1913

SHIVA PRAKASH v. KARNA.

which it is based, this appeal must prevail and the plaintiff's suit must fail. We accordingly allow the appeal, set aside the decrees of the courts below and dismiss the plaintiff's suit with costs.

Appeal allowed.

1913
June, 5.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Sir Pramada Charan Banerji.

ABDUL AZIZ KHAN AND OTHERS (DEFENDANTS) *v.* NIRMA (PLAINTIFF).*

Act No. XXI of 1850 (*Caste Disabilities Removal Act*), *section* 1—*Act No. XV of* 1856 (*Hindu Widows' Remarriage Act*), *section* 2—*Hindu widow—Conversion and subsequent remarriage.—Widow's estate not divested.—Hindu law.*

The widow of a separated Hindu became a convert to Muhammadanism and married a Muhammadan.

Held that the widow did not thereby lose her interest in the property of her late husband in view of the provisions of Act No. XXI of 1850; nor did section 2 of the Act No. XV of 1856 affect the situation, inasmuch as that section applied to *Hindu* widows only. *Khunni Lal* v. *Gobind Krishna Narain,* (1) followed. *Matungini Gupta* v. *Ram Rutton Roy* (2) dissented from.

THE facts out of which this appeal arose were as follows:—

One Musammat Parbati, a Hindu widow, wished to construct a temple and a well on a portion of the property of her late husband. She came to court on the allegation that the defendants obstructed her in carrying out the work and prayed for an injunction restraining them from interference. Her suit was decreed by the court of first instance. The defendants appealed to the District Judge. While the appeal was pending, Musammat Parbati became a convert to Muhammadanism and was married to a Muhammadan. Her mother-in-law, the respondent to the present appeal, put in an application to the District Judge that Musammat Parbati having been converted to Muhammadanism, her own name may be substituted in her place as a respondent in the appeal. An application was also put in by Musammat Parbati, praying that her suit be dismissed and the appeal of the defendants be allowed. The defendants put in an application objecting to the claim of Musammat Nirma, the mother-in-law of Musammat Parbati, on the ground that Musammat Parbati having withdrawn her suit, her mother-in-law had no status in law to carry it on.

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* First Appeal No. 157 of 1912 from an order of W. D. Burkitt, District Judge of Saharanpur, dated the 18th of July, 1912.

(1) (1911) I. L. R., 33 All., 356. (2) (1892) I. L. R., 19 Calc., 289.

The District Judge allowed the mother-in-law to be brought on the record in place of Musammat Parbati, holding that Musammat Parbati must be deemed to have forfeited her rights and that the succession had opened up in favour of the mother-in-law. The defendants appealed.

Mr. *S. A. Haidar*, for the appellants :—

Two enactments of the Legislature have to be considered. The first is Act XXI of 1850. Parbati was a Hindu widow, she changed her religion, and, so far as the provisions of that Act went, she could not be deprived of her rights to the property. The latest case on the point is *Khunni Lal* v. *Gobind Krishna Narain* (1). There was an earlier case *Bhagwant Singh* v. *Kallu* (2). The same view is expressed by Ghosh in his *Hindu Law*, pages 219 and 220. It was true that Mayne dissented from that view; page 80 (7th edition.) He also disapproved of the decision in 11 All., 100. The second enactment was the Hindu Widows' Remarriage Act (XV of 1856). That Act did not apply. The lower court was wrong in holding that it did. It applied to Hindu widows who remarried as Hindus. The lady in this case had become a Muhammadan before her second marriage. Section 6 of the Act made the whole thing clear and showed what the Legislature meant. The case of *Matungini Gupta* v. *Ram Rutton Roy* (3) is against this contention, but the judgement of PRINSEP, J., is the correct exposition of the law on the subject. The lady in that case remained a Hindu up to the time of her marriage.

Mr. *M. L. Agarwala*, for the respondent :—

The question had to be considered with reference to the peculiar position of a Hindu widow. She was a life-tenant and something more, she held the life-estate and protected the reversion. The two were kept distinctly in view by the law. As soon as she did anything to the reversion, her acts could be challenged. The reversioner could bring a suit. Act XXI of 1850 protected only the life-interest of the widow. The object of the Act was to protect only the interest which she had in the property. The right to protect the reversion had devolved on the respondent. The application for substitution of names could be made under order

(1) (1911) I. L. R., 33 All., 356 (364). (2) (1888) I. L. R., 11 All., 100.
(3) (1892) I. L. R., 19 Calc., 289.

1913

ABDUL AZIZ KHAN v. NIRMA.

XXII, rule 10, of the Code of Civil Procedure. So far as the Hindu Widows' Remarriage Act went, it referred to widows who took the estate as Hindu widows. It could not be construed to mean widows who were Hindus at the time of remarriage. Every Act had to be interpreted to give it a reasonable meaning. Otherwise it would be open to this anomaly that a widow would forfeit her estate if she married a Hindu, but if she married a non-Hindu she would keep it. The Act did contemplate the conversion of widows and it purposely used the expression 'any widow' instead of 'Hindu widow' in section 2. The adjective 'Hindu' was used in sections 3 and 6 and not in section 2. This distinction was significant. It was not the conversion that lost her the estate but the remarriage.

RICHARDS, C. J. and BANERJI, J.—This appeal arises under the following circumstances. One Musammat Parbati, the widow of one Ganga Ram, who was a Hindu, instituted a suit claiming that she, in exercise of her legal rights, wished to make a well, and build a temple on a portion of the property in the possession of which she was as a Hindu widow. She alleged that the defendants to the suit were preventing her from exercising her legal rights and she claimed an injunction to restrain them. The plaintiff got a decree in the court of first instance. The defendants appealed. While the appeal was pending, Musammat Parbati became a convert to Muhammadanism and married one Wali Muhammad. She then put in a petition stating that she no longer wished to prosecute her suit and prayed that her suit might be dismissed. Thereupon the present respondent, Musammat Nirma, the mother of her husband, who would have been entitled to the estate for her life if Musammat Parbati were then dead, made an application that she might be brought upon the record and allowed to defend the appeal. The court below allowed this application. Hence the present appeal.

The appellants contend that Musammat Parbati did not lose her estate upon becoming a convert to the Muhammadan religion, but that her right to her husband's property was protected by Act XXI of 1850, and that being a Muhammadan she was entitled to contract a legal marriage with her present husband. On the other hand, the respondent contends that under section 2 of Act XV of

1856, the remarriage of Musammat Parbati worked a forfeiture of her interest in her first husband's estate, and that, therefore, there was a devolution of interest to the present respondent. It was further contended that even if this be not so, Musammat Parbati, though she represented her husband's estate so long as she remained a Hindu widow, ceased to do so when she changed her religion and married again, and that therefore the present respondent, as next reversioner, ought to be allowed to continue the proceedings and protect the estate.

In our opinion, her conversion to the Muhammadan religion did not divest Musammat Parbati of her interest in her first husband's estate in view of the provisions of Act XXI of 1850. This has been repeatedly held in this Court and by their Lordships of the Privy Council. The last case to which we may refer is the case of *Khunni Lal* v. *Govind Krishna Narain* (1). We are also clearly of opinion that section 2 of Act XV of 1856 does not divest her of her interest in her first husband's estate.

Section 2 of Act XV of 1856 cannot possibly include all widows It is necessarily confined to "Hindu widows." Musammat Parbati was not a Hindu when she married her present husband. This Court has consistently held that the provisions of this Act do not apply to cases where the second marriage is valid irrespective of the provisions of the Act. Therefore, on the main ground of appeal, we think that the contention of the appellant is correct. Our attention has been called to the ruling of the Calcutta High Court, in the case of *Matungini Gupta* v. *Ram Rutton Roy* (2). This ruling is inconsistent with the rulings of our own Court.

With regard to the second contention, namely, that Musammat Parbati, in the events which have happened, ceased to represent her late husband's estate, we need only point out that the sole ground upon which the respondent could be substituted for Musammat Parbati would be that there had been a devolution of the estate, which, for the reasons already stated, is clearly not the case. No doubt, if anything detrimental to the estate is done by Musammat Parbati or by any other person, the reversioners may have a right to take steps for the protection of the estate by

(1) (1911) I. L. R., 33 All., 356. (2) (1892) I. L. R., 19 Calc., 289.

1913

ABDUL AZIZ KHAN v. NIRMA.

instituting a suit of their own. This is a very different thing to being substituted for Musammat Parbati in a suit which she instituted of her own motion and which she does not choose to prosecute.

We allow the appeal, set aside the order of the court below and dismiss the application with costs.

Appeal allowed.

1913
June, 16.

Before Mr. Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.

RAM RAJ (OBJECTOR) *v.* BRIJ NATH AND OTHERS (OPPOSITE PARTIES).*

Act No. VII of 1889 *(Succession Certificate Act)—Certificate of succession—Joint certificate not illegal if granted with the consent of the grantees.*

Held that the grant of a joint certificate under the provisions of the Succession Certificate Act, 1889, is not illegal, provided that the persons to whom such certificate is granted all consent to its being granted in this form.

THE facts of the case were these:

Brij Nath, one of the heirs of a deceased Hindu, applied for a succession certificate. Two other heirs, Ram Raj and Ranchhor, preferred separate objections and claimed the certificate for themselves. Subsequently all three agreed to the grant of a certificate to them jointly. Another claimant to the certificate was Musammat Tirbeni, about whom the District Judge remarked as follows:—" The position of Musammat Tirbeni in the family is only that of a person with a right to maintenance. She alleges that, as a special case, some of these debts belong to her. The ground on which the allegation is made is unusual. It seems not too probable that a woman would lend her *stridhan* to be invested and take no steps to see that it was invested in her own name. The burden of proving such a case is upon her, both as a matter of law and as a matter of common sense. Musammat Tirbeni adduced no evidence." The District Judge granted the certificate to the three jointly, on condition of their furnishing security for the indemnity of Musammat Tirbeni. One of the objectors appealed.

Babu *Binoy Kumar Mukerji*, for the appellant :—

A joint certificate granted to several persons is not contemplated by the Succession Certificate Act and is illegal; *Lonachand Gangaram* v. *Uttamchand Gangaram* (1) and *Madan Mohan* v. *Ramdial* (2) and the cases cited therein. If the granting

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* First Appeal No. 62 of 1913 from an order of A. Sabonadiere, District Judge of Aligarh, dated the 29th of November, 1912.

(1) (1891) I. L. R., 15 Bom., 684. (2) (1882) I. L. R., 5 All., 195.