

(1976) 08 CAL CK 0036
In the Calcutta High Court
Case No : A.F.O.D. No. 614 of 1969

Sm. Sankaribala Dutta

APPELLANT

Vs

Sm. Asita Barani Dasi and Others

RESPONDENT

Date of Decision : 20-08-1976

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 21, 22
Hindu Succession Act, 1956 — Section 14
Hindu Widows Remarriage Act, 1856 — Section 2

Citation : AIR 1977 Cal 289

Hon'ble Judges : M.N. Roy, J; Anil Kumar Sen, J

Bench : Division Bench

Advocate : Amulya Kumar Mukherjee, for the Appellant; Samarendra Kumar Dutta, (for Nos. 1-2) and Pramatha Nath Palit, for the Respondent

Final Decision : Dismissed

Judgement

Sen, J.—This appeal from original decree arises out of a suit for declaration of title, recovery of possession and mesne profits. The said suit being Title Suit No. 65 of 1966 having been dismissed by the learned Subordinate Judge Birbhum, by the judgment and decree dated August 22, 1968, the plaintiff No. 2, Sankari Bala has preferred the present appeal.

2. The suit was originally instituted by the appellant and her mother Rash Bilasini Chandra and the latter having died pending the suit and her right, title and interest having devolved on plaintiff No. 2, the appellant, she herself proceeded with the suit. Their case shortly was that Rash Bilasini was the first wife of Nafar Chandra Chandra and plaintiff No 2 Sankari Bala is the daughter of Nafar by Rash Bilasini the first wife. The only son born of Rash Bilasini having died at the age of 5 or 6 years, Nafar married for the second time the defendant No. 1 Asita Barani Chandra when Nafar could have no more son by the plaintiff No. 1 Rash Bilasini. After his marriage with defendant No. 1, Asita Barani, Nafar executed a registered deed of maintenance granting a life estate to defendant No. 1 in

respect of certain properties which are set out in Schedule "A" to the plaint. The defendant No. 1 has no power of alienation in respect of the properties so gifted to her in life estate in lieu of maintenance. Nafar died intestate on 12th Kartick, 1369 B. S. corresponding to October 29, 1962. He had, however, no issue by defendant No. 1 surviving him and on his death the properties left by him were inherited by his daughter plaintiff No. 2 in 8 annas and the surviving widows Rash Bilasini, plaintiff No. 1 and Asita Barani, defendant No. 1 in 4 annas each. A partition was effected between the parties on February 14, 1963, in respect of the properties left behind by Nafar and the properties set out in Schedule B to the plaint were allotted to defendant No. 1 Asita Barani on such partition. According to the plaintiffs, the defendant No. 1 Asita Barani remarried one Dulal Bagdi, defendant No. 2 who happened to be a servant of Nafar, in the latter part of the year 1371 B. S. On such re-marriage defendant No. 1 had a son by the said Dulal Bagdi, defendant No. 2 and since such remarriage they have been living as husband and wife at the house of defendant No. 2 a few furlongs away from the residential house of Nafar. The plaintiffs claimed that by such remarriage the defendant No 1 Asita Barani forfeited all her right, title and interest in the properties of both the Schedules "A" and "B" and such properties therefore, reverted to the plaintiffs, the surviving heirs and legal representatives of Nafar. It was further pleaded that after her remarriage, defendant No. 1 executed a deed of gift in favour of defendant No. 2 in respect of some of the "B" Schedule properties and between defendants 1 and 2 several transfers were made to defendants 3 to 7 in respect of one or more of the properties of the B Schedule. Such transfers, it was claimed, were neither lawful nor bona fide and the transferees acquired no right to those properties as the transferor was divested of such properties prior to such transfers. Accordingly, the plaintiffs prayed for declaration of their title in respect of the properties of both the Schedules and recovery of possession thereof by evicting the defendants therefrom. They further prayed for a decree for mesne profits as against the defendants.

3. The suit was contested principally by defendants 1 and 2 who filed a joint written statement. They took a bold defence that though they were living together and had a son because of illicit relation between them, they were never married, far less in the manner stated by the plaintiffs in the plaint. Their case on the other hand, was that the plaintiff No. 2 Sankari Bala and her husband Nemai Dutta who are well to do could not accept the position that Asita Barani should inherit any property from her husband. An attempt was made to coerce the defendant No. 1 Asita Barani to concede acceptance of life interest only which she resisted and that led to the partition on February 14, 1963. But even after the partition the plaintiff No. 2 and her sons tortured Asita Barani while she was living in her husband's residential home in the demarcated portion allotted to her by the partition. She was tortured, so much so, that she had to leave her husband's home. At first she took shelter in the house of one Nisith Dutta when she became apprehensive of her life but the said Nishith. who later appeared to

be a man of the camp of the plaintiffs, betrayed her and misappropriated her movable properties. At that stage she Left the shelter of Nisith and came to live with defendant No. 2 at first at Suri and then at his house. As for the gift in favour of defendant No. 2 is concerned, it was pleaded that it was effected in order to fulfil the pious desire of the deceased Nafar who being satisfied with the service rendered by defendant No. 2 had desired that his heirs and legal representatives would give some properties to him. In the written statement it was claimed that defendant No. 1 could not have forfeited her rights to the properties in either of the two Schedules and the transfers effected to the other different defendants were claimed to be lawful and bona fide.

4. Defendant No. 7 filed a separate written statement supporting the case of the contesting defendants Nos. 1 and 2.

5. On the pleadings as aforesaid, parties went to trial and evidence both oral and documentary was adduced by the parties. So far as the B Schedule properties are concerned, the learned Judge held that plaintiff's claim in respect thereof must necessarily fail inasmuch as Asita Barani having got the said properties by partition of her share in the husband's estate inherited by her in the rights of an absolute owner under the provisions of Hindu Succession Act, 1956, she cannot forfeit her right, title and interest in the said property even if she had subsequently remarried defendant No. 2 as alleged by the plaintiffs. On the authority of the two decisions in the cases of Lakshmi Ammal and Others Vs. Thangavel Asari, and Mst. Bhuri Bai Vs. Mst. Champi Bai and Another, he overruled the plaintiffs' claim that defendant No. 1 would forfeit her inheritance on the provisions of Section 2 of Hindu Widow's Remarriage Act, 1856; it was held that the said provision could have its application only to an inheritance limited to life interest. So far as "A" Schedule properties are concerned, the learned Judge took the view that in case of proof of subsequent remarriage as alleged by the plaintiffs, the defendant No. 1 might forfeit her right, title and interest therein. On careful consideration of the evidence on record, the learned Judge, however, rejected the case of the plaintiffs that Asita Bapani had remarried Dulal Bagdi as alleged by them. It was, therefore, held that the remarriage as alleged not having been established it cannot be said that Asita Barani forfeited her right, title and interest in the "A" Schedule properties. The learned Judge further held that subsequent unchastity being no ground for divesting and it being nobody's case that defendant No. 1 became unchaste when the succession opened or before it, subsequent unchastity though admitted would not divest her of the properties of either of the two Schedules. On the findings as aforesaid the learned Judge in the trial court dismissed the suit and hence the appeal.

6. The appeal is being contested by defendants 1 and 2 who are respondents 1 and 2 in this appeal.

7. Mr. Mukherji appearing on behalf of the appellant has challenged the findings of the learned Judge to the effect that defendant No. 1's remarriage with

defendant No. 2 had not been established. Relying strongly on the evidence on the point. Mr. Mukherji has contended that this court should set aside the said finding and find for itself that such remarriage has been well established. Mr. Mukherjee has further contended that the defendant No. 1 must be held to have forfeited her right, title and interest in the properties of either of the two Schedules because of such remarriage. Alternatively, Mr. Mukherji has contended before us that on the admitted unchastity, defendant No. 1 must be held to have forfeited her right, title and interest under the maintenance grant in respect of "A" Schedule properties. According to him, the learned Judge is wrong in holding otherwise overlooking the legal position that under the Hindu Law a widow is entitled to maintenance from the husband's estate only so long she remains chaste.

8. All the points thus raised by Mr. Mukherji have been contested by Mr. Dutta, the learned advocate appearing on behalf of the defendants 1 and 2, respondents 1 and 2 in this appeal. Mr. Dutta on the other hand has strongly contended that all the findings of the learned Judge are not only well supported by the evidence on record but all his conclusions on the point of law are absolutely correct.

9. We have carefully considered the rival contentions before us. In our opinion, the learned Judge in the trial court is perfectly right in his conclusion that the plaintiffs' suit in respect of "B" Schedule properties must fail in any event. Neither remarriage of defendant No. 1 with defendant No. 2 as claimed by the plaintiffs nor her admitted subsequent living with the said defendant in unchastity would divest her of the said property in law. Admittedly, Nafar died in the year 1962 after the Hindu Succession Act, 1956, had come into effect. Nafar having died intestate defendant No. 1, Asita Barani inherited 1/4th share in the estate of her deceased husband in absolute rights under the provisions of that Act. The said Act does not provide for forfeiture or divesting of an estate so inherited by the widow either on remarriage or on account of subsequent unchastity. Reliance is no doubt placed on the provisions of Section 2 of Hindu Widow's Remarriage Act, 1856, by Mr. Mukherji on behalf of the appellant. Mr. Dutta appearing on behalf of the respondents on the other hand has contended that the said provision must be deemed to have been repealed on the provisions of Hindu Adoptions and Maintenance Act, 1956. In our opinion, however, whether repealed or not Section 2 of the Hindu Widow's Remarriage Act, 1856, does not help the appellant in any manner. It provides as follows :--

"All rights and interests which any widow may have in her deceased husband's property by way of maintenance or by inheritance to her husband or 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 person entitled to the property on her death shall thereupon

succeed to the same."

Section 5 on the other hand provides that except as provided in Sections 2 to 4 a widow on remarriage shall not forfeit any other property or right to which she is otherwise entitled notwithstanding her remarriage.

10. The above provision came up for interpretation before the Madras High Court in the case of Thangavelu Asari (died) and Others Vs. Lakshmi Ammal and Others, (the decision of the Appeal Court affirming the decision relied on by the learned Judge in the trial court reported in Lakshmi Ammal and Others Vs. Thangavel Asari, . It was there held-

"There is a clear indication in the provisions of the section that any property to which the widow may become entitled absolutely will not be forfeited on her remarriage. It is only when the widow is in enjoyment of rights and interests of a limited amplitude that this section applies. The words "shall upon her remarriage cease and determine as if she had then died" can have significance only when the widow's rights are of limited nature and duration. Otherwise merely by the notional death of the widow the next heirs of the husband would not become entitled to succeed, whereas if she was in enjoyment only of a limited interest such persons would succeed under the general law."

11. We are in respectful agreement with the aforesaid interpretation of Section 2 of the Hindu Widow's Remarriage Act, 1856. We fully agree with the learned Judges of the Madras High Court that read in the context the clause "conferring upon her only a limited interest in such property" qualifies the rights and interests which the widow may have in the deceased husband's property in either of the three manners specified in the provision so that an interest which the widow inherits absolutely under the provision of the Hindu Succession Act, does not come within the purview of Section 2 of the Hindu Widow's Remarriage Act, 1856, This view appears to be the consistent view taken by the other High Courts. Reference may be made to the case of Mst. Bhuri Bai Vs. Mst. Champi Bai and Another, (relied on by the learned Judge in the trial court) and also to the decisions in the cases of Pandurang Narayan Salunke Vs. Sindhu and Another, and Ballabha Pani v. Jasodhara Pani ILR (1965) Cut 398. That being the position we must uphold the view of the learned Judge that even if defendant No. 1 had remarried defendant No. 2 such remarriage would not divest her of the "B" Schedule properties which she inherited from her late husband in the interest of an absolute owner. Nor would she forfeit that property on her admitted subsequent unchastity as it is now well settled that such subsequent unchastity does not lead to divesting of an interest which had earlier validly vested in her (See Moniram v. Keri Kalitani (1879) 7 Ind App 115 (PC)). The learned Judge was therefore right in his conclusion that the plaintiffs' claim to "B" Schedule properties must fail in any event and we affirm the said conclusion.

12. So far as the "A" Schedule properties are concerned, admittedly those were the subject-matter of a grant by the husband Nafar during his lifetime. The grant

is dated March 26 1945. It is Exhibit F for the defendants and Ext. 5 for the plaintiffs. It is a gift in life estate. The material extract therefrom may usefully be set out hereunder :

"Whereas you are my second wife as I have married you recently and no children are born of your womb at present, yet as human life is floating and none can say what will happen when and thinking whether you will be able to live in amity with my first wife in future who is at present alive and that after my death if you may find it difficult to get food and raiment I make a gift to you in your life estate the property owned and possessed by me. On payment of rent and cess etc. to the landlord, you shall enjoy the same till your lifetime and you shall not do any act harmful to it or to make any encumbrance, gift, sale, mortgage, etc., in respect thereof. If it be done then it will be wholly void and invalid and disallowed in court. If I remain alive after your death then I shall become the absolute owner of the property mentioned in the Schedule or if there be any of my heirs alive then he will in law become the absolute owner thereof. None of the heirs of your father's family shall become the owner or possessor thereof. If no son born of my loins be alive then any heir of myself or my father's line shall be the absolute and full owner of the property mentioned in the Schedule. To this effect in sound health, good faith, without request from others out of my own accord I execute this Deed of Gift for life estate in the property."

13. The Court below took the view that if remarriage as alleged by the plaintiffs be proved, defendant No. 1 may forfeit this grant but not on account of subsequent unchastity as admitted by her. Though the learned Judge thinks that because of remarriage, the grantee under the above gift would forfeit her life estate, he has not given any reasons for such a view. We are, however, unable to accept such a view. It being a gift in favour of defendant No. 1, whether she would forfeit the grant in the event of her remarriage or because of her subsequent unchastity would entirely depend upon the terms thereof. If the grant is not so forfeited on its terms, she does not forfeit the properties otherwise in law. Though under the gift she got only a life estate, Section 2 of the Hindu Widow's Remarriage Act, 1856, would have no application, inasmuch as, such a life estate was not acquired by her in any of the three ways set out therein. u/s 14(2) of the Hindu Succession Act, 1956, this life interest remains as such and does not become an absolute estate but nonetheless it lasts the normal life of the grantee. Nor Mr. Mukherji could draw our attention to any statutory provision by which the defendant No. 1 can be said to forfeit the properties so gifted to her in life estate in the event of her remarriage or becoming unchaste.

14. Let us now consider the gift itself to see if thereunder defendant No. 1 would forfeit the properties in the event of her remarriage or becoming unchaste. We have set out the relevant terms of the gift hereinbefore. There is no express condition set out in the gift itself that in the event of the grantee remarrying or becoming unchaste, she would forfeit her life estate. Nor such a condition can be read as implied in the gift. On the facts and circumstances of the case, it is well

established that the donor at a ripe old age married the donee who was quite young in her life. Having married such a young girl and apprehending his death he was providing for the lady a means for her livelihood obviously for her natural life. It must be presumed that the donor was quite aware that in law the donee on being a widow could remarry but even then he was not making any provision in the grant that in the event of such remarriage or on her becoming unchaste she would forfeit the grant. On the other hand, having married a young girl at an old age and on a reasonable apprehension that she would be left a widow incapable to support herself he gave her a life estate which is to last her natural life. Reversion is provided only on her death. When such was the grant it would be difficult to read in it a limitation as contended for by Mr. Mukherji.

15. Mr. Mukherji next contended that the gift was meant for widow's maintenance and when a widow forfeits her maintenance from the husband's estate under the Hindu Law by remarrying or by becoming unchaste, defendant No. 1 must be deemed to have forfeited "A" schedule properties on her remarrying defendant No. 2 or even on her own admission when she is living an unchaste life with the said defendant No. 2. We are unable to accept such a contention. The right of a Hindu widow to maintenance out of husband's estate is conditional upon her leading a life of chastity and she may forfeit such maintenance on her remarriage under the provision of Section 2 of the Hindu Widow's Remarriage Act, 1856 or Section 22 read with Section 21(iii) of Hindu Adoption and Maintenance Act, 1956. But the interest by way of life estate created by a grant as now under consideration must be distinguished from the widow's right to receive maintenance from the estate of the deceased husband, in as much as, in case of a grant of the present nature a vested estate in the property is created by the deed -- the limit whereof is entirely dependent on the grant itself so that if in the grant there is no clause for forfeiture on the grantee's remarriage or on the grantee's ceasing to live a chaste life she cannot be said to forfeit her rights in the event of her remarriage or her living an unchaste life. The right of a Hindu Widow to maintenance out of the husband's estates on the other hand is of an indefinite character which does not create any vested estate and which again is subject to the limitation in law referred to hereinbefore. This position follows from the decision of the Privy Council in the case of AIR 1935 180 (Privy Council) A contention similar to the one put forward by Mr. Mukherji before us was overruled by the Bombay High Court in the case of Parami v. Mahadevi ILR (1910) 34 Bom 278. There, a Hindu widow was entitled to maintenance at the rate of Rs. 24/- a year under her husband's will. The widow led an unchaste life after the death of her husband. When she sued to recover the maintenance under the will the same was resisted on the ground that because of unchastity she must be deemed to have forfeited her right to get the maintenance. Such a contention as a defence to the suit was overruled by the Bombay High Court. In rejecting the defence contention that the testator in making the grant of Rs. 24/-per year must be presumed to have intended that the allowance should be given subject to the condition of chastity on which the

right of a Hindu widow to maintenance depends, it was observed :

"Further though the annuity is granted by the will as maintenance that word cannot be understood as imposing any condition or restriction so as to cut down or extinguish the right to Rs. 24/- a year given by the will. Where an implication is to be made, it must be certain and necessary; the rule that a will of a Hindu must be construed with due regard to Hindu habits and notions applies only where there is ambiguity. Caution must be used in applying that rule and it must be adopted only where a suggested construction of doubtful language leads to manifest absurdity or hardship. Here there is neither. The mere fact that the word "maintenance" is used cannot affect the unconditional terms of the bequest."

16. In the grant now under consideration by us there is no use even of the word maintenance though the life estate was created to provide for food and raiment in favour of the grantee and that for her natural life. Therefore, in our opinion, the learned Judge was not right in his view that in the event of proof of remarriage defendant No. 1 would forfeit her life estate under the grant Ext. 5 or Ext. F. On this finding of ours the suit must fail as a whole, inasmuch as, the defendant No. 1 would not forfeit the properties set out in either of the schedules in the event of her remarriage as alleged by the plaintiffs being proved or on her admitted subsequent unchastity. Since, however, the other issue as to whether the defendant No. 1 had remarried defendant No. 2 or not had been thoroughly argued before us by both the parties with reference to evidence on the issue, we consider it necessary to decide how far the finding of the learned Judge in this respect against the plaintiffs can be upheld.

17. The issue as to whether defendant No. 1 Ashita Barani had married defendant No. 2, Dulal Bagdi or not has been answered against the plaintiffs by the learned Judge in the trial court. On a very careful consideration of the evidence on record he has come to the conclusion that no such marriage between defendant No. 1 and Dulal Bagdi had been proved. On the contrary, he has accepted the defence case that Asita Barani had been leading an immoral life living with Dulal as a concubine. We ourselves have reassessed the entire evidence on the issue and we find no reason to differ -from the conclusion arrived at by the learned Judge. (After considering the plaintiffs' evidence on the issue as to whether defendant No. 1 had remarried defendant No. 2 their Lordships proceeded.)

18-21. As against this, the learned Judge in the trial court has accepted the bold testimony of defendants 1 and 2 who admit to be living an immoral life. The learned Judge has seen the demeanour of these two witnesses and had been very much impressed thereby. We have read their evidence carefully and we find that their evidence is corroborated materially by attending facts and circumstances made out from other evidence found by us to be more reliable. In this view, we affirm the findings of the learned Judge to the effect that Asita had not been married to Dulal as alleged by the plaintiffs. Such marriage not having

been proved there could be no divesting of the properties set out in Schedule "A" because of such remarriage. We have already found that subsequent unchastity does not divest a widow of properties which once vested in her except when the terms of the grant provide for such divesting and hence defendant No. 1 could not be said to be divested of. "A" Schedule properties because of her admitted unchastity. Moreover it is not the case of the plaintiffs that defendant No. 1 was divested of the properties of either of the two Schedules because of unchastity. Hence the plaintiffs are not entitled to recover possession of the suit properties as claimed by them. 22. On the conclusions as above, this appeal fails. Subject to a declaration of the plaintiffs' right, title and interest as reversioners to the Schedule "A" properties on the death of Asita Barani, their claim as made in the suit must fail and the judgment and decree of the court below is affirmed. In the circumstances, however, we direct that the parties do bear their costs throughout.

Roy, J.

22. I agree.