

1898

CHATARBUDJ
DAS
v.
GANESH
RAM.

the decree used by the Madras Court, we allow this application. We set aside the decree of the Subordinate Judge. We direct him to restore the suit to the file, and after considering the objections which we understand have been filed by the applicant, to pass such orders as appear to be just. The applicant will have his costs of this application.

APPELLATE CIVIL.

1898.

June 27.

Before Mr. Justice Blair and Mr. Justice Aikman.

RANJIT (PLAINTIFF) v. RADHA RANI AND ANOTHER (DEFENDANTS)*
Act No. XV of 1856 (Re-marriage of Hindu widows) section 2—Hindu Law—Hindu widow—Rights of widow in deceased husband's property—Widows whose re-marriage is valid independently of the Statute.

Held, that a Hindu widow belonging to the Kurmi caste, in which the re-marriage of widows was permitted, by custom of the caste, independently of Act No. XV of 1856, was not, by reason of her re-marriage, deprived of her right to remain in possession of her deceased husband's estate during her life-time, and that a suit brought during her life-time by the reversioners to the estate of her husband to obtain immediate possession of such estate could not succeed. *Har Saran Das v. Nandi* (1), and *Dharam Das v. Nand Lal Singh* (2), followed.

IN this case the plaintiff claimed certain immovable property which had been owned in his life-time by one Ganga Prasad, a somewhat remote collateral. Ganga Prasad had died in 1893, leaving him surviving his step-mother Radha Rani, who was actually in possession of the property, and a widow, Sugna. Sugna had married again after the death of Ganga Prasad. The parties were Kurmis, amongst whom the re-marriage of widows is permitted. The plaintiff, however, alleged that the defendant Sugna had by her re-marriage lost all right to her deceased husband's property, and that, inasmuch as Radha Rani, being the step-mother of the last owner, could not be his heir, he (the plaintiff) was entitled to the property.

* Second Appeal No. 546 of 1896, from a decree of F. W. Fox, Esq., District Judge of Jhansi, dated the 20th April 1896, confirming a decree of Mr. Azizul Rahman, Subordinate Judge of Jhansi, dated the 4th March 1896.

(1) L. L. R., 11 All., 330.

(2) Weekly Notes, 1889, p. 78.

The Court of first instance dismissed the plaintiff's suit, holding that Sugna was the real heir to the property claimed. The plaintiff appealed, and his appeal was likewise dismissed on a similar finding. The plaintiff thereupon appealed to the High Court.

Babu *Jogindro Nath Chaudhri* and Babu *Ratan Chand*, for the appellants.

Pandit *Sundar Lal*, for the respondents.

BLAIR and AIKMAN, JJ.—This is the suit of a plaintiff, who alleges that, failing the right of a Hindu widow of the Kurmi caste who has re-married to the property of her first husband, he is the heir. He impleads the person in actual possession of the property, who is the mother-in-law of the widow, the widow herself and her second husband. The question raised is one as to which there is a clear and absolute difference of opinion between the decisions of this Court and those of the Courts at Bombay and Calcutta, though there is indeed one case which has arisen in the Bombay High Court which has been decided to the same effect as the rulings laid down by this Court. The Allahabad decisions are in the cases of *Har Saran Das v. Nandi* (1) and *Dharam Das v. Nand Lal Singh* (2). Several unreported cases have all been decided in this Court in the same way. We see no reason to doubt the soundness of those decisions, which form, as far as we know, a consistent *cursus curiæ* in this Court. Another point was raised by the appellant to the effect that in the provisions of the *wajib-ul-arz* a custom was alleged to exist to the effect that a widow among the Kurmi caste who re-marries loses thereby the right to her husband's property. It is found as a fact upon evidence by the Judge of the lower appellate Court that no such custom is proved. The appeal fails and is dismissed with costs.

Appeal dismissed.

(1). I. L. R., 11 All., 330.

(2) Weekly Notes, 1889, p. 78.