, she may enforce her claim against the transferee, subject to the provisions contained in Section 53 of the Transfer of Property Act (see **Meenakshi Ammal v. Ammini Ammal** (AIR 1927 Madras 657) and **Ranjeet Kaur v. Harmandeep Kaur** (2022 SCC OnLine P& H 2703). This court in **Sherikath and Others v. Shamseena and Another** (2017 (2) KHC 773) held that such a contention could be raised by the wife even as a defence against a claim petition under Rule 58 of Order XXI of the Code of Civil Procedure, and then the institution of a suit under Section 53 of the TP Act in a representative capacity is not necessary.

21. Therefore, can Section 18 be understood as

conferring upon the wife a right to receive maintenance from the profits of the immovable property of the husband, although it can be said that it imposes a duty upon the husband to maintain her even if he has no resources. The provision does not expressly confer any proprietary right upon the wife in such resources; it merely states that a Hindu wife *“shall be entitled to be maintained by her husband”*.

22. Thus, it appears that if a Hindu wife has a right to receive maintenance from her husband's property, such a right must emanate from certain other sources, as held in *Divakaran v. Chellamma* (supra), and not from the provisions of the Act, 1956 itself. In this context, it is relevant to examine the purpose for which the Act, 1956 was enacted. It is stated in the introductory part of the Act, 1956 that:

“An Act to amend and codify the law relating to adoptions and maintenance among Hindus.”

In the Parliamentary discussions while the Act, 1956, was introduced, it was observed that, based on the Smritis and various commentaries on Hindu law, divergent interpretations

had been adopted by different High Courts, thereby necessitating a legislative enactment to bring uniformity and avoid such inconsistencies. It is thus evident that the primary purpose for which the Act, 1956, was enacted was to codify the laws governing the field of Hindu law, which had previously been derived from the Smritis and commentaries and had been subjected to divergent interpretations by different High Courts. Notably, to achieve this objective, Section 4 of the Act, 1956 creates an overriding effect on the provisions of the said Act over the ancient Hindu law or custom. Section 4 of the Act, 1956 reads as follows:

4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,— (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

It is also significant to note that a similar saving clause, corresponding to Section 4 of the Act, 1956, has

been incorporated in both the Hindu Marriage Act, 1956 and the Hindu Succession Act, 1956, as Section 4 of the respective statutes. The scope and ambit of the expression '*any matter*' used in Section 4, namely, "shall cease to have effect with respect to any matter for which provision is made in this Act", is evident from the various provisions of the Act 1956, which are discussed herein above. The Act, 1956 specifically governs the subject of maintenance, including the circumstances under which a person may claim maintenance from an estate, or when such a claim creates a charge over the property and when it does not, and who is entitled to the benefit of such maintenance, etc. As per Section 4, any text, rule or interpretation of Hindu law or any custom or usage as part of that law, shall cease to have effect with respect to *any matter* for which provision is made in the Act, 1956.

23. Prior to the 1929 amendment to the Transfer of Property Act, Section 39 used the expression '*property is transferred with the intention of defeating such right*,' which was akin to the language of Section 53 of the TP Act.

However, following the amendment, a wife who was entitled to receive maintenance from the profits of immovable property of her husband was no longer required to prove that the transfer was made with such intent or that the transferee had notice of it. Notably, at the time of this amendment, a Hindu wife already possessed the right to receive maintenance from her husband's property under the ancient Hindu law. Thus, the question to be decided is whether such a right is still in existence, unless it is created by the acts of parties or a decree of court etc.

24. In most of the above precedents referred to by the learned Amicus Curiae, the basic substratum upon which the constitutional courts held that a wife has a right to receive maintenance from the profits of the immovable property of her husband was the reasoning adopted in ***Banda Manikyam v. Banda Venkayamma*** or ***Chandramma v. Maniam Venkatareddi and Others***. The legal principles enunciated in those decisions were founded either on the obligations of the husband or father within a joint Hindu family or on their obligations as recognised under the Smritis and

commentaries authored by ancient authorities such as Manu, Narada, and Yajnavalkya. Undoubtedly, under ancient Hindu law and the law governing joint Hindu families, a wife in a joint family was recognised to have the status of a co-owner for the limited purpose of claiming maintenance over the properties of the husband. Such rights and obligations were derived from the classical Hindu law texts and commentaries.

25. In those cases, except in **Ramaswamy Goundar and Ors. v. Baghyammal and Ors.** (supra), the High Courts did not have any occasion to consider the impact of the provisions of Section 4 of the Act, 1956, on the question of whether a wife has a right to claim maintenance from the immovable property owned by the husband. In **V.Tulasamma v. Sesha Reddy** [(1977) 3 SCC 99] also, the Hon'ble Apex Court incidentally referred to the above view, but there also the issue before the court was in respect of a situation prior to 1956 and the gamut of discussion was on Section 14 of the Hindu Succession Act, 1956.

26. In **Ramaswamy Goundar and Ors. v. Baghyammal and Ors.**

(supra), the High Court has referred to Section 4 of the Act, 1956 and has held that the above principles are not inconsistent with any of the provisions of the Act, 1956 and, therefore, Section 4 does not negate them. However, a right over or *against* immovable property, or an obligation annexed to the property, can be created only by operation of law, by acts of the parties, or by an order of the court, in certain cases. Therefore, even after the enactment of a comprehensive legislation governing the right to receive maintenance from immovable property and prescribing the circumstances in which such a right would bind the immovable property, to what extent the principles derived from ancient texts can be accorded the force of law so as to create such a right over immovable property, remains to be determined. The law, therefore, needs to be laid down in this regard with certainty by a Full Bench.

27. In these circumstances, we frame the following questions for consideration by the Full Bench:

- (a) Is a Hindu wife entitled to receive maintenance from the immovable property of her husband *dehors* the

provisions of the Hindu Adoptions and Maintenance Act, 1956?

(b) Is there not an apparent conflict between the views expressed in **Vijayan v. Sobhana and Others** [LIR 2007 (1) Kerala 822], or **Sathiyamma v. Gayathri and Others** [2013 (3) KHC 322], **Nysha v. P.Suresh Babu** (MANU/KE/2266/2019) and **Hadiya (Minor) v. Shameera M.M.** [2025 (3) KHC 131], and what is the correct law?

Let the records be laid by the Registry before Hon'ble the Chief Justice for appropriate directions.

SATHISH NINAN

JUDGE

P. KRISHNA KUMAR

JUDGE

SV