Gurdyal Singh v. *Raja of Faridkot*[1]. [Their Lordships held that there was no ground for supposing that no suit will lie upon the judgment of a recognized foreign Indian State. As the amended section permits the Courts in British India to inquire into the merits, if necessary, the dangers of miscarrige of justice referred to in the earlier decisions of this Court have been effectively provided for—*Haji Musa* v. *Purmanand*[2]. If some of these Courts have been privileged to execute their decrees under section 229 in British India, there is no particular reason why the foreign judgments of those Courts, to which section 229 does not apply, should not be sued upon in British Indian Courts of Justice. I would, therefore, reverse the decrees of the Courts below and direct that the suit be disposed of according to law.

Decree reversed.

(1) (1894) 22 Cal., 222. (2) (1891) 15 Bom., 216.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

PANCHAPPA (ORIGINAL PLAINTIFF), APPELLANT, *v.* SANGANBASAWA (ORIGINAL DEFENDANT), RESPONDENT.*

1899. *July* 21.

Hindu law—Adoption—Gift of a son in adoption by a widow after remarriage—Widow Remarriage Act (XV of 1856), Secs. 2 and 3.

A Hindu widow has no power, after her remarriage, to give in adoption her son by her first husband, unless he has expressly authorized her to do so.

SECOND appeal from the decision of F. C. O. Beaman, District Judge of Belgaum.

Suit by an alleged adopted son to recover the property of his adoptive father.

The property in dispute had been the property of one Fakirappa. He had a wife Tippawa, and he married as his second wife a widow Dyamawa, who had by her first husband a son Panchappa (the plaintiff).

After Fakirappa's death, Dyamawa gave Panchappa in adoption to Tippawa.

* Second Appeal, No. 104 of 1899.

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Panchappa filed the present suit to recover possession of Fakirappa's estate from his sister Sanganbasawa.

The Subordinate Judge dismissed the suit, holding that plaintiff's natural mother had no power to give him in adoption after her remarriage, and that his adoption by Tippawa was, therefore, invalid.

The decision was upheld, on appeal, by the District Judge.

The plaintiff appealed to the High Court.

Manekshah Jehangirshah for appellant (plaintiff) :—The plaintiff's mother could give him in adoption although she had remarried. By the Hindu law the mother is empowered to give her son in adoption. By her remarriage she does not cease to be his mother, and, therefore, her right remains. Under Act XV of 1856 she no doubt forfeits by remarriage certain rights of inheritance and succession in her deceased husband's family. But the Act does not take away her right of giving her son in adoption. Nor is her right of guardianship over her children in any way affected, if no property is left by her deceased husband. No doubt, if her husband had expressly forbidden her to give his son in adoption, the adoption would have been invalid. Remarriage does not destroy a mother's right of succeeding as heir to her deceased son —*Akora Suth* v. *Boreani*[1]. If so, how can it affect her right to give her son in adoption ?

Dáji Abaji Khare for respondent (defendant) :—When a widow remarries, she forfeits all her rights in her deceased husband's family. Her right of giving her son in adoption rests upon the presumption that her husband had given his consent to such an act. But on remarriage she is to be treated as if she were dead, and, therefore, such consent cannot be presumed after her remarriage. Act XV of 1856 deprives her of her right of guardianship over her minor children. And her authority over her children comes to an end when she remarries. A mother has, no doubt, the right of giving her son in adoption ; but when she remarries, this right is lost, as all other rights she had in her former husband's family.

(1) (1868) 2 B. L. R., 199.

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PARSONS, J.:—The undisputed facts are these. Fakirappa had a wife, Tippawa, and he married as his second wife a widow, Dyamawa, who had by her first husband an only son, Panchappa. After Fakirappa's death, Dyamawa gave and Tippawa took Panchappa in adoption, and Panchappa has brought this suit to obtain Fakirappa's estate.

The question is whether his adoption is legal. The answer depends upon the power of Dyamawa to give Panchappa in adoption. The sole argument advanced in support of the adoption was based upon the use of the word 'mother' in the Hindu texts. A mother is said in them to have the power to give in adoption: Dyamawa in spite of her remarriage was still the mother of Panchappa: she could, therefore, give him to Tippawa to adopt. On the other side it was argued that by remarriage the widow lost all rights in her late husband's family and had, therefore, no disposing power left in her. The latter is the view which was accepted by the Judges of both the lower Courts, and I have no doubt that it is correct. It seems almost useless to refer to Hindu texts for assistance in the case of a status the existence of which they never contemplated. It is, however, I think clear that the power to give in adoption was only conferred upon the father and mother, because they were the owners and natural guardians of their son, and it follows that, if the mother should lose that position, then her power to give in adoption would be lost also. The provisions of section 3 of Act XV of 1856 declare in no uncertain tone that the effect of remarriage is to deprive the mother of the right of the guardianship, unless she has been expressly constituted guardian by the will or testamentary disposition of her deceased husband, and the Act gives the Civil Court the power of appointing a guardian for the children as if they had neither father nor mother. I would apply the same rule here, and hold that the adoption is invalid, as the mother had remarried, and no power to give in adoption had been conferred on her by her deceased husband. The decree is confirmed with costs.

RANADE, J.:—Both the Courts below have rejected the appellant-plaintiff's claim on the ground that his adoption was invalid, as his natural mother, Dyamawa, who gave him in adoption, had

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contracted a remarriage with Fakirappa before the adoption took place. The property in dispute belonged to Fakirappa, who had a *lagan* wife named Tippawa, and who married Dyamawa as his *pát* or *udki* wife. Dyamawa's first husband's name was one Ningappa, and a son was born to her by this marriage. On Ningappa's death, Dyamawa with her son went to live with Fakirappa, and she subsequently became his *pát* wife. On Fakirappa's death, she gave in gift her son by the first marriage to her co-wife Tippawa, and it is the validity of this adoption that is now in dispute. The Court of first instance held that, by reason of Dyamawa's second marriage, she forfeited all her rights in the family of Ningappa, and she could not make a valid gift of her first husband's son, who must be treated as an orphan. The District Court, in appeal, took the same view, holding also that the boy could not be regarded as a self-given boy.

Mr. Manekshah, the appellant's pleader, however, contended before us that the natural mother's relationship to her son by first marriage is not affected by her second marriage, and that the texts speak only of the right of the *mother* as such to give her son in adoption, and the mother's authority is independent of the continuance or otherwise of the first marriage relationship. Reliance was placed chiefly on the ruling in *Akora Suth* v. *Boreani*[1], in which it was held that the right of the mother to succeed as heir to her deceased son is not destroyed by reason of her having contracted a second marriage. If a mother can thus succeed as her son's heir notwithstanding her remarriage, it was contended that by analogy she could make a valid gift of her son by adoption, though she had married a second husband. In another case decided by the Allahabad High Court—*Har Saran Das* v. *Nandi*[2]—it was also held that where parties belonged to castes in which remarriage was customary before Act XV of 1856 was passed, the widow did not forfeit her rights of inheritance by reason of her second marriage. The parties in the present case belong to the Lingáyat caste, among whom remarriage has always been customary, and it was, therefore, contended that Dyamawa did not forfeit her rights (among others the right of giving her son in adoption) by reason of her

(1) (1868) 2 Beng. L. R., p. 199; 11 Cal. W. R., 82. (2) (1889) 11 All., 330.

remarriage. In both these cases it was held that section 2 of Act XV of 1856 did not restrict the already existing rights of widows, and that the Act was only an enabling Act in the interest of those who could not marry a second time by caste custom. This view of the Calcutta and Allahabad High Courts was, however, expressly dissented from by a Full Bench of this Court in *Vithu* v. *Govinda*[1], which held that, even in castes where remarriage was permitted by caste usage, a Hindu widow, who may have inherited property as heir to her son, forfeited her rights to such property after she remarries, and the property passed to the next heir. This ruling was based upon what may be described as a liberal construction of section 2 of Act XV of 1856.

In an earlier case—*Omkar*[2]—this Court had held that remarriage was equivalent to the civil death of the widow by reason of the operation of section 2 of Act XV of 1856, and this operation extended to the forfeiture of interests in possession as also in respect of rights still unrealized. In a more recent case, the Calcutta High Court has adopted the same construction of section 2 when it held in *Matungini* v. *Ram Rutton Roy*[3] that a Hindu widow forfeited all her interests in her first husband's property when she subsequently took a second husband, and this result followed even when remarriage might be customary in the caste—*Rasul Jehan Begum* v. *Ram Surun Singh*[4]. The Madras High Court took the same view in *Murugayi* v. *Viramakali*[5].

The three High Courts of Madras, Calcutta and Bombay have thus accepted the same construction of section 2 of Act XV of 1856, by which all the rights and interests which a widow may have in her deceased husband's property by way of maintenance, or inheritance, or by will or testament, * * shall upon her remarriage cease and determine as if she had then died. The rights and interests of Dyamawa thus ceased and determined when she became the *udki* wife of Fakirappa, and as stated further on in section 3, though Dyamawa was alive, her first husband's son (the minor plaintiff) became an orphan,

(1) (1896) 22 Bom., 321.
(2) P. J. for 1883, p. 280.
(3) (1891) 19 Cal., 289.
(4) (1895) 22 Cal., 589.
(5) (1877) 1 Mad., 226.

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without father and mother. The construction placed upon this section 3 by the High Court of Allahabad is that a new guardian should be appointed in place of the widow when she is remarried (*Khushali* v. *Rani*[1]). Where this is the case, it is clear that there can be no reservation intended of the widowed mother's right to give her son in adoption. On Dyamawa's remarriage, she was dead in relation to her first husband's family, and her son was as an orphan, being one without a mother. In West and Bühler, p. 999, it was laid down that a Shudra's widow, who married another person, cannot adopt a son to her deceased husband. If she cannot take in adoption, she cannot for the same reason give a son in adoption after remarriage. It is true section 5 of the Act reserves to the widow certain rights of inheritance not covered by the exceptions in clauses 2, 3, 4. It cannot, however, be contended that the right of giving a son in adoption is of the nature of a right reserved to her by section 5. It is a right subordinate to the right of inheritance from her husband and the guardianship of her sons, both which rights are excepted by name in sections 2 and 3 of the Act.

Her right to succeed as heir to her deceased son obviously comes under the reservation made in section 5, and the Calcutta decision—*Akora Suth* v. *Boreani*—first noted above, and on which the appellant chiefly relies, may be justified by this reservation. The Allahabad ruling in *Har Saran Das* v. *Nandi*[2] cannot, however, be so explained, and, therefore, it was expressly disapproved in the Calcutta case of *Rasul Jehan Begum* v. *Ram Surun Singh*[3] for the same reason as that adopted by the Bombay High Court. The right to give a boy in adoption is a right of disposition, a portion of *patria potestas*, which comes to the widow by reason of her connection with her deceased husband's estate, and being a part of the rights and intersets she acquires as a widow, it is included within the provisions of sections 2 and 3 of the Act, and is not a reservation which the Act concedes to the widow.

The decision of the Courts below was, therefore, correct, and I would accordingly confirm the decree and reject the appeal with costs.

Decree confirmed.

(1) (1882) 4 All., 195.

(2) (1889) 11 All., 330.

(3) (1895) 22 Cal., 589.