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in-aid of execution the answer must in my opinion certainly be in the negative and this is exactly what we would expect from the wording of the section itself. Order XXI, rule 95, applies to an application made by the purchaser and an application made by the purchaser cannot in my opinion possibly be read as an application by a decree-holder to take some step-in-aid of execution, whether the purchaser be the decree-holder or an outsider. As soon as the sale is confirmed the property vests in the purchaser and any further step which it may be necessary for him to take in order to secure possession is not a step taken by a decree-holder even if he happens to be the auction-purchaser but is an application by the auction-purchaser as such and has consequently nothing to do with the execution of the decree. I have not specifically referred to the cases in the Calcutta High Court because they have all been referred to in the Full Bench decision of this Court in the case of *Haji Abdul Gani* v. *Raja Ram* (1).

For the reasons I have given I would set aside the order of the learned District Judge and that of the Subordinate Judge and would decree this appeal with costs.

DAS, J.—I agree.

Appeal decreed.

APPELLATE CIVIL.

Before Coutts and Das, J.J.

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June, 16.

MUSSAMMAT SURAJ JOTE KUER

v.

MUSSAMMAT ATTAR KUMARI.*

Hindu Law—widow, remarriage of, to non-Hindu, effect of—whether right to estate inherited from the deceased husband

* Appeal from Appellate Decree No. 153 of 1921, from a decision of Ashutosh Chattarji, Esq., District Judge of Darbhanga, dated the 1st September, 1920, affirming a decision of Babu Narendra Nath Banarji, Munsif of Darbhanga, dated the 8th April, 1920.

(1) (1916) 1 Pat. L. J. 232, F.B.

is last—Hindu Widows' Re-marriage Act, 1856 (*Act XV of* 1856), *section* 2—*Conversion of Hindu widow, effect of—Removal of Caste Disabilities Act*, 1850 (*Act XXI of* 1850)—Dayanandis *or* Arya Samajists, *whether are Hindus.*

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Section 2 of the Hindu Widows' Remarriage Act, 1856, applies to all persons who, being Hindus, become widows. Therefore, if any such widow re-marries either a Hindu or a non-Hindu she loses the estate which she has inherited from her deceased Hindu husband even though, in the particular sect to which she belongs, the re-marriage of a widow is permitted.

Abdul Aziz Khan v. *Nirma*(1), dissented from.

Matungini Gupta v. *Ram Rutton Roy*(2), approved.

Semble, that a Hindu widow who changes her religion does not, since the enactment of the Removal of Caste Disabilities Act, 1856, lose her rights in the estate of her deceased husband, unless she re-marries.

Semble, that the Hindu Widows' Re-marriage Act applies even to sects in which the re-marriage of a widow is recognised by a custom or as a tenet of that sect.

Harsaram Das v. *Nandi*(3), *Gajadhar* v. *Kaunsilla*(4) and *Mula* v. *Partab*(5), disapproved.

Murugayi v. *Viramakali Chatakondu*(6), *Vittatayaramma* v. *Sivayya*(7), *Muhammad Umar* v. *Mussammat Man Kuar*(8), *Rasul Jehan Begum* v. *Ram Suran Singh* (9), *Gouri Churn Patni* v. *Sita Patni* (10) and *Nitya Madhab Das* v. *Srinath Chandra Chuckerbutty*(11), approved.

The *Dayanandis* or members of the *Arya Samaj* are Hindus.

Bhagawan Koer v. *J. C. Bose*(12), applied.

(1) (1913) I. L. R. 35 All. 466.
(2) (1892) I. L. R. 19 Cal. 289, F.B.
(3) (1889) I. L. R. 11 All. 330.
(4) (1909) I. L. R. 31 All. 161.
(5) (1910) I. L. R. 32 All. 489.
(6) (1876-78) I. L. R. 1 Mad. 226.
(7) (1918) I. L. R. 41 Mad. 1078.
(8) (1916-17) 21 Cal. W. N. 906.
(9) (1895) I. L. R. 22 Cal. 589.
(10) (1909-10) 14 Cal. W. N. 346.
(11) (1908) 8 Cal. L. J. 542.
(12) (1904) I. L. R. 31 Cal. 11.

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Appeal by defendant No. 1.

The facts of the case material to this report are stated in the judgment of Coutts, J.

Hasan Jan, for the appellant.

Susil Madhab Mullick and *Naresh Chandra Sinha*, for the respondents.

COUTTS, J.—This was a suit for declaration of title to, and confirmation of possession of an eight-anna share in *Tauzi* Nos. 1300, 1516 and 1519, and a two-anna share in *Tauzi* No. 1303 in *Mauza* Usthua.

The facts are not disputed and are shortly as follows: The defendant No. 1, Mussammat Suraj Jote Kuer, was the wife of Ramdhani Prasad, son of the plaintiff, Mussammat Attar Kumari. After the death of Ramdhani Prasad, the defendant No. 1 left her husband's house and went to live in the house of defendant No. 2, Muhammad Yasin, a Muhammadan, whose mistress she became. Subsequently she was converted to Muhammadanism and was married to Muhammad Yasin. She, however, still retained the estate of her deceased husband and this suit by her mother-in-law was instituted to recover the estate on the ground that having re-married she had lost all her rights in her deceased husband's property. During the life-time of her husband both he and defendant No. 1 were *Dayanandis*, that is to say, followers of Pandit Dayanand Saraswati, founder of the *Arya Samaj*, and the questions which have arisen in this case are whether a *Dayanandi* is a Hindu, if so whether a Hindu widow belonging to this sect forfeits her rights to her husband's property on re-marriage, and whether a Hindu widow after conversion and subsequent re-marriage forfeits her rights to her husband's property. It has been decided by both the Courts below that a *Dayanandi* is a Hindu and that in accordance with the Hindu law the widow of a *Dayanandi*, after conversion and re-marriage, loses her rights to her husband's property. The suit has accordingly been

decreed and against this decision the defendant No. 1 has appealed.

The questions that arise in this second appeal are the questions I have indicated above and I shall first deal with the question of whether a Hindu widow, after conversion and subsequent re-marriage, forfeits her rights to her husband's property.

So far as this Court is concerned the matter is one of first impression but the question has arisen directly in the High Courts of Calcutta, Madras, Bombay and Allahabad. The decisions in Calcutta, Madras and Bombay are unanimously to the effect that in such a case a Hindu widow loses her property, whereas the Allahabad High Court has taken a directly contrary view; and it is contended by the learned Vakil for the appellant that it is the Allahabad view which is correct and the view which we ought to follow. The argument of the learned Vakil for the appellant is based on the interpretation which has been placed on section 2 of the Hindu Widows' Re-marriage Act (Act XV of 1856) by the Allahabad High Court. The Hindu Widows' Re-marriage Act, it is argued, deals with the case of Hindu widows who had up to that time been held to be incapable of contracting a valid marriage; by that enactment, such marriages were legalized and the issue of such marriages were legitimatized, but the old Hindu rule of law was retained that on re-marriage the widow lost her rights to her deceased husband's property, for section 2 of the Act enacts that:

"All rights and interests which any widow may have in her deceased husband's property by way of maintenance......shall upon her re-marriage cease and it shall be determined as if she had then died."

It is contended that "widow" in this section can only mean "Hindu widow" so that if a Hindu widow changes her religion and becomes a Muhammadan she is no longer a Hindu widow, and, if she re-marries, section 2 of the Act does not apply and she does not lose her husband's estate. This is the view which, as I have already said, has been adopted consistently in the Allahabad High Court and I need only refer to

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the last case on the point, *Abdul Aziz Khan* v. *Nirma*(1), which followed the previous decisions of that Court. I may mention in this connection, however, that at least one of the learned Judges, who was a party to that decision, in another case expressed a doubt as to the correctness of this view, but did not dissent because of the long course of decisions in that Court. The Calcutta High Court has taken an entirely different view which has been expressed in the judgment of the majority in the Full Bench case of *Matungini Gupta* v. *Ram Rutton Roy* (2). In that case, on an interpretation of section 2 of the Act, four of the learned Judges, who decided that case, hold that it includes all widows who are within the scope of the Act, that is to say, all persons who, being Hindus, become widows, and they say that it must follow from this that if any such widow marries she is deprived of the estate which she inherited from her Hindu husband. Prinsep, J., recorded a dissenting judgment being unable to adopt this interpretation of the section and his view was the same as that which has been adopted in Allahabad. In Madras and in Bombay, so far as the interpretation of the Act is concerned, there has been a difference of opinion amongst the learned Judges. The wording of the section is curious and it certainly lends itself to the interpretation which has been put upon it by the Allahabad High Court and by the learned Judges who have adopted the same view, but the reasoning of the majority of the Full Bench of the Calcutta High Court appears to me to be correct, and, in my opinion, section 2 of the Act includes all persons who, being Hindus, become widows, and that any such widow, if she re-marries, loses the estate which she inherited from her deceased Hindu husband. On the interpretation of the statute alone, therefore, in my opinion, a Hindu widow, who becomes a Muhammadan and re-marries, loses her right to her husband's property. But even if this interpretation be wrong it is not sufficient to say that if the Act does not apply a Hindu

(1) (1913) I. L. R. 35 All. 466. (2) (1892) I. L. R. 19 Cal. 289, F.B.

widow who changes her religion and re-marries retains her deceased husband's estate. In such circumstances we are relegated, in coming to a decision, to the general rule of Hindu law, and in regard to this I think there can be no doubt.

A widow's right to succession is based on the ground that she is half of the body of her deceased husband and that she is capable of conferring spiritual benefits on him. When she remarries she ceases to be half of the body of her late husband or to be able to confer spiritual benefits on him and she becomes the wife and half of the body of her new husband. The reason, therefore, for her keeping the estate of her deceased husband disappears. Formerly, by changing her religion, a widow lost her estate, but since Act XXI of 1850 this is not so. Although, however, she does not lose her estate by a change of religion it seems clear that she must lose it by re-marriage when the whole reason for holding the estate disappears. Moreover ordinarily both under the Hindu law and by the enactment a Hindu widow on re-marriage loses her estate. If, however, the contention of the learned Vakil for the appellant were correct, by doing another act which is repugnant to Hindu ideas, namely, by becoming a Muhammadan she would have his estate. It is difficult to conceive that this could be a correct view of the Hindu law.

Looked at from another point of view the contention is equally difficult to accept. The estate which a Hindu widow has she has from her deceased husband and it is distinctly limited in character, one limitation being that she loses it if she re-marries. She cannot get a larger estate than she got from her husband, yet it is suggested that by changing her religion she does in fact enlarge her estate inasmuch as she can continue to hold it on re-marriage. I am unable to accept this contention and in support to the view I have taken I would refer to the decisions of Wilson, J., and Banerji, J., in the Full Bench decision

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in the case of *Matungini Gupta* v. *Ram Rutton Roy* (1). This view has been accepted in the later cases of the Calcutta High Court. The question has never been considered from the point of view of the general Hindu law in the Allahabad High Court but the view I have expressed has been generally accepted in Madras and Bombay. In all the Courts then in which the matter has been considered from the standpoint of the general rule of Hindu law it has been held that a Hindu widow after conversion and subsequent remarriage forfeits her rights to her husband's property and this is in my opinion the correct view of the law.

It is next contended that, even if this be so, if a Hindu widow belongs to a sect such as the *Arya Samaj*, in which widow re-marriage is allowed, she does not forfeit her rights of her husband's property on re-marriage. It is, in the first place, urged that this cannot be so because it would be anomalous for any sect to approve of widow re-marriage and at the same time to deprive the widow who re-marries of her estate. The fact of an apparent anomaly, however, will not establish the correctness of the contention put forward and I may remark that this is exactly the position created by the Hindu Widows' Re-marriage Act. The marriage of a Hindu widow has been validated but she is still deprived of her property. It is next urged that the Hindu Widows' Re-marriage Act does not apply to sects of Hindus in which widow re-marriage is recognized, and that subsequently section 2 of the Act does not apply. I am not prepared to accept this proposition, but, even accepting it, the question remains, What rule does apply? and here again we are thrown back on the general rule of Hindu law which I have discussed above. It may be that certain classes of Hindus recognize widow re-marriage either by custom or as tenet of their sect, but even where this is so it would be necessary to establish affirmatively that this recognition carries with it the right to retain the deceased husband's estate for to do so is against

(1) (1892) I. L. R. 19 Cal. 289, F.B.

both the general rule of Hindu law and against the provisions of the statute. I doubt whether in the case of any class amongst whom widow re-marriage is recognized it has been established that this carries with it the right to retain the deceased husband's estate but certainly in this case it has not been proved. In support of the contention of the learned Vakil for the appellant we have been referred to the rulings in the cases of *Harsaran Das* v. *Nandi* (1), *Gajadhar* v. *Kaunsilla* (2), and *Mula* v. *Partab* (3). There is no doubt that in the Allahabad High Court the view contended for by the learned Vakil for the appellants has been generally accepted, but in none of these cases has the general principle of Hindu law been considered. It has merely been said that because section 2 of the Act does not apply therefore where widow re-marriage is recognized the widow does not lose her husband's property, but with due respect to the learned Judges who decided these cases this does not dispose of the matter. If the Act does not apply we must fall back on the general rule of the Hindu law and this is that a widow loses her property on re-marriage. This is the view which has been taken in the other High Courts and I would refer to the decisions in the case of *Murugayi* v. *Viramakali Chatakondu* (4), which has been followed in a series of cases ending with the case of *Vittatayaramma* v. *Sivayya*(5), *Muhammad Umar* v. *Mussammat Man Kuar* (6), *Rasul Jehan Begum* v. *Ram Suran Singh* (7), *Gouri Churn Patni* v. *Sita Patni* (8), and *Nitya Madhab Das* v. *Srinath Chandra Chuckerbutty* (9).

The last contention is that a *Dayanandi* is not a Hindu. It is somewhat difficult to define the term "Hindu" and there are several castes and sects who although non-conformists are still classed as Hindus. I can find no decision on the question of whether

(1) (1889) I. L. R. 11 All. 330
(2) (1909) I. L. R. 31 All. 161.
(3) (1910) I. L. R. 32 All. 489.
(4) (1876-78) I. L. R. 1 Mad. 226
(5) (1918) I. L. R. 41 Mad. 1078.
(6) (1916-17) 21 Cal. W. N. 906.
(7) (1895) I. L. R. 22 Cal. 589.
(8) (1909-10) 14 Cal. W. N. 346.
(9) (1908) 8 Cal. L. J. 542.

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Dayanandis are Hindus. The sect which approaches most nearly to the *Dayanandis*, however, are the *Brahmos* and in the case of *Bhagawan Koer* v. *J. C. Bose* (1), in which their Lordships of the Privy Council discussed this question of whether *Brahmos* are Hindus or not, they have said, "The learned Judges of the Chief Court examined the literature bearing upon the *Brahmo* society; they had before them much important evidence with reference to the *Brahmos* and the relation of their principles and their organization to the Hindu system; and they came to the conclusion that a Sikh or Hindu by becoming a *Brahmo* did not necessarily cease to belong to the community in which he was born". We may therefore now take it as settled law that *Brahmos* are Hindus. Their creed is directed against caste and idolatry and the object of the founder, Raja Rammohan Roy, was to found a pure monotheistic religion. The sect of *Dayanandis* was founded by Pandit Dayanand Saraswati and it is now known as the *Arya Samaj* and it too is directed against caste and idolatry but they follow the *Vedas*; and, as Dr. Gour in his *Hindu Code* has said, "If the *Brahmos* are Hindus the *Arya Samajists* are more so because, though professing to be monotheists, they believe in the supremacy of the *Vedas*" [Gour's *Hindu Code*, 1919, page 182, paragraph 300]. In my opinion there can be no doubt that the *Dayanandis* are Hindus. This being so the defendant No. 1 in this case was a Hindu, she continued to be a Hindu up till the time she adopted the Muhammadan religion, and for the reasons I have given she has forfeited her right to her husband's estate on her re-marriage.

The suit has therefore been rightly decreed in both the Courts below and I would dismiss this appeal with costs.

ADAMI, J.—I agree.

Appeal dismissed.

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(1) (1904) I. L. R. 31 Cal. 11.