

APPELLATE CIVIL

Before Mr. Justice Madhavan Nair and
Mr. Justice Lakshmana Rao.

1935,
March 11.

THUKRU BAI (PETITIONER), APPELLANT,

v.

C. ATTAVAR AND SEVEN OTHERS (RESPONDENTS), RESPONDENTS.*

Special Marriage Act (III of 1872), sec. 24 (added by amending Act XXX of 1923)—Retrospective effect, if has—Marriage solemnised before coming into force of sec. 24—Rights of parties to—Law governing.

Section 24 which has been added to the Special Marriage Act III of 1872 by the amending Act XXX of 1923 has no retrospective effect and is inapplicable to persons who solemnised their marriage under the Special Marriage Act III of 1872 before its amendment. The words "who marries" in section 24 show that the marriage contemplated is one after the date of the coming into force of the section and not a marriage under the Act before it was amended. The rights of the parties to a marriage which took place under the Special Marriage Act III of 1872 before its amendment are governed not by the amending Act of 1923 but by the original Act.

Vidyagavri v. Narandas, A.I.R. 1928 Bom. 74, and *Punya-brata Das v. Monmohan Ray*, A.I.R. 1934 Pat. 427, approved.

APPEAL against the order of the District Court of South Kanara, dated 9th November 1932 and passed in Original Petition No. 94 of 1929.

P. Govinda Menon for appellant.

K. Y. Adiga for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by
MADHAVAN NAIR J.—This appeal arises out of
an application under section 372 of the Indian

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*Appeal Against Order No. 37 of 1933.

Succession Act XXXIX of 1925, made by the widow of one Venkappa for the grant of a succession certificate to enable her to collect the amount of two deposits as regards which her husband died intestate.

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The widow is the appellant. She and her husband are members of the Billava community in South Kanara which follows the Aliyasanthana law of inheritance according to which a widow has no right to the property of her deceased husband. They were originally married in 1890 according to the rules of their community and had children, respondents 1 to 7. Later on, Venkappa and his family became Brahmos. On 19th June 1903, a marriage under the Special Marriage Act III of 1872 was solemnised between the appellant and her deceased husband in the presence of the Registrar. Act III of 1872 was amended by Act XXX of 1923 and sections 22, 23, 24, 25 and 26 were newly added to the Act. Section 24 says :

“ Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion, who marries under this Act, and to the property of the issue of such marriage, shall be regulated by the provisions of the Indian Succession Act, 1865.”

The appellant before us claims under this provision that, as she and her husband were married under “ this Act ”, i.e., the Special Marriage Act, she is entitled to the grant of a succession certificate under the Indian Succession Act. Her claim is resisted by the eighth respondent, who is a brother of the deceased Venkappa. He contends that section 24 of the Act on which the appellant relies has no retrospective operation and as such, though she was married under the Special Marriage

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Act, she is not entitled to get a succession certificate. The appellant's contention was overruled by the learned District Judge and her petition was dismissed.

The short question for determination in this civil miscellaneous appeal is whether, under the new section 24 added to the Special Marriage Act III of 1872 by the amending Act XXX of 1923, the appellant is entitled to a succession certificate under the Indian Succession Act XXXIX of 1925.

Under section 10 of the Special Marriage Act III of 1872 before it was amended, the parties to the marriage should sign a declaration that they did not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion. The law is well settled that, in spite of this declaration, a Hindu by becoming a Brahmo did not cease to be a Hindu and that, in the case of such a person, a succession certificate under the Succession Act cannot be granted; see *Bhagwan Koer v. Bose*(1) and *Jnanendra Nath Ray, In re*(2). This position is not disputed by the learned Counsel for the appellant; but what he contends is that after the introduction of section 24 into the Act the petitioner is entitled to ask for a succession certificate as she has been validly married under the Act. The answer to the question we have to determine does not depend upon the consideration whether the marriage of the petitioner with her deceased husband under the Special Marriage Act is valid or not, for its validity is not disputed by anyone. What we have to determine is whether the case of the appellant falls within the words of

(1) (1903) I.L.R. 31 Cal. 11 (P.C.). (2) (1922) I.L.R. 49 Cal. 1069.

the new section 24 of the Act. That section can apply only to a person

“professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act.”

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It is obviously inapplicable to the appellant for two reasons. In the first place, when she and her husband solemnised their marriage under the Special Marriage Act in 1903 the declaration that they must have made under section 10 of the Act was that they did not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion, whereas persons claiming the benefit of section 24 should have declared at the time of the marriage that they professed the Hindu, Buddhist, Sikh or Jaina religion. The form of declaration under section 10 to be used by the parties has been changed subsequent to the introduction of section 24 as will be seen from the second schedule to the Act. The declaration now in use after the amendment of the Act is totally the reverse of the declaration which must have been made by the appellant and her husband when their marriage was solemnised under the Act in 1903. Secondly, the words “who marries” used in the section clearly show that the marriage contemplated is one after the date of the coming into force of the section and not a marriage under the Act before it was amended. These two grounds would show that section 24 can apply only to persons who marry under the Act subsequent to the enactment which has added it to the old Act by amendments, i.e., in other words, section 24 cannot have any retrospective effect and will not apply to persons who solemnised their marriage

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under the Special Marriage Act before its amendment. If it was the intention of the Legislature to give section 24 retrospective operation it could clearly have shown that intention by using appropriate language. The conclusion we have arrived at, based on the language of the section, is supported by authorities also. In *Vidyagavri v. Narandas*(1) it was pointed out that

“ Act XXX of 1923 is an amending Act and there is no provision therein for retrospective effect.”

In that case, the plaintiff's marriage took place in 1918 under the Special Marriage Act of 1872 and it was held that the rights of parties could not be governed by the amending Act of 1923 but by the original Act as the amending Act has no retrospective effect. In *Punyabrata Das v. Monmohan Ray*(2) the learned Judges construed the words “ who marries ” in section 24 as synonymous with “ who shall marry hereafter ”, which means from the date of the enactment which brought that section into being and cannot mean who is married under the Act hereby amended.

For the above reasons we hold that the appellant is not entitled to claim a succession certificate by virtue of the new section 24 of the Act and that her rights to claim the succession certificate should be regulated by the provisions of the Act before its amendment, in which case it is not disputed, having regard to the decisions, that she will not be entitled to ask for a succession certificate. The civil miscellaneous appeal therefore fails and is dismissed with costs.

A.S.V.

(1) A.I.R. 1928 Bom. 74.

(2) A.I.R. 1934 Pat. 427.