
(1920) 12 BOM CK 0006
In the Bombay High Court
Case No : First Appeal No. 255 of 1920

Fakirappa Veerbhadrappa

APPELLANT

Vs

Savitrewa Sangappa

RESPONDENT

Date of Decision : 21-12-1920

Acts Referred:

Citation : (1921) 23 BOMLR 482

Hon'ble Judges : Shah, J;Norman Macleod, J;Hayward, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Shah, J.—The first question referred to us is whether a Hindu widow has power after her remarriage to give in adoption a son by her first husband. This reference has become necessary in view of the conflicting decisions in Panohappa v. Sanganbaaawa I.L.R.(1899) Bom. 89 1 Bom. L.R. 543. and Putlabai v. Mahadu I.L.R.(1908) Bom. 107: 10 Bom. L.R. 1134. I feel clear that the question should be answered in the negative. The view taken by Mr. Justice Ranade in Panchappa v. Sanganbasawa appears to me to represent the correct conclusion on this point. Apart from the Hindu Widow Remarriage Act XV of 1856, it seems to me that a Hindu widow on her remarriage loses all power of giving her son by her first husband in adoption, because her connection with the family of her husband, which is necessary for the act of giving in adoption, ceases on remarriage. The texts of Yajnavalkya and Manu, which authorize the father or the mother to give a son in adoption, do not, in my opinion, affect this conclusion. These Smriti writers did not permit any remarriage of a, Hindu widow, and did not provide for the case such as we have before us. On the contrary it is clear that in the Chapter relating to marriage in the Acharadhyaya, Yajnavalkya has in effect prohibited widow remarriage : at least Vijnanesvara has clearly understood Yajnavalkya in that sense as would appear from the words used by him in introducing Verses Nos. 68 and 69 in that Chapter. Manu is also equally clear on the point as would appear from Verses Nos. 161-164 in the 5th Adhyaya and

Nos. 64 and 05 in the 9th Adhyaya. It seems to me that a Hindu widow after her remarriage cannot claim to have any right to give a son by her first husband in adoption. Any such power would be entirely opposed to the spirit and the basic principles of Hindu law.

2. This view derives support from the terms of the Hindu Widow Remarriage Act. I do not propose to discuss the provisions of that Act in detail. They have been discussed by Mr. Justice Ranade in the judgment to which I have already referred, and I desire to express my agreement with the opinion that the widow's power of giving in adoption her son by her deceased husband comes to an end on her remarriage.

3. The reasoning in *Putlabai v. Mahadu*, which is based upon Yajnavalkya's text (*Vyavaharadhyaya*, Verse No. 130) and the commentary of Vijnanesvara thereon, seems to my mind to ignore the fundamental fact that there is really no provision for such a case either in the *Smriti* or the commentary. It was never contemplated by the *Smriti* writers or the commentators. To rely upon a permissive text, which enables either the father or the mother to give in adoption, for the purpose of justifying the mother's act of giving in adoption her son by her first husband after her remarriage, seems to me to be opposed to the fundamental principles of Hindu law. The spiritual and temporal connection with the family of her first husband, which such an act implies, cannot be predicated of her after her remarriage. The passage at p. 468 of Mandlik's *Hindu Law* relied upon in *Putlabai*'s case applies to a widow, who still belongs to the family; but I do not see how that can be read as applying to a widow who has remarried. On these grounds, with great respect, I am unable to agree with the conclusion reached in *Putlabai v. Mahadu*. Mr. Gumaste has relied upon *Basappa v. Rayawa* I.L.R.(1904) Bom. 91; 6 Bom. L.R. 779, f. b. m as indicating that in spite of remarriage the widow does not lose her right to inherit her son's property. The judgment of the Full Bench is in terms based upon the rule of *stare decisis* and does not indicate that the view taken of the widow's right to inherit her son's estate after her remarriage is necessarily in accordance with Hindu law. In any case I do not think that the decision affects the present point as to her power to give in adoption her son by her first husband.

4. The second question referred to us is whether, assuming that the widow after having remarried has such power, it can be exercised, considering that the person giving and the person taking the boy in adoption would be the same individual. There is no precedent to guide us on this point; at least none has been cited to us. Here, again, I may say that the position contemplated by the question is never contemplated by the Hindu law writers, and appears to me to be opposed to the theory of adoption, which implies giving and taking as distinct acts. The person giving in adoption would always be different from the person taking in adoption. There is no provision for the person giving and the person taking being the same individual. Such a position appears to me to be clearly opposed to Hindu law. I would accordingly answer this question also in the

negative.

Norman Macleod, Kt., C.J.

5. I concur.

Hayward, J.

6. I concur.

7. After the decision of the Full Bench as above reported, the Court passed the following order:

Norman Macleod, Kt., C.J.

8. The result is that the appeal must be dismissed with costs. The Court directs that the costs of the appeal be taxed on Rs. 5,200 said to be subject matter in appeal, the subject-matter in the lower Court being stated to be Rs. 7,000.