

(1959) 08 MP CK 0009

Madhya Pradesh High Court

Case No: Letters Patent Appeal No. 98 of 1957

Mst. Bisarti Lodhi

APPELLANT

Vs

Mst. Sukarti and Another

RESPONDENT

Date of Decision: Aug. 31, 1959

Acts Referred:

- Hindu Succession Act, 1956 - Section 14

Citation: AIR 1960 MP 156 : (1959) ILR (MP) 540 : (1960) 5 MPLJ 227

Hon'ble Judges: G.P. Bhutt, C.J; T.C. Shrivastava, J

Bench: Division Bench

Advocate: R.S. Dabir, for the Appellant; P.R. Navlekar, for the Respondent

Final Decision: Dismissed

Judgement

Shrivastava, J.

This Letters Patent appeal is directed against the judgment in Second Appeal No. 983 of 1956, delivered on 21-8-1957.

The appellant Mst. Bisarti was the defendant in Civil Suit No. 17-A of 1954 of the Court of the 2nd Civil Judge (Class II), Schora. That suit was instituted by the respondents (plaintiffs) for possession of a house and certain tenancy lands in village Pakaria. Tahsil Sehora, District Jabalpur. Lachchi, who was the tenant of the lands and owner of the house, died in 1949, leaving the appellant Mst. Bisarti as his widow and Mst. Ranchi as his mother. Mst. Ranchi died on 7-4-1953 and Mst. Bisarti (appellant) remarried one Pandu in churi form according to the caste custom. The respondents are the sisters of Lachchi deceased.

Their suit was based on the ground that after her remarriage, Mst. Bisarti (appellant) lost her rights in her husband's property and they being the nearest successors were entitled to the property. They alleged that they took possession of the same in October 1953, but they were dispossessed by the appellant. They,

therefore, sued for possession of the lands and the house. It may be stated here that no date about the remarriage was stated in the plaint, but it was conceded before us that the remarriage took place some time in 1953. At any rate, it is clear that the remarriage took place before the commencement of the Hindu Succession Act, 1956 (hereinafter referred to as the Act) as the present suit was filed in 1954.

The appellant as defendant denied that she remarried Pandu or that she lost her rights in her husband's estate. She stated that she continued in possession of the property all along and averred that the story of possession by the respondents-plaintiffs and subsequent dispossession was false.

The trial Court and the first appellate Court held that the appellant had remarried Pardu in churi form and that the remarriage was valid according to the custom of the caste. It was further hold that the custom pleaded by the appellant-defendant that a widow continues to retain possession of her former husband's property even after remarriage was not found proved. These findings of fact were binding in second appeal and are binding in this Letters Patent appeal also.

According to the Hindu law, when a widow remarries, it amounts to her civil death, and she is divested of the property of her husband in which she had a life estate. Thereafter succession opens and the reversioners are entitled to take possession of the property. This position was not disputed before us by Shri R. S. Dabir, learned counsel for the appellant. He, however, contended that the provision in Section 14 of the Act affects the case in two ways. First, Section 14 is retrospective and therefore the appellant should be deemed to have an absolute estate in her husband's property after his death in 1949; she could not, therefore, be divested of the property even on remarriage. Secondly, according to the findings of the trial Court and the first appellate Court, the appellant had continued in possession all along and was in possession at the commencement of the Act; her rights, therefore, in the property became absolute according to Section 14.

Reliance is placed on the decision in [Kamala Devi Vs. Bachu Lal Gupta](#), wherein it has been observed:

""There is no doubt that by reason of the expression "whether acquired before or after the commencement of this Act" the section is retrospective in effect."

That decision, however, does not apply to the instant case inasmuch as the remarriage had taken place before the commencement of the Act. The immediate consequence of the remarriage was that the property passed on to the reversioners. They could not be deprived of their interest by the subsequent legislation, as that would amount to divesting of interests created prior to the coming into force of the Act, which cannot be effected without any express statutory provision to that effect. The expression "possessed by a female Hindu" occurring in Section 14 of the Act obviously means that the widow must be in possession of the property in her right as a Hindu widow, since possession must be a consequence of and related to the life

estate which a Hindu widow has in her husband's property.

It is only when such possession continues that the rights are enlarged u/s 14 of the Act and she becomes a full owner of the property. If she has already been divested of her interest as a widow On account of her remarriage before the commencement of the Act her possession of the property is not in her right as a Hindu widow. The reversioners would, in such a case, become entitled to the property immediately on her remarriage, and the fact that they neglected to take action to dispossess her would not enlarge the rights of the widow.

Reference was also made to the decision in Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others . In that case, it was observed that the widow would be in constructive possession of the property, if the adoption turns out to be invalid and her possession would entitle her to an absolute interest u/s 14 of the Act. In the instant case, the position is different. The widow lost all title to the property on account of her remarriage and her possession thereafter was not in consequence of any title, but was only as a trespasser. In fact, the reversioners would be deemed to be in constructive possession of the property on account of the title which had accrued in their favour.

In the result, the appeal is dismissed with costs. Hearing fee is fixed at Rs. 50/- only.