
(1981) 10 BOM CK 0028
In the Bombay High Court
Case No : First Appeal No. 98 of 1974

Bayabai Bondhe	Vs	APPELLANT
Saibai Tonge and another		RESPONDENT

Date of Decision : 06-10-1981

Acts Referred:

Citation : (1983) MhLj 172

Hon'ble Judges : V. Mohta, J

Bench : Single Bench

Advocate : A.M. Bapat, for the Appellant; G.J. Ghate, for the Respondent

Final Decision : Allowed

Judgement

V. Mohta, J.—A pure question of law is involved in this first appeal. It is: whether father's widow is entitled to succeed to the estate of a step-son despite her remarriage before succession opens?

2. The dispute relates to the ancestral estate left by one Kavishwar son of Govind Tonge- a Hindu dying intestate on 23-10-1967. Rival claimants are step-mother Bayabai (defendant No. 1) and paternal aunt's daughter Saibai (plaintiff). Kavishwar's natural mother Anusaya had pre-deceased her husband Govinda who died on 1-9-1963. Govinda married Bayabai thereafter. After Govinda's death, Bayabai remarried one Udhav Bonde as per custom prevailing in their Kunbi community. The plaintiff filed the present suit for possession in the year 1970 contending that defendant No. 1 had wrongfully dispossessed her from the property. Defendant No. 1 disputed these allegations contending that she was in possession in her own rights as the sole surviving legal heir entitled to succeed to the property of deceased Kavishwar. The trial Court recorded findings that (1) defendant No. 1 had already become absolute owner of 1/2 of the property on the death of Govinda and (2) she had forfeited the right to succeed to the other 1/2 because of her remarriage at the time of second opening of succession. Consequently, a decree for partition and possession of half of the estate came to

be passed in favour of the plaintiff. Hence, this appeal at the behest of defendant No. 1.

3. As the only point urged before me is about true interpretation of the provisions of Hindu Succession Act, 1956 (Act No. 30 of 1956), it is unnecessary to refer to the other factual side. Before Act No. 30 of 1956, the rights of a remarried widow were governed by the Hindu Widow's Re-marriage Act, 1856 (Act No. 15 of 1856), section 2 of which provided that upon re-marriage widow's right, title and interest in husband's property ceases and determines as if she had then died. The trial Court's decree is based on assumption that the said provision continues to operate despite over-riding effect of the Act No. 30 of 1956 in view of saving clauses contained in section 4. Now, it is well known that new Act was brought on statute book to secure uniformity and to improve the status and conditions of Hindu females in the matter of succession. It has brought about radical changes and is a complete code in itself relating to inheritance and succession of a Hindu. It has over-riding effect not only on "any text, rule or interpretation of Hindu Law or any custom or usage as a part of that law" but also on any other law in force "in so far as it is inconsistent with any of the provisions contained in this Act." I see clear inconsistency between the old Act and the new Act which, for the first time, makes a widow not only an absolute owner but a fresh stock of descent. Section 2 of the old Act contemplated inheritance of limited estate by a widow who was not treated as a descent. Moreover, the new Act as a complete Code leaves no scope whatsoever for traditional concept of Hindu Law or provisions of other enactments on the subject of succession to encroach upon the same. Thus, it seems clear to me that the provisions of section 2 of the old Act are completely obliterated by the new Act. In the view that I have taken of the matter, it is unnecessary to refer to the submissions made and several authorities cited on section 2 of the old Act by Shri Ghate, the learned counsel for the plaintiff. However, the following observations in Smt. Kasturi Devi Vs. Deputy Director of Consolidation and Others, may be noticed as considerable reliance was placed upon the Same:

"Our attention has not been invited to any text of the Hindu Law under which a mother could be divested of her interest in the property either on the ground of unchastity or remarriage. We feel that application of the bar of inheritance to the Hindu widow is based on the special and peculiar, sacred and spiritual relationship of the wife of the husband. After the marriage, the wife becomes an absolute partner and an integral part of her husband and the principle on which she is excluded from inheritance on remarriage is that when she relinquishes the link with her husband even though he is dead and enters a new family, she is not entitled to retain the property inherited by her. The same, however, cannot be said of a mother. The mother is in an absolutely different position and that is why the Hindu Law did not provide that even the mother would be disinherited if she remarried.

Close scrutiny of the above decision indicates that it does not cover the present

subject at all. In that decision, question arose as to whether unchaste natural mother could succeed to the property of son or no. The learned Judge noted the difference as it existed between unchaste widow and unchaste mother. Provisions of the new Act with relation to the right of father's remarried widow was not even remotely before the Supreme Court and hence, I see nothing in the said decision favouring the respondents.

4. Thus, for working out the respective rights, scrutiny of provisions of the new Act only is essential. Section 8 deals with four general rules of succession in the case of males. In the first place, property devolves upon the relatives specified in class I of the Schedule. They take simultaneously. Secondly, in the absence of such heirs, the property devolves upon the relatives specified in entries I to IX in class II. First entry in class II has preference over the second and so on. Thirdly, the property devolves upon the agnates and fourthly, upon the cognates. In the present case, admitted position is that deceased Kavishwar left behind him neither a relative specified in class I nor an agnate. The plaintiff is a cognate. The only question, therefore, is whether defendant No. 1 falls in entry VI of class II and whether she incurs disqualification in the matter of succession on account of subsequent remarriage. The entry reads thus : -

"VI. Father's widow; brother's widow" The term "widow" has been described in Stroud's Judicial Dictionary (Fourth Edition, 5th Volume, page 3010) as under:

Widow: A widow is a woman who has survived a man to whom she was lawfully married and who was his WIFE at the time of his death.

Keeping the dictionary meaning in view, it seems to me that the word "father's widow" is a word of identification only. A widow does not cease to answer that description on her subsequent remarriage. If at all, Legislature intended to make exception about remarriage father's widow in the matter of succession, nothing prevented it from qualifying the ordinary meaning in the enactment. Rightly the learned counsel for the plaintiff argued that no new word can be added to the provisions by judicial interpretation. However, the further submission in this connection that only those widows who do not remarry are contemplated under this entry seems to me to be far fetched. Even erstwhile widow Will be a widow vis-a-vis her former husband though she may be a wife of the present husband.

5. In order to judge legislative intention, it is unsafe to rely only on one section. What is necessary is examination of all the provisions together and accounts the background of each other. Section 24 to section 28 of the new Act provide a clue to this seemingly difficult problem. These provisions deal with the subject of disqualifications in succession. Section 28 provides that no relative shall be disqualified from succession "Save as provided in this Act, on any other ground whatsoever." Grounds are enumerated in these provisions. Section 24 deals with remarried females. Section 25 with murderers, section 26 with converts, section 27 deals with general rule and section 28 removes disqualifications due to disease, defect or deformity. Section 24 reads thus :

Any heir who is related to an intestate as the widow of a predeceased son, the widow of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.

It is apparent that the disqualification due to remarriage is confined only to three species of female relatives and this section does not take in its sweep other female heirs. Father's widow is not one of these three species and therefore, it seems to me that she is not at all affected by the disqualification due to remarriage. As such disqualification is not gatherable from the provisions of the Act, it is clear that there is no bar to succession. It is also significant to notice that entry VI simultaneously refers to two female relatives out of which one does incur disqualification due to remarriage. By necessary implication, it, therefore, follows that Legislature intended to include even a remarried father's widow as a female relative in class II and that she has been deliberately excluded from the class of disqualified females.

6. My attention was drawn by Shri Bapat, the learned counsel for the appellant, to the case of Mantorabai Vs. Paretanbai and Another, and Khagendra Nath Ghosh and Others Vs. Karunadhar Kala and Others, . Though both these decisions are against different backdrops and do not decide the point directly, it does appear that they have also proceeded on the similar lines if not the same.

7. In conclusion, the appeal succeeds and the suit fails; but without any order as to costs, reason being that a question of law not so far decided by this Court has arisen in this matter.