
AIR 1952 Cal 771

Calcutta High Court

Case No: A.F.A.D. No. 440 of 1948

Lalit Mohan

APPELLANT

Vs

Shyamapada Das

RESPONDENT

Date of Decision: Aug. 3, 1951

Acts Referred:

Hindu Widows Remarriage Act, 1856 " Section 1, 2#Hindu Womens Right to Property Act, 1937 " Section 3

Citation: AIR 1952 Cal 771

Hon'ble Judges: G.N. Das, J

Bench: Single Bench

Advocate: Muktipada Chatterjee, for the Appellant;Panchanan Choudhury and Nirmal Chandra Choudhury, for the Respondent

Final Decision: Dismissed

Judgement

G.N. Das, J.

This is an appeal by defendant 2 in a suit for declaration of the plaintiff's title and for recovery of possession.

2. The plaintiff is the reversioner to the estate of one Tarapada. Tarapada died in Agrahayan, 1342 B. S. leaving a widow Kalimati. Defendant 2

claims title to a part of the property in suit on the strength of a conveyance executed by Kalimati in Magh, 1350 B. s. It is the plaintiff's allegation

that Kalimati remarried in 1344 B. S. It is therefore alleged that by such remarriage Kalimati lost her interest in her husband's estate that is, in

Tarapada's estate to which the disputed property appertains, that by the sale by Kalimati after remarriage defendant 2 acquired no title and that

the plaintiff is accordingly entitled to possession on declaration of title.

3. The trial court decreed the plaintiff's suit. There was an appeal by defendant 2 which was dismissed by the lower appellate court. Hence this

second appeal by defendant 2.

4. Mr. Muktipada Chatterjee, learned Advocate for the appellant has raised three contentions. In the first place he contends that as there is a

custom of remarriage among the Bairagis to which caste Tarapada and his family belong, the disqualifying provisions of the Hindu Widows"

Remarriage Act (Act XV of 1856) have no application. Mr. Choudhury, learned Advocate appearing for the plaintiff-respondent, has referred to a

host of decisions which are referred to in Mayne's Hindu Law, Article 533 and Mulla's Hindu Law, Article 563. Mr. Chatterjee relies on the Full

Bench decision in the case of Bhola Umar v. Kausilla 55 ALL. 24 (F.B.). It is pointed out in the above text books that the Allahabad Court and

the Oudh Court have taken a view different from that of other High Courts. In this court there is a consistent body of authorities starting with the

case of Rasul Jehan Begam v. Ram Suran Singh 22 Cal. 589, where this point precisely arose for consideration. A Bench of this court (Ghose and

Gordon JJ.) was of opinion that even if the widow remarried according to the custom of the sect to which she belonged, nevertheless on her

remarriage she lost her interest in her husband's property. This Bench decision has been followed in a long line of cases. I am accordingly unable

to accede to the submission raised by Mr. Chatterjee that in all these cases no attention was paid to the Preamble to the Hindu Widows"1

Remarriage Act, 1856 and that I should refer this case to a larger Bench in view of the Allahabad Full Bench decision. The decision in Rasul's

case has now been followed for over half a century. The result is that this contention of Mr. Chatterjee must be overruled.

5. The next contention of Mr. Chatterjee is that the Hindu Widows" Remarriage Act, 1856 has been superseded by Act XVIII [18] of 1937 and

the disqualification imposed by the 1856 Act has now been taken away. Assuming that this is so, the remarriage in this case took place in 1344

B.S. long before the 1937 Act came into operation. The divesting took place in this case in 1344 B. S. (1927 A. D.). Accordingly, 1937 Act can

have no manner of application and unsettle rights which had been crystallised ten years earlier.

6. In the third place Mr. Chatterjee contends that Kalimati was a minor at the date of her remarriage and that the remarriage in the present case

was according to the system of Kanthibadal which is prevalent among the Bairagis. Mr. Chatterjee contends that Kanthibadal marriage is really

Gandharva form of marriage and therefore consent of the widow remarrying was necessary and that as Kalimati was a minor her consent was

wanting and the remarriage must not be regarded as a valid marriage in law. It is well known that the only forms of marriage which are prevalent

now are the Brahma and Ashura forms of marriage and the other forms of marriage which were recognised by the Hindu Law have fallen into

disuse. Ghose, Hindu Law, Edn. 3 vol. 1 pp.- 798-799 Mulla Hindu Law p. 428, Mayne Hindu Law, 83. Gandharva form of marriage is obsolete

now and the marriage in the present case cannot be regarded as Gandharva form of marriage. It is a special form of marriage which is validated

by custom among the Bairagis; Bairagi Marriage and ,Stridhana, Edn. 2 p. 248. In my opinion the third contention of Mr. Chatterjee cannot,

therefore, be accepted.

7. The result, therefore, is that this appeal fails and it is dismissed with costs.