

(1868) 09 CAL CK 0010

Calcutta High Court

Case No: Appeal No. 22 of 1868

Boreani

APPELLANT

Vs

Akora Suth

RESPONDENT

Date of Decision: Sept. 8, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to me that the decision of Mr. Justice Kemp is correct. The object of the Act was to remove all legal obstacles to the marriage of Hindu widows. Looking to the words of Section 2, I am of opinion that it was not the intention of the Legislature to deprive a Hindu widow, upon her re-marriage, of any right or interest which she had not at the time of her re-marriage. The words of the section are:--"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 re-marry, only a limited interest in such property with no power of alienating the same, shall, upon her re-marriage, 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."

2. In the present case, at the time of her re-marriage, the property belonged to her son, and she had no right or interest in that property. It came to her by inheritance from her son, who died after her re-marriage. If the son had pleased, he might have given the property to his mother, notwithstanding her re-marriage. At the time of her re-marriage, she had no interest in her deceased husband's property, by inheritance to her husband, or to his lineal successors. It could not, therefore, cease or determine upon her re-marriage; and if she had died at the time when she re-married, the property would never have descended to her.

3. Section 5 to which Mr. Justice Kemp alludes, says that, "except as in the three preceding sections provided, a widow shall not, by reason of her re-marriage, forfeit

any property or any right to which she would otherwise be entitled; and every widow who has re-married, shall have the same rights of inheritance as she would have had, had such marriage been her first marriage."

4. The right of inheritance from her son, after her re-marriage, did not, as it appears to me, fall within any of the exceptions referred to in Section 5.

5. Our decision is in accordance with the judgment of Mr. Justice Kemp. That judgment is, therefore, affirmed, and this appeal will be dismissed with costs.

L.S. Jackson, J.

I concur in this judgment, although at first I had a certain difficulty. The words of Section 2 are somewhat embarrassing, and the impression left on my mind is that the Legislature had an intention, which it has failed to carry out in words. I can hardly suppose that the Legislature intended a Hindu widow to be capable of inheriting the property of her son, she having previously re-married, when, if she had re-married, while in the enjoyment of such property, she would have been by such re-marriage entirely divested of that property. For, although it is true that, if the son had been living at the time of her re-marriage, in certain circumstances, he could have had the option of depriving her of the succession, or confirming it on her, still it might, and probably would, in most instances, happen that at the time of re-marriage the son was an infant. But it is not our province to set aside the clear meaning of the words of the Legislature merely for the purpose of getting rid of apparent inconsistencies.