instituted before the date of the notification and the District Judge would have no power to transfer such a suit to Mr. Desai's Court under section 24 of the Civil Procedure Code. That transfer being void, Mr. Desai would have no power to go on with the suit.

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DHORIBHAI v. PRAGDASJI

*Divatia J.*

*Rule made absolute.*

J. G. R.

## APPELLATE CIVIL.

*Before Mr. Justice Murphy and Mr. Justice Sen.*

RAGHUNATH SHANKAR DIXIT AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS *v.* LAXMIBAI KOM HARI WARE, BY HER MUKHTYAR GOVIND NARAYAN WARE AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 3), RESPONDENTS.*

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*Hindu Law—Hindu Widows' Remarriage Act (XV of 1856), section 2—Widow of a Hindu—Conversion to Mahomedanism—Remarriage—Forfeiture of Hindu husband's estate—Caste Disabilities Removal Act (XXI of 1850), section 1.*

A Hindu widow who has ceased to be a Hindu before her remarriage by conversion to Mahomedanism, forfeits whatever interest she had in her husband's estate.

*Matungini Gupta* v. *Ram Rutton Roy*,[1] *Vitta Tayaramma* v. *Chatakondu Sivayya*[2] and *Mussammat Suraj Jote Kuer* v. *Mussammat Attar Kumari*,[3] followed.

*Abdul Aziz Khan* v. *Nirma*,[4] disapproved.

*Per Sen J.* The provision of section 2 of Hindu Widows' Remarriage Act, 1856, was intended to meet the objection that a Hindu widow could not be permitted to retain any right in her husband's estate on her voluntarily leaving her husband's family. The only aspects of her position that appear to have been taken into consideration in the enactment of section 2 are the limited interest a widow holds in her husband's estate and the contingency of her renouncing the position which entitled her to hold such interest. The question of a change of religion has no direct relevancy to these two questions, and it would be wrong to interpret the expression "any widow" as a widow of a Hindu merely so long as she remained a Hindu.

The view that the word "remarriage" in section 2 of the Hindu Widows' Remarriage Act refers only to remarriage under the Act, is too narrow a view and mistaken, firstly, because the words "under the Act" do not occur in the section,

* Second Appeal No. 84 of 1933.

(1) (1891) 19 Cal. 289, F. B.
(2) (1918) 41 Mad. 1078, F. B.
(3) (1922) 1 Pat. 706.
(4) (1913) 35 All. 466.

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and secondly, as the Act is intended merely to remove obstacles to the remarriage of Hindu widows and not to prescribe the kind of remarriage a widow of a Hindu may contract.

SECOND APPEAL against the decision of K. B. Wassoodew, District Judge at Nasik, confirming the decree passed by D. G. Kamerkar, Joint Subordinate Judge at Nasik.

Proceedings in execution.

One Dwarkabai, a widow of Govind Ramkrishna Ware, brought a suit in the Second Class Subordinate Judge's Court at Nasik to recover her husband's property from the possession of the appellant-defendants Nos. 1 and 2. The suit ended in a compromise decree on September 10, 1927, by which the defendants accepted Dwarkabai's husband's title as the adopted son of Ramkrishna and allowed her a half share in the property in suit.

Subsequently Dwarkabai became a convert to Mahomedanism and thereafter married a Mahomedan in 1928.

In 1930 Laxmibai (respondent) claiming to be reversionary heir of Govind, Dwarkabai's husband, filed a darkhast to obtain possession of half the house awarded to Dwarkabai by the compromise decree of 1927.

The appellant-defendants objected to Laxmibai's claim on the ground that Dwarkabai's remarriage did not entail forfeiture of the widow's estate vested in her under Act XV of 1856—and that the proper person to execute the personal decree was Dwarkabai and not Laxmibai; that assuming that Dwarkabai's rights had devolved on Laxmibai there was no proof that Govind was the adopted son of Ramkrishna; that the next reversioner of Govind was Radhabai, his father's sister and not his uncle's widow Laxmibai.

The Subordinate Judge held that Dwarkabai by her remarriage forfeited all rights and interest vested in her as widow of Govind. He therefore allowed the darkhast to proceed.

On appeal the District Judge confirmed the order.

Defendants appealed to the High Court.

*K. V. Joshi*, with *P. G. Patil*, for the appellants.

*D. R. Patwardhan*, for respondent No. 1.

*K. B. Sukhthankar*, for respondent No. 2.

SEN J. This is an appeal from the appellate decree passed by the District Judge, Nasik, confirming the order of the Subordinate Judge at Nasik in Regular Darkhast No. 247 of 1930 of the last Court.

In the suit Dwarkabai *kom* Govinda claimed that her husband had been adopted by the widow of Ramkrishna Gopal Bhat Ware, to whom two-thirds of the property in suit had belonged. The defendants compromised the claim by recognising her husband's title as the adopted son of Ramkrishna and allowed her a half share in the suit property and rents from 1923 to 1927 and in the rents for future years until equitable partition of the property. Thereupon a compromise decree was passed in those terms on September 10, 1927. She made no attempt to execute the decree and in the same year became a convert to Mahomedanism, and she married a Mahomedan in 1928. Thereafter the present darkhast was filed by Laxmibai, widow of Hari Gopal Ware, who is Dwarkabai's first husband's uncle's widow and who claims to be Govinda's reversioner. She claims that on Dwarkabai's remarriage after conversion she is entitled to inherit Govinda's property under the provisions of section 2 of Act XV of 1856.

A small portion of the property in suit having been acquired by the Municipality of Nasik after the decree, the said Municipality was joined as a co-opponent, and it opposed the darkhast. The darkhast was not contested by defendant No. 2, who is a brother of defendant No. 1, and it was proceeded with *ex parte* against him. The appellants (original defendants Nos. 1 and 2) are grandsons of one Rangu, who was a brother of Godu, mother of

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*Sen J.*

Govinda's adoptive father Ramkrishna, Laxmibai being the widow of Hari, Ramkrishna's brother. The following three contentions of the appellants raised in the lower Courts were not pressed in this appeal:—(1) that Govinda was not proved to be Ramkrishna's adopted son, (2) that even if he was, the next reversioner of Govinda would be Radhabai, his father's sister and not his uncle's widow Laxmibai, and (3) that Radhabai having obtained an heirship certificate and having assigned all her rights to the appellants, Laxmibai is not entitled to execute the decree against the appellants. As regards the first of these contentions the learned District Judge has rightly held that the appellants who accepted the position in the suit that Govinda was Ramkrishna's adopted son cannot now go behind that position; and the second position is concluded by the decision in *Pranjivan Hargovan* v. *Bai Bhikhi*,[1] as held by the learned District Judge. *Prima facie*, therefore, if Dwarkabai ceased to represent her husband's estate on her conversion and remarriage, Laxmibai would be entitled to execute her decree under Order XXI, rule 16, as the decree would be transferred "by operation of law" to Laxmibai.

The first question, therefore, that arises for our consideration, and this is the main question arising in this appeal, is whether Dwarkabai's conversion and remarriage has entailed the forfeiture of all her rights and interests in her husband's estate. As to her conversion, it could not have any such result, as the Caste Disabilities Removal Act, XXI of 1850, provides that so much of any law or usage then in force as inflicts on any person forfeiture of rights or property or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing any religion shall cease to be enforced. The learned Subordinate Judge thus rightly held that Dwarkabai, on her conversion, retained unimpaired her rights in her husband's property.

[1] (1921) 45 Bom. 1247.

As to the effect of a Hindu widow's remarriage, section 2 of Act XV of 1856 provides :—

"All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same."

The difficulty in this case arises in interpreting the words "any widow" with reference to the facts of this case. The appellants contend that these words must be held to mean "any Hindu widow", that after Dwarkabai remarried she did not remain a Hindu widow and that therefore Act XV of 1856 cannot apply in this case. They rely on *Abdul Aziz Khan* v. *Nirma*,[1] wherein it was held that a Hindu widow who had ceased to be a Hindu before her remarriage, e.g., by conversion to Mahomedanism, did not forfeit her rights in her husband's property.

There is no Bombay case in which the specific question under consideration was involved, namely, whether Act XV of 1856 applies to a Hindu widow who has renounced her faith and subsequently married a non-Hindu. The High Courts of Calcutta, Madras and Patna have held that the Act applies to such a widow: *Matungini Gupta* v. *Ram Rutton Roy*,[2] *Vitta Tayaramma* v. *Chatakondu Sivayya*,[3] and *Mussammat Saraj Jote Kuer* v. *Mussammat Attar Kumari*.[4] The Allahabad High Court appears to be alone in holding the contrary view. The case of *Bhola Umar* v. *Kausilla*,[5] which was referred to by the learned advocate for the appellants, dealt with the case of a Hindu widow who had remarried in accordance with a custom of her caste, and therefore is not applicable to the facts of this case. The *ratio decidendi* of the Calcutta, Madras and Patna cases is that "any widow" in Act XV of 1856 refers to the widow

(1) (1913) 35 All. 466.
(2) (1891) 19 Cal. 289, F. B.
(3) (1918) 41 Mad. 1078, F. B.
(4) (1922) 1 Pat. 706.
(5) (1932) 55 All. 24.

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of any Hindu, and not merely to a widow who is and remains a Hindu. It has been argued that the expression must be more strictly construed, that as the Act was intended to remove the legal obstacles that might exist to the marriage of Hindu widows, it cannot have been intended to apply to a widow to whose remarriage, owing to her prior conversion, no such obstacles existed, and that the intention of this Act cannot be to impose any liability or disability upon widows who are entitled to remarry apart from its provisions. The learned advocate for the appellants has also relied on the arguments used by Krishnan J. in his dissenting judgment in *Vitta Tayaramma* v. *Chatakondu Sivayya*,[1] namely, that the word " remarriage " in section 2 of the Act referred only to a remarriage *under the Act* and not to any remarriage whatever, and that remarriage after conversion cannot be said to be one permitted by the said Act.

We find ourselves unable to agree with the above arguments. It seems to us that when Act XV of 1856 was passed the possibility of cases like the present arising for the consideration of the Courts was not perhaps foreseen, but that the provision of section 2 was intended to meet the objection that a Hindu widow could not be permitted to retain any right in her husband's estate on her voluntarily leaving her husband's family. The only aspects of her position that appear to have been taken into consideration in the enactment of section 2 are the limited interest a widow holds in her husband's estate and the contingency of her renouncing the position which entitled her to hold such interest. The question of a change of religion, in our opinion, has no direct relevancy to these two questions, and we, therefore, believe that it would be wrong to interpret the expression " any widow " as the widow of a Hindu merely so long as she remained a Hindu. There is no doubt that the words were not intended to apply to a Christian

[1] (1918) 41 Mad. 1078, F. B.

or Muslim widow who had never been a Hindu at any time. Nor, in our opinion, could it have been intended that Hindu widows should be allowed to escape the disability imposed upon them by section 2 by renouncing their religion prior to their remarriage. The argument against their retaining any interest in their husband's estate after remarriage would remain with equal force, if it did not, indeed, become stronger, in the case of conversion prior to remarriage. In our opinion the view that the word "remarriage" in section 2 refers only to remarriage under the Act is too narrow a view and mistaken, firstly, because the words "under the Act" do not occur in the section, and, secondly, as the Act is intended merely to remove obstacles to the remarriage of Hindu widows and not to prescribe the kind of remarriage the widow of a Hindu may contract. Section 1 of the Act no doubt speaks of two Hindus marrying; it deals with the validity of the marriage and the legitimacy of the issue of such marriage. Section 2, however, deals with a different matter, namely, the question of the widow's retaining interest in her husband's property on remarriage; and, in our opinion, it is not necessary to assume that the remarriage referred to in that section means no more and no less than the kind of remarriage which section 1 legalises and validates. We concur in the view taken by the majority of Judges in the full bench cases of *Matungini Gupta* v. *Ram Rutton Roy*[1] and *Vitta Tayaramma* v. *Chatakondu Sivayya*[2] that the expression "any widow" includes all widows who being Hindus became widows and is wide enough to cover the case of such a widow remarrying a Hindu or a member of another religion. In the Madras case Wallis C. J. went so far as to hold that the Legislature was well aware, when enacting section 2, of the existence of remarriages by widows of Hindus with members of another religion just as much as with Hindus; and that they must have considered

(1) (1891) 19 Cal. 289 F. B.

(2) (1918) 41 Mad. 1078, F. B.

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that the case for enforcing the forfeiture on remarriage was even stronger in the former case than in the latter.

We, therefore, hold that on Dwarkabai's remarriage she forfeited whatever interest she had in her husband's property.

[Their Lordships then dealt with other points argued in the appeal which are not material for the purposes of this report.]

*Appeal dismissed.*

J. G. R.

## ORIGINAL CIVIL.

*Before Mr. Justice Tyabji.*

1934
*October* 19

*In re* MAHOMED HAJI HAROON KADWANI.*

*Mahomedan law—Waqif—Appointment of trustees—Members of waqif's family to be preferred.*

In the case of a trust created by a Muslim, members of his family should be given preference in appointment as trustees; but they are liable to removal for misconduct, and they should be careful to give not the least ground for suspicion that the funds are not utilized for the most proper objects in accordance with the principles of Islam.

*Atimannessa Bibi* v. *Abdul Sobhan*,[1] *Niamat Ali* v. *Ali Raza*[2] and *Phatmabi* v. *Haji Musa Sahib*,[3] referred to.

THE facts are sufficiently stated in the judgment.

*C. K. Daphtary*, for the petitioner.

*Sir Jamshed Kanga*, Advocate General, in person.

TYABJI J. The trust originated from the will of the deceased Haji Abdulla Hussein which provided that one-third of the estate should be dedicated to such good and

* In the matter of the Indian Trustees Act XXVII of 1866: Misc. No. 93 of 1934.

[1] (1915) 43 Cal. 467 at p. 473. [2] (1914) 13 All. L. J. 26 at p. 30.
[3] (1913) 38 Mad. 491 at p. 496.