

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

MULA (DEFENDANT) v. PARTAB (PLAINTIFF)*

1910

March 16.

Act No. XV of 1856 (*Hindu Widows' Re-marriage Act*), section 2—*Hindu widow—Re-marriage permitted by rules of caste—widow not deprived of property of first husband.*

Where the rules of her caste recognise the right of a Hindu widow to re-marry, a second marriage has not the result of divesting her of the property of her first husband.

THE facts of this case were as follows:—

One Siria, a Taga Brahman, was the owner of certain property. He died leaving him surviving his widow, Mathuri, and his mother Tulsha. The names of these ladies were entered as owners after his death. The ladies executed a deed of gift in 1885 in favour of Nanda, the brother of Mathuri. Nanda died leaving Chhajju his heir. Chhajju mortgaged a portion of the property and sold another portion to the defendants. Musammatt Tulsha died some years ago, and Musammatt Mathuri contracted a *karao* marriage 7 years ago. The reversioners brought this suit for possession of Siria's property on the ground that Musammatt Mathuri had only a limited interest in the property which she lost after contracting the second marriage. The court of first instance (second Additional Judge of Meerut) decreed the suit. The defendant appealed.

Pandit Mohan Lal Sandal, for the appellant, submitted that the suit did not lie during the lifetime of Mathuri. She still had her interest in the property. *Karao* was a recognised form of marriage among the Taga Brahmans. The only consequence was that a *Bisa* Brahman widow became a *Dasa* Brahman after second marriage. It derogated from her social position; *Khuddo v. Durga Prasad* (1) and *Gajadhar v. Kawnsilla* (2). If the marriage were invalid, Musammatt Mathuri would be held to be living in concubinage with the man with whom she purported to contract a second marriage and subsequent unchastity did not affect her right of inheritance.

Maulvi Shafi-uz-zaman, for the respondents, submitted that the ruling in *Khuddo v. Durga Prasad* only applied to cases where second marriage was allowed. *Karao* was not sanctioned

* First Appeal No. 19 of 1909, from a decree of Kanhaiya Lal, second Additional Judge of Meerut, dated the 3rd of September, 1908.

(1) (1906) I. L. R., 29 All., 122. (2) (1908) I. L. R., 31 All., 161.

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among the *Bisa* Brahmans. Section 2 of the Widows' Re-marriage Act applied.

Pandit *Mohan Lal Sandal*, replied.

STANLEY, C. J., and BANERJI, J.—The suit out of which this appeal has arisen was brought by the plaintiff respondent for possession of certain property which belonged to one Siria. He claims as the next reversioner to Siria. Siria died leaving a widow, Musammat Mathuri, and his mother, Musammat Tulsha. These ladies made a gift of the property in favour of one Nanda, who is now dead. Chhajju, the brother of Nanda, mortgaged a part of the property to Kabul, defendant No. 3, and Sukh Ram, and he also sold a portion to the defendants 5, 6, 7 and 8. Musammat Tulsha is dead.

It has been found that the widow, Musammat Mathuri, has married again. The plaintiff claims the property on the ground that by reason of Mathuri's second marriage she has forfeited her rights to the property of her first husband, and that the plaintiff is therefore entitled to the possession of it. The parties belong to the caste of *Taga* Brahmans.

The court below has found, and the correctness of its finding is not challenged in this appeal, that there are two classes of *Taga* Brahmans called respectively *Bisa Tagas* and *Dasa Tagas*. The parties belong to the class of *Bisa Tagas*. Among *Bisa Tagas* re-marriage of widows is not allowed, but if a widow does re-marry she becomes a *Dasa Taga* and this re-marriage, although it reduces her to the rank of *Dasa Tagas*, is regarded as valid. The result of the finding therefore is that the second marriage of Musammat Mathuri is a valid marriage, according to the custom of the caste, the effect of the marriage being to reduce the re-married wife to the rank of *Dasa Tagas*. The learned Judge of the court below holds that as there has been a valid re-marriage of Musammat Mathuri, she forfeited her rights to the estate of her first husband under the provisions of section 2 of Act XV of 1856.

It is contended that this conclusion is erroneous and that Act No. XV of 1856 does not apply to a case like this where a re-marriage is valid according to the custom of the caste and independent of the provisions of the Act. Having regard to the

rulings of this court this contention seems to us to be correct. It has been held in a number of cases in this court that where according to the custom of the caste the re-marriage of a widow is valid, Act XV of 1856 is inapplicable. This has been the course of rulings in this court, and although personally we may have hesitation in accepting the view adopted in those rulings, we think we are bound by the uniform course of decisions in this court, and must therefore hold that section 2 of Act No. XV of 1856 is inapplicable to a case like this. This being so, the decree of the court below cannot be supported. The result is that we allow the appeal, set aside the decree of the court below and dismiss the plaintiff's suit with costs in both courts.

Appeal allowed.

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MISCELLANEOUS CIVIL.

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March 17.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

THE RAJPUTANA MALWA RAILWAY CO-OPERATIVE STORES, LIMITED,
(APPLICANT) v. THE AJMERE MUNICIPAL BOARD (OPPOSITE PARTY)*.

Act No. XV of 1877 (Indian Limitation Act), schedule II, articles 2, 61, 62 and 120—Limitation—Suit to recover from a Municipal Board money alleged to have been illegally levied as octroi duty—Municipal Board's powers of taxation.

A Municipal Board, in disregard of certain lawful orders of the Government of India, levied upon a Company trading within municipal limits certain sums by way of octroi duty over and above what they were legally entitled to levy. Held, on suit by the Company to recover from the Board the sums so levied, (1) that the suit would lie and (2) that the suit was one for money had and received to the use of the defendant within the meaning of article 62 of the second schedule to the Indian Limitation Act, 1877. *Morgan v. Palmer* (1) and *Neate v. Harding* (2) referred to. *Seth Karimji v. Sardar Kirpal Singh* (3) dissented from.

The facts of this case were as follows:—

The plaintiff company were general merchants and importers at Ajmere. They sued the Municipal Board of Ajmere for refund of Rs. 81-7-0, alleged to have been wrongly charged by the Board as octroi duty for goods imported by the Company into India by sea between the 20th of January, 1899, and the

*Civil Miscellaneous No. 246 of 1909.

(1) (1824) 2 B. and C., 729; (2) (1851) 6 Exch., 349; 86 R. R., 328.
26 R. R., 637.

(3) Punj. Rec., 1886, C. J., 289.