

APPELLATE CIVIL.

1931
September,
21.

Before Syed Wazir Hasan, Chief Judge and Mr. Justice
Bisheshwar Nath Srivastava.

PARBATI, MUSAMMAT, AND ANOTHER (DEFENDANTS-
APPELLANTS) *v.* RAM PRASAD (PLAINTIFF-RESPON-
DENT).*

*Hindu law—Widow's estate—Hindu widow marrying a
Muhammadan after conversion—Continuance of posses-
sion over her first husband's estate for over twelve years
without any change in the character of the possession—
Adverse possession, whether perfected her title to a
limited estate or to an absolute estate.*

Held, that a title acquired under section 28 of the Indian
Limitation Act, 1908, through adverse possession by a widow,
who claims and holds a widow's estate, inures to the estate
of her deceased husband and descends upon her death accord-
ingly. *Lajwanti v. Safachand* (1), relied on.

Where, therefore, a Hindu widow was converted to
Muhammadanism and married a Muhammadan but conti-
nued in possession of her previous husband's property for over
twelve years, without any change in the character of her
possession, *held*, that even if the result of the remarriage
was to effect a forfeiture of her widow's estate, her possession
thereafter was unlawful and therefore adverse but there
being no evidence to show that she prescribed for the absolute
estate, this adverse possession can only be regarded as adverse
possession of the limited estate which she had enjoyed before
the remarriage. The mere fact of remarriage in the absence
of any assertion of absolute ownership or change in the manner
of her possession could not enlarge her estate into an ab-
solute one. As she retained possession for more than twelve
years after her remarriage, she thereby perfected her title
only to a widow's estate which inured to the estate of her
deceased husband and would on her death descend to his
reversioners. *Umrao Singh v. Pirthi* (2), *Tarif v. Phul
Singh* (3), *Desa v. Dani* (4), and *Mahajan v. Musammat
Purbo* (5), relied on.

*Second Civil Appeal No. 46 of 1931, against the decree of
Mr. Bhagwat Prasad, Subordinate Judge of Mohanlalganj at Lucknow,
dated the 17th of December, 1930, reversing the decree of Babu Hiran Kumar
Ghoshal, Munsif, South Lucknow, dated the 31st of July, 1930.

(1) (1924) L.R., 51 I.A., 171.

(2) (1925) A.I.R., All., 369.

(3) (1927) A.I.R., All., 274.

(4) (1929) A.I.R., Lah., 327.

(5) (1929) I.L.R., 11 Lah., 424.

Mr. *K. P. Misra*, for the appellants.

Messrs. *Lakshman Prasad Srivastava* and *Raj Kumar Srivastava*, for the respondent.

1931

 PARBATI,
MUSAMMAT

 v.
RAM PRASAD

HASAN, C.J. and SRIVASTAVA, J.:—This is a defendants' appeal against the decree, dated the 17th of December, 1930, of the Subordinate Judge of Mohanlalganj reversing the decree, dated the 31st of July, 1930, of the Munsif, South Lucknow. It arises out of a declaratory suit.

One Raghu, a Lunia by caste, was possessed of a house in mohalla Narhi, Lucknow. He went abroad thirty-five years ago and has not been heard of since. His wife Musammat Parbati, defendant No. 1, has remained in possession of the house ever since. On the 7th of March, 1930, Musammat Parbati executed a will in favour of Ram Adhin, defendant No. 2, in respect of the house in question. The plaintiff-respondent Ram Prasad, a cousin of Raghu, instituted the suit which has given rise to this appeal on the allegations that Raghu had died and that Musammat Parbati was in possession of the house in dispute as a Hindu widow and as such had no right to execute the will. He claimed a declaration that the will in question was not binding on him and was void and inoperative.

The defendants did not deny that the possession of Musammat Parbati at its inception was that of a Hindu widow but pleaded that after Raghu went abroad, Musammat Parbati went into the keeping of one Jagnu Sonar, that seven or eight years later when Jagnu died, she became a Muhammadan and married one Hazari about thirty years ago. They pleaded that since the time she went into the keeping of Jagnu and at any rate since she became a Muhammadan and married Hazari, her possession ceased to be that of a Hindu widow and that she has perfected an absolute title to the house in suit by adverse possession for more than twelve years.

1931

PARBATI,
MUSAMMAT
o.
NAM PRASAD

Hasan,
C. J. and
Srinastara,
J.

The learned Munsif held that Musammat Parbati after her remarriage with Hazari forfeited her widow's estate and had remained in adverse possession for more than twelve years. He accordingly dismissed the suit. On appeal the learned Subordinate Judge held that the Hindu Widow Remarriage Act (XV of 1856) did not apply to the case and therefore her remarriage with Hazari did not effect a forfeiture of her Hindu widow's estate. He further held that after her remarriage there was no change in the character of her possession and, therefore, even if it were supposed that Parbati forfeited her rights on her remarriage, she did not perfect her rights as full owner by adverse possession. He therefore allowed the appeal and decreed the plaintiff's claim.

The learned counsel for the defendants-appellants has challenged the correctness of the findings of the lower appellate court on both the points. He has contended that the case is governed by the Hindu Widows' Remarriage Act and that even if the Act did not apply, Musammat Parbati must be held to have forfeited her widow's estate on remarriage, according to the provisions of the Hindu law. He has further contended that her possession, since the time of the remarriage, must be deemed to be that of an absolute owner and not of the limited estate of a Hindu widow.

We are of opinion that even if it were assumed that Musammat Parbati forfeited her widow's estate when she contracted her second marriage with Hazari, it is not possible to hold that she prescribed for an absolute estate since the time of her second marriage. There is not an iota of evidence to show that after her marriage with Hazari any change took place in the character of her possession or that she ever asserted any title as an absolute owner. All that appears on the record is that even after her remarriage she continued to hold the property exactly in the same way as

before. In fact, as remarked by the learned Subordinate Judge, there is nothing to show that she was even cognizant of the fact that she had forfeited her widow's estate by reason of her remarriage. In *Lajwanti v. Safachand* (1), it was held by their Lordships of the Judicial Committee, that a title acquired under section 28 of the Indian Limitation Act, 1908, through adverse possession by a widow, who claims and holds a widow's estate, inures to the estate of her deceased husband and it descends upon her death accordingly. The principle underlying this decision is applicable to the present case. If the result of the remarriage was to effect a forfeiture of her widow's estate, her possession thereafter was unlawful and therefore adverse but there being no evidence to show that she prescribed for the absolute estate, this adverse possession can only be regarded as adverse possession of the limited estate which she had enjoyed before the remarriage. The mere fact of remarriage in the absence of any assertion of absolute ownership or change in the manner of her possession could not enlarge her estate into an absolute one. As she has been allowed to retain possession for more than twelve years after her remarriage, she has thereby perfected her title only to a widow's estate which inures to the estate of her deceased husband, Raghu, and would on her death descend to the plaintiff as his reversioner. The present case is almost on all fours with the cases reported in *Umrao Singh v. Pirthi* (2), *Tarif v. Phul Singh* (3), *Desa v. Dani* (4), and *Mahajan v. Musammam Purbo* (5). These are all cases of widows who forfeited their estate by reason of remarriage. As there was nothing to indicate any change in the character of their possession after remarriage, it was held that by their adverse possession

1931

PARBATI,
MUSAMMAT
v.
RAM PRASAD.

Hasan,
C. J. and
Srivastava,
J.

(1) (1924) L.R., 51 I.A., 171.

(2) (1925) A.I.R., All., 369.

(3) (1927) A.I.R., All., 274.

(4) (1929) A.I.R., Lah., 327.

(5) (1929) I.L.R., 11 Lah., 424.

1931

PARBATI,
MUSAMMAT
v.
RAM PRASAD.

Husan,
C. J. and
Srinastava,
J.

extending for more than twelve years, the widow acquired only a widow's estate and not an absolute estate. We are, therefore, in agreement with the learned Subordinate Judge that the defendants have failed to prove that Musammat Parbati perfected her rights as full owner by adverse possession. The appeal must therefore fail on this ground. In this view of the case it is not necessary for us to discuss the plea about forfeiture.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

PRIVY COUNCIL.

1932
P. C.
April, 21.

NISAR ALI KHAN, SARDAR v. MOHAMMAD ALI KHAN, SARDAR, KHAN BAHADUR AND CROSS-APPEAL.

[On Appeal from the Chief Court of Oudh.]

Will—Construction—Absolute or limited interest—“Malik” —Dominant intention of will—Series of Life Interests—Possession under invalid will—Claim by remainderman —Estoppel—Jurisdiction—Suit in Oudh joining claim to be mutawalli of property in Punjab—Code of Civil Procedure (V of 1908), section 17.

A Shia Muhammadan who died in 1896 made two wills, one dealing with an estate in Oudh of which he was taluqdar under Act I of 1869, the other with two properties (J. and R. K.) in the Punjab. He was owner of property J. Property R. K. had been granted by the Government to his deceased elder brother, and under the grant the testator had a life interest but his successor was to be chosen by the descendants of the grantee, or by the Lieutenant-Governor, from among their number. The testator was also in possession of a property K. in the Punjab which he had included in a deed of *waqf*, the deed providing that he was to be *mutawalli* for life and that the office was to devolve upon his successors.

*Present: Lord BLANESBURGH, Lord TOMLIN, Lord RUSSELL of Killowen, Sir GEORGE LOWNDES, and Sir DINSHAH MULLA.