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RAJANI KANTA DAS v. PURNA CHANDRA KUNDU.

appeal lies against it; but it cannot on that ground be urged that it may not be set aside on the ground of fraud. The present case is not a case in which it has been found merely that the decree was obtained by perjured evidence. It has been found here that the suit or claim was a false suit or claim and the falsity of the claim was necessarily known to the party putting forward the claim. That being so, it is clear that the decree in question has been properly set aside; and in this connection we may refer to the case of *Manindra Nath Mitter* v. *Hari Mondal* (1). The appeal is dismissed with costs.

P. M. C. *Appeal dismissed.*

(1) (1919) 24 C. W. N. 133.

APPELLATE CIVIL.

Before Teunon and Chaudhuri JJ.

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June 1.

BINODINI HAZRANI

v.

SUSTHEE HAZRANI.*

Hindu Law—Succession—Custom of remarriage—Whether a childless widowed daughter of child-bearing age free to remarry, by custom, an heir of her father.

In the caste in which widow remarriage is a custom, a childless widowed daughter of child-bearing age is not entitled to succeed to her father's property along with the married daughter having a son, in the absence of any proof of custom entitling her to succeed under such circumstances.

SECOND appeal by Binodini Hazrani, the plaintiff.

The plaintiff instituted the suit for recovery of khas possession of the disputed lands on declaration

*Appeal from Appellate Decree, No. 89 of 1918, against the decree of M. Yusuf, District Judge of Murshidabad, dated July 19, 1917, modifying the decree of Behari Lal Sarkar, Munsif of Kandi, dated June 14, 1916.

of her title thereto by right of inheritance from one Dwarika Hazra who was the admitted owner of the properties. Dwarika died leaving a widow Depu and two daughters, the plaintiff and defendant No. 1. He had two other daughters, *viz.*, Amrita and Kshanta, mother of defendant No. 2, who died in his lifetime. The plaintiff claimed the disputed lands as heir of Dwarika on the death of Depu, as she was the only surviving married daughter having a son. Defendant No. 1 was a childless widowed daughter, aged about 16 or 17 to whom it was open to re-marry under the custom of her caste. She denied that the plaintiff was the daughter of Dwarika and averred that defendant No. 2, daughter's son, was the true heir of Dwarika. The first Court found that the plaintiff was the daughter and true heir of Dwarika and was in possession of the lands within 12 years before suit and gave her a decree. The lower Appellate Court held that defendant No. 1 was a daughter likely to have male issue by re-marriage according to the custom of her caste and so was entitled to succeed along with the plaintiff to the disputed property. Hence it gave the plaintiff a decree for joint possession in the lands in suit along with the defendant No. 1. The plaintiff, thereupon, appealed to the High Court.

Babu Brajendra Nath Chatterjee (*Babu Dhirendra Nath Bagchi* with him), for the appellant, submitted that the question in this case is who was the true heir at the time when succession opened out on the death of the widow. There was a married daughter having a son, *i.e.*, the plaintiff, and a childless widowed daughter, *i.e.*, defendant No. 1. The latter is not an heir under the Hindu law. She has not re-married even now. A married daughter having a son is preferred to a childless widowed daughter.

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[TEUNON J. Can we not look upon her as a maiden daughter, as by custom it is open to her to re-marry any moment?]

Maiden daughter is one who has never been married. The test is not the possibility of having male issue. The language of the text shows that it is the married daughter having a son or likely to have a son who can succeed. In cases to which the Hindu Widow Re-marriage Act (XV of 1856), applies, under s. 4 a childless widow still remains incapable of inheriting: *Mukunda Lal Chakravarty* v. *Manmohini Debi* (1). The defendant No. 1 did not claim to be heir in the first Court. Though the defendant No. 1 was free to re-marry according to the custom of her caste, still the question would arise whether there was any custom under which she would be entitled to succeed on the ground that there was a remote possibility of her re-marriage and getting male issues. This question was never raised in the Courts below and there are no evidence and findings upon the point.

Babu Mahesh Chandra Banerjee (for *Babu Gurudas Sinha*), for the respondent, referred to Sarbadhikary's Hindu Law of Inheritance p. 913, and *Hurry Charan Das* v. *Nemai Chand Keyal* (2). The widow was only 16 or 17 years old and free to re-marry, and so she was in the position of a daughter likely to have male issue. Hence she was entitled to succeed: *Bimola* v. *Dangoo Kansaree* (3).

Babu Brajendra Nath Chatterji, in reply, distinguished the case of *Hurry Charan Das* (2) on the ground that in that case the widow had re-married and got sons.

(1) (1919) 26 Ind. Cas. 903. (2) (1883) I. L. R. 10 Calc. 138.
(3) (1873) 19 W. R. 189.

TEUNON AND CHAUDHURI JJ. The question involved in this case is one of inheritance to a person of the name of Dwarika Nath Hazra, who was the father of the plaintiff and also of defendant No. 1. On the death of Dwarika he was succeeded by his widow and on the death of the widow the contest is between the two daughters. One daughter, the plaintiff, at the time when the succession opened out was married and had a son. The other daughter, defendant No. 1, was a childless widow. But it has been found and in fact it is not disputed that in the caste to which the parties belong widow re-marriage is permitted. At the time when the succession opened out defendant No. 1, the widowed daughter, was only 16 or 17 years of age. She being thus of child-bearing age and it being open to her at any time to marry it has been held by the District Judge that she was a daughter likely to have male issue and therefore entitled to succeed along with the plaintiff who is a married daughter having a son.

We think that in the absence of any proof of custom entitling this widowed daughter, to succeed equally with the married daughter, the learned District Judge has fallen into an error. Widow re-marriage is a custom in the caste, but that does not by itself predicate the further custom that the widowed daughter because it is open to her to re-marry is entitled to succeed equally with the married daughter. So far from there being any proof of the existence of any such further custom, the decision of the District Judge is in fact contrary to the pleadings in the case. The plaintiff in her pleadings alleged that the defendant No. 1 as a childless widow was not entitled to succeed. The defendant No. 1 herself accepted this position and pleaded that the true heir was neither her sister nor she, but the only son of a third sister who had apparently predeceased her father.

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In this view of the matter, we set aside the decree of the District Judge and restore the decree of the Munsif with costs in all Courts.

P. M. C. *Appeal allowed.*

APPEAL FROM ORIGINAL CIVIL.

Before Mookerjee, Acting C. J., and Chaudhuri J.

1920

June 7.

W. S. IRWIN

v.

D. J. REID.*

Libel—Fair comment—Privilege—Malice—One of a class—Public document.

The plaintiff was a member of Cham paran Agrarian Enquiry Committee and as such settled some questions of rent between the indigo planters and the tenants. The defendant, an indigo planter, in a series of three letters to the Press made certain allegations against the plaintiff suggesting that his consent to the settlement was obtained by misrepresentation.

Held, that the cumulative effect of the letters was libellous. It was not a fair comment on a matter of public interest and the defendant was not entitled to any privilege.

Merivale v. *Carson* (1), *Lefroy* v. *Burnside* (2), *Davis* v. *Shepstone* (3), *Adam* v. *Ward* (4), *London Association* v. *Greenlands* (5), *Royal Aquarium Society* v. *Parkinson* (6) referred to.

Mangena v. *Wright* (7) distinguished.

APPEAL from the judgment of Rankin J.

This was an appeal from a decree in a suit for libel on three letters published in the Press.

* Appeal from Original Civil, No. 28 of 1919, in Civil Suit No. 196 of 1918.

(1) (1887) 20 Q. B. D. 275.
(2) (1879) L. R. 4 Ir. 556.
(3) (1886) 11 A. C. 187.
(4) [1917] A. C. 309.
(5) [1916] 2 A. C. 15.
(6) [1892] 1 Q. B. 431.
(7) [1909] 2 K. B. 958.