

(1959) 09 MP CK 0013

In the Madhya Pradesh High Court

Case No : Second Appeal No. 144 of 1956

Bhondu Ganpat Kirad and Others

APPELLANT

Vs

Ramdayal Govindram Kirad and Another

RESPONDENT

Date of Decision : 15-09-1959

Acts Referred:

Hindu Widows Remarriage Act, 1856 — Section 2, 5
Hindu Womens Right to Property Act, 1937 — Section 3(2)

Citation : AIR 1960 MP 51 : (1959) 4 MPLJ 1173

Hon'ble Judges : G.P. Bhutt, C.J;P.K. Tare, J;K.L. Pandey, J

Bench : Full Bench

Advocate : S.C. Dubey and A.R. Choubey, for the Appellant; H.L. Khaskalam and Rama Gupta, for the Respondent

Judgement

Pandey, J.

The questions referred to the Full Bench are:

(i) Whether the property inherited by a Hindu widow from her son is divested on account of her subsequent remarriage?

(ii) Whether the cases of Babulal v. Sher jamakhand, Second Appeal No. 46 of 1957, D/-24-9-1954 (Nag) and Panna v. Mst. Goura, Second Appeal No. 650 of 1951, D/-19-4-1957 (Madh Pra), on the one hand or Bisahin v. Gaitri, Second Appeal No. 210 of 1938, D/-11-10-1940 (Nag) and the earlier cases on the other hand lay down the correct law?

(iii) Whether a Hindu widow, who has interest in her deceased husband's property along with her Minor son u/s 3(2) of the Hindu Women's rights to Property Act, 1937, gets the property after the death of her minor son on account of the fluctuation of her interest to the full or that interest vanishes after her son's death and she succeeds to the property under the general Hindu Law as mother of her deceased son?

The facts of the case, so far as they are relevant for this reference, are these. A genealogical tree will be necessary. We take the one given in the order of reference :

DEVAJI	(dead)								
				Nanhu (dead)	Ganpat (dead)				
Bhondu									
					(Pltff. 1)				
			Sarup (dead)	Mst. Jugna	Mst. Gulja	=Mst. Batni	(Deft. 2)	(Plff. 2)	(Plff. 3)
	Nathia (dead)								

Sarup held, as his ancestral property, two occupancy plots khasra Nos. 188 and 189 of village Sasawad. He died in March 1952, leaving behind him surviving his widow, Mst. Batni (defendant 2), and a son, Nathia, besides two sisters, Mst. Jugna (plaintiff 2) and Mst. Gulja (plaintiff 3), and a first cousin Bhondu (plaintiff 1). Nathia died on 20-11-1952. Thereafter, by a sale deed dated 7-6-1954, Mst. Batni transferred without legal necessity the occupancy plots to Ramdayal (defendant 1). Subsequently, Mst. Batni remarried. Bhondu, Mst. Jugna and Mst. Gulja thereupon brought the suit out of which this reference arises for a declaration that the sale deed dated 7-6-1954 was ineffective against them and for possession of the two occupancy plots.

The first two questions involve a consideration of the effect of Sections 2 and 5 of the Hindu Widow's Remarriage Act, 1856 (XV of 1856), which are as under:

"2. All rights and interest which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall, upon her remarriage, cease and determine as if she had then died; and the next heirs of her deceased husband. Or other persons entitled to the property on her death, shall thereupon succeed to the same."

"5. Except as in the three preceding sections is provided, a widow shall not, by reason of her remarriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has remarried shall have the same rights of inheritance as she would have had, had such marriage been her first marriage."

The words of Section 2 of the Hindu Widows' Remarriage Act, 1856, are unambiguous. "All rights and interests which any widow may have in her deceased husband's property.by inheritance to her husband or to his lineal successors... shall. upon her remarriage, cease and determine as if she had then died....." The section is restricted in operation to the property of a Hindu which his widow has already inherited either directly from her husband or through his lineal descendants before her remarriage. The self-acquired property of any lineal descendant of her husband which a widow may inherit before her remarriage is

not within the ambit of the section.

It would, therefore, appear that, u/s 2, the remarriage of a Hindu widow does not entail forfeiture of the estate which she inherits from her son unless it was initially her deceased husband's property. Against this, Section 5 of the Act enacts that, except as provided in Section 2, "a widow shall not, by reason of her remarriage, forfeit any property, or any right, to which she would otherwise be entitled." While, therefore, a widow, upon her remarriage, forfeits her rights and interests in her husband's property which is already vested in her, she retains unimpaired the right to inherit, after her remarriage, her husband's lineal descendants.

This is based on the principle that, although the remarriage puts an end to the connubial relationship, it does not affect consanguinity. Consequently, in spite of her remarriage, she does not lose the right to inherit to her son, which is founded on the relationship by blood. Whether this right to inherit to her son after her remarriage also extends to her husband's property devolving upon her son which, if she had inherited from her son before remarriage, she would have forfeited in consequence of her remarriage, does not arise for consideration in this case.

All the High Courts are agreed that, under the provisions of Section 2 of the Hindu Widow's Remarriage Act (XV of 1856), a Hindu widow on remarriage forfeits her rights in her deceased husband's property. The forfeiture enacted in the section extends even to communities in which remarriage is by custom permissible: *Vithu v. Govinda* ILR 22 Bom 321, *Ramchandra Sitaram and Others Vs. Sakhamam and Others*, *Nawab Singh v. Gauri Shankar* AIR 1935 Pat 58, *Mt. Suraj Jote Kuer v. Mt. Attar Kumari* ILR 1 Pat 706: (AIR 1922 Pat 378), *Murgayi v. Viramakali* ILR 1 Mad 226, *Tayaramma v. Sivayya* ILR 41 Mad 1078: (AIR 1919 Mad 854), *Gajapathi v. Jeevammal* AIR 1929 Mad 765, *Matungini Gupta v. Ram Rutton Roy* ILR 19 Cat 289, *Santala Bewa and Others Vs. Badaswari Dasi*, and *Manabai v. Chandanbai* ILR (1954) Nag 727: (AIR 1954 Nag 284).

In the last-mentioned case a Division Bench of this Court reviewed the case law bearing on the point and, differing from the contrary view taken in *Bhola Umar and Another Vs. Mt. Kausilla and Others*, held that both under the Hindu Widows' Remarriage Act and otherwise under the Hindu Law, a Hindu widow on remarriage forfeited her right to her husband's property even though the customary law of the caste to which she belonged permitted such a remarriage. If Section 2 of the Hindu Widows' Remarriage Act, 1856, applies to property in all cases in which a Hindu widow has obtained it by inheritance to her deceased husband, its express terms apply equally to the property of her husband which she has inherited as mother from her son before her remarriage.

The view that a mother, who is in possession of her husband's property by inheritance to her son forfeits it upon remarriage has been consistently taken by the Judicial Commissioner's Court and this Court. The leading case of the Judicial

Commissioner's Court is *Sammar v. Mst. Bhago*. 5 CPLR 85. Other cases are *Sitaram v. Laxman* 8 Nag LR 128, *Kashirao v. Ukarda* 11 Nag LR 116: (AIR 1915 Nag 109) and S. A. No. 210 of 1938, D/-11-10-1940 (Nag). The Bombay and the Patna High Courts have also taken the same view: *Ramchandra Sitaram and Others Vs. Sakharam and Others*, *Sheobaran Mahto v. Mt. Bhogea* AIR 1918 Pat 590 and AIR 1935 Pat 58.

A contrary view appears to have been taken in S. A. No. 46 of 1947. D/-24-9-1954 (Nag), which is, however, distinguishable on facts. In that case, a son had obtained his father's property under a will executed by the father. Upon the death of the son, his mother inherited the property and subsequently remarried. The question was whether, upon her remarriage the mother forfeited the property which she had inherited from her son. *Mudholkar and Deo, JJ.*, observed:

"Though she has remarried, she would not be divested of the property as she took the estate as her son's heir and not her husband's heir".

Their Lordships did not consider whether the property which the son had obtained under his father's will partook of the nature of ancestral or self-acquired property. In a recent case, the Supreme Court dealt with the question in *C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another*, and, after a consideration of the texts OK the subject and variant opinions of the High Courts, laid down, that the question was primarily one of the intention of the donor or the testator to be gathered from the terms of the deed of gift or will. The material question in such cases would be whether the grantor really wanted to make a gift of his property to his son or the apparent gift was only an integral part of a scheme to partition the property. There is no presumption that he intended the one or the other.

In *Babulal's case* S. A. No. 46 of 1947, D/-24-9-1954 (Nag) (cit. sup.), perhaps their Lordships thought, though they have not said so, that the property obtained by the son under his father's will was not his ancestral property and partook of the character of his self-acquired property. If so, on the facts of *Babulal's case*, S. A. No. 46 of 1947, D/-24-9-1954 (Nag), the decision is distinguishable since, as shown, self-acquired property of the lineal descendants is not covered by Section 2 of the Hindu Widows' Remarriage Act, 1856. However, in S. A. No. 650 of 1951, D/-19-4-1957 (Madh Pra), *Sets J.*, relying upon *Babulal's case*, S. A. No. 46 of 1947, D/-24-9-1954 (Nag), took the view that a mother, upon her remarriage, did not forfeit the right to remain in possession of her husband's property, which she had inherited from her son. We are of opinion, that, in view of the provisions of Section 2 of the Hindu Widows' Remarriage Act, 1856, and the *cursus* of opinion, that case was not correctly decided.

The third question relates to one of the several aspects of the nature of interest taken by the widow of a Hindu who dies having at the time of his death an interest in joint family property. The provisions made in sub-s. (2) of Section 3 of

the Hindu Women's Rights to Property Act (XVIII of 1937, as amended by XI of 1938) are in point. The Act was intended to redress disabilities and to give "better rights to women". It is patently ameliorative in character in that it recognises the claim of women to a fair and equitable treatment in certain matters relating to devolution of property. Since the provisions of the Act touch many branches of Hindu Law and have to be fitted in the contour of the law existing at the time it was enacted, it has raised problems which do not admit of logically consistent answers. It is not possible to anticipate all the doubts and difficulties which must arise as to the effect of the provisions of the Act on the rules of Hindu Law as they existed at the time when it was enacted. We would, therefore, deal with only that aspect of the matter which is directly involved in the question referred to vis.

When a Hindu governed by the Mitakshara dies, having at the time of his death an interest in a joint family property, his widow gets, under Sub-section (2) of Section 3 of the Hindu Women's Rights to Property Act, 1937, the same interest in the property as he himself had. Fluctuation by births and deaths is a normal incident of the interest which a Hindu governed by Mitakshara has in his joint family property during his lifetime: *Katama Natchiar v. Raja of Shivagunga*, 9 Moo Ind App 539. Since his widow takes the same interest in the joint family property which her husband had at the time of his death, it must be of the same nature and character, subject to such limitations as have been expressly or by necessary intendment placed upon it by the Act. If the interest of the husband in the joint family property is a fluctuating interest, the widow too obtains in the property a like interest.

There is nothing in the Act to show that the widow takes in the joint family property the defined and divided interest of her husband as if he had separated from the joint family at the time of his death. The Act puts the widow in the place of her husband and vests in her, immediately upon his death the undefined and fluctuating interest in the joint family property which he himself had till the moment of his death. This has been the view of this Court and nearly all, other High Courts: *Gurudayal v. Sarju* 1949 Nag LT 119: (AIR 1952 Nag 43), *Baburao v. Savitribai* ILR (1952) Nag 578: AIR 1952 Nag 270 *Hanuman v. Tulsabai* ILR (1955) Nag 1030: (AIR 1956 Nag 63), *Ramchandra v. Ramgopal* AIR 1956 Nag 228 *Tukaram Raghoji v. Mt. Gangi* AIR 1957 Nag 28. *Bhagobai Vs. Bhaiyalal and Others*, , *Mt. Jambal v. Mst. Dulaurin*, F. A. No. 109 of 1952, D/-18-9-1957 (MP), *Bhagwant Amar Singh Teli Vs. Mt. Manmati and Another*, , *Laxman v. Gangabai*, (S) AIR 1955 MP 138 , *Nagappa Narayan v. Mukambe Venkatraman*, *Nagappa Narayan Shetti Vs. Mukambe Venkatraman Shetti*, , *Jonnagadla Seethamma and Another Vs. Jonnagadla Veerana Chetty and Others*, , *Parappa alias Hanumanthappa and Another Vs. Nagamma and Others*, , *Kallian Rai Vs. Kashi Nath*, , *Sabujpari and Another Vs. Satrugan Isser and Others*, , *Nanda Kishore v. Sukti Dibya* AIR 1953 GAU 240, *Harekrishna Das v. Jujesthi Panda*, (S) AIR 1956 GAU 73 and *Kala Meah Vs. Rai Mohan Saha*, .

Since a Hindu widow, who obtains under Sub-section (2) of Section 3 of the Act the fluctuating interest of her husband in the joint family property, it would, as in the case of her husband, cease to be fluctuating upon alienation or partition and determine altogether upon her death. Further, as under Sub-section (3) of Section 3 of the Act, the interest which she gets is not an absolute interest but is limited in the manner of a Hindu woman's estate, it will also come to an end by surrender or remarriage. These are the cases in which the fluctuating character of the interest taken by a widow under the Act either ceases or is determined altogether.

The four cases, *Bhiwra v. Renuka* ILR (1949) Nag 400: (AIR 1952 Nag 215), *Gurudayal v. Sarju* 1949 Nag LJ 119: (AIR 1952 Nag 43), *Hanuman v. Tulsabai* 956 Nag LJ 194 : (AIR 1956 Nag 63) and *Bhagobai Vs. Bhaiyalal and Others*, , which have been referred to in paragraph 12 of the order of reference, deal with the nature or extent of interest of a Hindu widow following a suit for partition. These cases do not lend any support for the supposition that, in a case like the one here, the interest taken by a widow under Sub-section(2) of Section 3 of the Act lapses, when she becomes the sole surviving member of the joint family.

It may be that a Hindu widow taking interest under Sub-section(2) of Section 3 of the Act is not a coparcener. But the Act vests in her the fluctuating interest which her husband had in his joint family property at the time of his death "notwithstanding any rule of Hindu Law to the contrary". The essence of this interest is unity of ownership. As observed by the Privy Council in *9 Moo Ind App 539 (PC)*, at page 611:

"There is community of interest and unity of possession between all the members of the family, and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession".

The deceased simply disappears and the survivors take, as a kind of accretion to the interest which they already had in the whole property, a larger interest. That being so, it is inherent in the very nature of the fluctuating interest which a widow derives from her husband that it is capable of being enlarged by deaths, and liable to be diminished by births, in the family. There is no basis in law for the supposition that she loses this interest altogether when the only other member of her joint family dies and she is in a position to obtain the whole estate as his heir.

Actually, there is no substantial difference between the nature of the estate which such a widow takes by survivorship and the one which she may take as her son's heir. In either case, it would be a Hindu Woman's estate. There is, therefore, no reason for not allowing her to take the whole estate by survivorship or for supposing that the interest which enables her to do so Vanishes". In our view, the widow in such a case gets the whole estate by survivorship.

The further question whether Section 2 of the Hindu Widows' Remarriage Act,

1856, applies to a Hindu widow who upon the death of her husband takes interest in joint family property under Sub-section (2) of Section 3 of the Hindu Women's Rights to Property Act, 1937, has not been referred to us and We do not propose to decide it. We may, however, mention that a Division Bench of this Court has taken the view that it applies: ILR (1954) Nag 727: (AIR 1954 Nag 284).

Our answers to the questions referred are:

(i) A Hindu widow is, upon her remarriage, divested of her husband's property which she has already obtained by inheritance to her son. She does not however, forfeit the self-acquired property of the son which she has inherited.

(ii) S. A. No. 46 of 1947, D/-24-9-1954 (Nag) is distinguishable on facts. S. A. No. 650 of 1951, D/-19-4-1957 (MP), was not correctly decided.

(iii) A Hindu widow, who has, under Sub-section(2) of Section 3 of the Hindu Women's Rights to Property Act, 1937, obtained interest in her husband's estate and holds" the estate with her minor (unmarried) son, takes, upon the death of the son, the whole estate by survivorship.