APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

1902. *January* 21.

CHAMAR HARU DALMEL (ORIGINAL PLAINTIFF), APPELLANT, *v.* KASHI (ORIGINAL DEFENDANT), RESPONDENT.*

Widow—Re-marriage—Inheritance—Succession to a son of first marriage notwithstanding re-marriage—Hindu Widows' Re-marriage Act (XV of 1856), sections 2, 5.

The widow of a Hindu married a second time. Subsequently to her re-marriage her son by her first marriage died childless.

Held, that she was entitled to succeed to his property notwithstanding her re-marriage.

SECOND appeal from the decision of Ráo Bahádur V. V. Phadke, Acting First Class Subordinate Judge, A. P., at Thána, reversing the decree passed by E. F. Rego, Subordinate Judge of Bassein.

The defendant Kashi was the widow of one Sakur, a Hindu of the Chamar caste, who died about the year 1890, leaving a son, Arjun, who succeeded to his property.

In 1893 the widow Kashi (the defendant) married a second time.

In April, 1900, Arjun died childless and Kashi (defendant) took possession of his property.

In July, 1900, the plaintiff, a first cousin of Sakur's, filed this suit, claiming the property and contending that Kashi was not entitled to succeed by reason of her re-marriage.

The Court of first instance decreed the suit in plaintiff's favour on the following grounds:

Defendant having re-married is civilly dead so far as her inheritance to the property of her first husband is concerned. This is the general Hindu view. For the defendant it has been contended that Act XV of 1856 and the case of *Akora* v. *Boreani*, reported in 11 Calcutta Weekly Reporter, page 82, give her preferential right. No doubt these authorities fully support defendant's contention. But it appears that subsequently the Calcutta High Court which decided *Akora* v. *Boreani* came to a different conclusion. Not only the Calcutta High Court, but even the Bombay and the Madras High Courts came to the same conclusion 'that all the rights and interests which a widow may have in her deceased husband's property shall upon her re-marriage cease and determine

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as if she had then died'—*vide* I. L. R. 24 Bom. p. 93, *Panchapa* v. *Sanganbasava*. In this case it was held that a widow, after her re-marriage, could not give in adoption her son by her first husband. In *Vithu* v. *Govinda* (I. L. R. 22 Bom. p. 321) it was held that the property inherited by a widow from her son was forfeited by her re-marriage. The present suit is a converse case that a widow after re-marriage may inherit her son's property by her first husband. If according to *Vithu* v. *Govinda* a widow forfeits the property which she has already inherited from her first husband or his son by her, on the score of her subsequent re-marriage, it is not understood why a widow who has already re-married and is thereby civilly dead in her first husband's family, should inherit subsequently, *i.e.*, after her re-marriage, the property of her first husband or his son by her. In my humble opinion subsequent forfeiture may be a hardship and may be relieved against, but allowing subsequent inheritance is simply revolting to the Hindu ideas. Subsequent forfeiture has been distinctly ruled in the two cases quoted above. If so, subsequent inheritance must not be allowed on the same grounds.

It is argued for the defendant that *Akora* v. *Boreani* was fully concurred in by the Bombay High Court in the two cases aforesaid. I do not think it is so. For in I. L. R. 24 Bom. p. 94, it is simply said that 'her right to succeed as heir to her deceased son *may be justified*.' In I. L. R. 22 Bom. p. 329, it is simply said that the Calcutta Court did not notice *Akora* v. *Boreani* while coming to a different conclusion in subsequent cases. In *Onkar's case* (P. J. for 1887, page 230) the Bombay High Court held that a widow's re-marriage amounted to her civil death, and it operated to the forfeiture of interests in possession as also in respect of rights *still unrealised*. If so, it is quite clear that the Bombay High Court is not going to follow *Akora* v. *Boreani*. According to Hindu customs, when a widow performs *pát*, her husband's relations succeed to her husband's estate. If so, how could such a widow after *pát* succeed to the same estate? Under all these circumstances I must find for the plaintiff.

On appeal, the lower Appellate Court reversed this decree and decided the suit in favour of defendant, recording the following judgment:

Section 2 of Act XV of 1856 only provides that on marriage 'all rights and interests, which any widow may have by way of maintenance, or by inheritance to her husband or to his lineal successors.....shall cease and determine as if she then died.' The Calcutta High Court, in a Full Bench ruling (*Akora* v. *Boreani*, 11 Calcutta Weekly Reporter, page 82), has held that that section applies to rights and interests which the widow actually possesses at the time of the re-marriage and not to those that would be subsequently acquired. Thus a widow who re-marries after succeeding to her deceased (son) would be deprived of the heritage, but a widow who marries before the death of her son can succeed to his estate. The plain language of the section justifies this construction.

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The lower Court is not correct in saying that the Calcutta, Madras and Bombay High Courts have come to a different conclusion. I have not found any decision of the Calcutta or Madras High Court having decided in a manner contrary to the decision of the Calcutta High Court mentioned above. The point was not referred to at all in the case of *Vithu* v. *Govinda* (I. L. R. 22 Bom. p. 321). In the case of *Panchapa* v. *Sanganbasava* the point was incidentally referred, but no definite opinion was expressed. The case of *Omkar* (P. J., 1883, p. 80) does not refer to the point at all. So then the result is that defendant is the heir of her deceased son.

It is of course a great anomaly that, whilst on the one hand a widow is obliged to give up property to which she has actually succeeded as soon as she contracts a re-marriage, she should be at liberty to succeed as heiress to her son if he died after her re-marriage. But the law has evidently created the anomaly and the remedy must be in getting the law amended.

I may as well notice here another defect which I have found in the law.

By section 2 a widow loses all her rights and interests by way of inheritance to her husband or to his *lineal successors*. The term *lineal successors* of course means the descendants and heirs of the husband and does not include the father, brother, or other collaterals of the husband. Now it is a well known principle that under certain contingencies a daughter-in-law takes the estate of her deceased father-in-law or the widow of a *sapinda* takes the estate of a deceased *sapinda*. If, then, a widow having so inherited an estate from a father-in-law or a *sapinda* chooses to re-marry, she will not be deprived of the property inherited by her, as section 2 would not apply to her case. I notice this circumstance, that if this case goes in appeal before the High Court, that Court may see whether the law requires to be amended. Fortunately few such cases can arise, but the law should not continue to create a hardship.

Plaintiff appealed to the High Court.

G. S. Mulgaonkar for the appellant (plaintiff) :—The defendant Kashi, by contracting a re-marriage, is disqualified from succeeding to her son by her first marriage, as on her re-marriage she ceased to be his mother: see Hindu Widows' Re-marriage Act (XV of 1856), section 2; *Khushali* v. *Rani*.[1] By her re-marriage a female severs all her connection with the family of her first husband. She ceases to be a *sapinda* in that family, which is an essential condition for a female to succeed.

The Hindu Widows' Re-marriage Act (XV of 1856) is silent as to the position of widows as heirs after re-marriage. Section 2

(1) (1882) 4 All. 195.

of the Act deals only with subsequent re-marriage. Section 8 cannot refer to her position in her first husband's family : it refers to the family of her second husband: see *Akora* v. *Boreani*,[1] *Vithu* v. *Govindu*.[2] Further, this Act is only an enabling Act. It validates marriages of widows and legitimatizes children born of their re-marriage. In other respects the Act does not alter the general Hindu Law. Under Hindu Law, a widow on her re-marriage became an outcaste and her subsequent issues were considered illegitimate. It was to alter this that the Act was passed: see remarks of Wilson, J., in *Matungini Gupta* v. *Ram Rutton Roy*.[3]

The only case on the point is *Akora* v. *Boreani*.[1] We submit this case is not a binding authority. The judgment gives no reasons and the Judges merely construed section 2 of the Hindu Widows' Re-marriage Act (XV of 1856). They did not consider the status of a re-married widow under general Hindu Law.

V. G. Ajinkya for the respondent (defendant) was not called upon.

CANDY, J. :—The anomaly pointed out by the lower Appellate Court is obvious, at least in cases in which the son dies during minority ; but it seems to us impossible to avoid the clear language of sections 2 and 5 of Act XV of 1856 as shown by Peacock, C.J., in *Akora* v. *Boreani*.[4] We cannot find in the numerous cases relating to the Act XV of 1856 any expression of opinion contrary to the view taken in the above noted Calcutta case. The words "rights still to be realized" in the decision of this Court in *Omkar's case*[5] refer to the right which was vested in the widow, *i.e.*, the right to execute the decree which had been passed in the joint names of Omkar and the widow. We must confirm the decree with costs.

Decree confirmed.

(1) (1868) 2 Beng. L. R. (A. C. J.) p. 204. (3) (1891) 19 Cal. p. 291.
(2) (1896) 22 Bom. p. 331. (4) (1868) 2 Beng. L. R. at p. 199.
(5) (1883) P. J. p. 280