

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 496 of 1997**

Balak Ram (died and deleted) Through Lrs Smt. Kavilaso and Ors.

---- Appellants

Versus

Rukhi And Ors.

---- Respondents

For Appellants	:	Ms. Sharmila Singhai, Advocate
For Respondents No.1 and 2(a).	:	Mr. G.D. Washwani, Advocate with Mr. Sushil Dubey, Advocate.
For State	:	Mr. Neeraj Kumar Sharma, Dy. G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****15/01/2016**

Heard.

1. This second appeal is directed against impugned judgment and decree dated 12.05.1997 passed by the Additional District Judge, Ambikapur in Civil Appeal No.19-A of 1994 by which the learned Lower Appellate Court has reversed the judgment and decree of the Trial Court and dismissed the suit of the plaintiff.

2. The appellant/plaintiff filed suit for declaration of title and permanent injunction on pleadings that the land in dispute was joint property of the plaintiff Balakram and his brother Alva. Alva died in the year 1946 leaving behind two daughters with no son to succeed. It was the case of the plaintiff that as Alva had no son, plaintiff Balakram, who was the sole surviving male, succeeded to the entire property and his name was accordingly recorded under an order passed on 10.01.1949 by the Revenue Officer. It

was the pleadings of the plaintiff that ever since then, he has been cultivating possession land in dispute. It was also pleaded that the defendants have no title or interest in the property nor they are in possession because defendants were married in their childhood itself and since then, they are residing in the matrimonial house. It was also pleaded that at the time of death of Alva, old customary Hindu Law was in force under which, widows or daughters were not entitled to inherit the property of the deceased. As the defendants started interfering to get their names recorded in the revenue records, cause of action arose for the plaintiff to file suit.

3. In the written statement filed by the defendants, claim of the plaintiff was denied on the pleadings that Alva was survived by his widow and two daughters as per the then applicable *Riyasat* Law, defendants were entitled to half of the share in the property but by misleading the revenue officer, plaintiff got an order passed in his favour. It was also pleaded that after death of Alva, defendants were being maintained out of the income derived from the land in dispute and defendants resided in the house of late Alva. Defendants No.1 & 2 were married and expenses of marriage were incurred from the the disputed property. Defendant No.1 was married in the year 1956 whereas defendant No.2 was married in the year 1956-60. It was asserted that the property in dispute was joint family property of the defendants, therefore, they are entitled to half of the share in the said property. The defendants also pleaded that the defendants are in possession of the land in dispute along with the plaintiff and deriving the benefits of income from the disputed property.

4. On the basis of the pleadings of the parties, learned Trial Court framed four issues as below :

“(i) Whether the plaintiff is entitled to seek a declaration that he is the sole successor of the land in dispute shown in appendix 'A' attached in the plaint ?

(ii) Whether the plaintiff is entitled to decree of permanent injunction against the defendants ?

(iii) Whether the plaintiff has affixed deficit Court fee ?

(iv) Other relief and suit expenses ?”

5. Learned Trial Court by judgment and decree dated 30.07.1991, decreed the suit holding that after death of Alva, defendant No.3 Sukhmen remarried and thereby, lost any interest or limited estate if any, she had in the property of deceased. It was held that at the time of death of Alva, as per the old customary Hindu Law, the property would devolve upon surviving male and the widows and daughters are not entitled to inherit the property of the deceased.

6. Aggrieved by the aforesaid judgment and decree, the respondents/defendants preferred an appeal. Learned Lower Appellate Court reversed the judgment and decree of the Trial Court and dismissed the suit holding that despite marriage, Sukhmen, the widow of Alva, was entitled to inherit the property of deceased Alva as respondents/defendants were purchasers of the property, acquired title could not be taken away. It was also held that during lifetime of Sukhmen defendant No.3, defendant No.1 & 2 are not entitled to any share in the property. On the aforesaid finding, it was concluded that defendant Sukhmen is also entitled to half share in the property and the suit was dismissed holding that Sukhmen is entitled to partition of her half share.

7. Aggrieved by the aforesaid judgment, the appellant has come to this Court by way of this appeal.

8. This appeal was admitted on the following substantial questions of law on 29.08.1997:

“ Whether defendant No.3 widow of Alva upon her remarriage in 1949-50 was divested of her widowed estate of her former husband Alva and the Widow's Remarriage Act, 1856 ?

Whether the possession of the daughters over

the suit lands, along with their mother ripened into full ownership after the commencement of Hindu Succession Act, 1956 ?”

9. Learned counsel for the appellant raised following submissions :

The first submission of learned counsel for the appellant is that there is an admission of Sukhmen (DW2) in her evidence that 3 years after the death of Alva, she remarried. In view of this admission, the provision of Section 2 of the Hindu Widow's Remarriage Act, 1856 (*for short “the Act of 1856”*) are squarely attracted under which after remarriage, all rights and interests which Sukhmen, widow of Alva, had in 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. It is submitted that this clear and categorical provision in view of admission of Sukhmen leads to irresistible conclusion that as soon as Sukhmen remarried, all rights and interests came to an end and she had no relation with the family of the deceased husband nor any interest, right, title, ownership in respect of the property of the deceased husband. In support of the submission, learned counsel for the appellant relied upon the judgment of the Supreme Court in the case of **Velamuri Venkata Sivaprasad (dead) by Lrs vs. Kothuri Venkateswarlu (dead) by Lrs and others, (2000) 2 SCC 139.**

The other submission of learned counsel for the appellant is that in order to attract provision of Section 14 of the Hindu Succession Act, 1956 so as to confer absolute title and interest on the widow, it has to be proved by clinching and cogent evidence that the widow was in possession of the property in dispute, deriving income and enjoying the same in some manner by way of receiving rent, sale proceeds or otherwise. In the absence of there being any evidence to

link the widow with the property of the deceased, benefit under Section 14 of the Hindu Succession Act, 1956 shall not accrue. In support of this submission, learned counsel for the appellant relied upon the judgments of the Supreme Court in the cases of **Gulabrao Balwantrao Shinde and others vs. Chhabubai Balwantrao Shinde and others, (2003) 1 SCC 212** and **Sadhu Singh vs. Gurdwara Sahib Narike and others, (2006) 8 SCC 75**.

10. On the other hand, learned counsel for the respondents submits that the issue as to whether Sukhmen was divested of any title or interest in her husband's property upon alleged remarriage could not be gone into because there was no pleadings made by the parties. He submits that it was for the plaintiff to come out with the specific pleadings and lead cogent evidence that upon remarriage, defendant Sukhmen was divested of title if any, she had in the property of her deceased husband. The plaintiff did not come out with any such case and merely because, there is some evidence of remarriage, the consequences of remarriage as provided under Section 2 of the Act of 1856 cannot be presumed. Learned counsel for the respondents also submitted that in any case, applicability of Section 2 of the Act of 1856 shall depend upon proof of fact whether or not there was a custom of remarriage. Relying upon the full Bench decision of the Allahabad High Court reported **in the case of Bhola Umar and another vs. Mt. Kausilla and others, AIR 1932 Allahabad 617**, it has been submitted that Section 2 of the Act of 1856 is attracted only in a case where it is proved from reliable evidence that widow remarried even though there was no custom of remarriage. Where there is custom of remarriage, remarriage would not divest the widow of her estate by application of Section 2 of the Act of 1856.

11. On this particular issue of applicability of the Act of 1856 in the facts and circumstances of the present case, learned counsel for the appellant has relied upon five Judges Bench decisions of Hyderabad High Court **in the case of Basappa and others vs. Parwatamma, AIR (39) 1952 Hyderabad 99 (C.N.48)**, wherein a different view has

been taken from that in the case of *Bhola Umar (supra)* of Allahabad High Court full Bench judgment. In the aforesaid decision, it has been held that unless a custom to the contrary is proved, Section 2 of the Act of 1856 will be applicable upon remarriage of widow and will divest her from any right, interest in the property of deceased husband. Learned counsel for the appellant also relied upon a Division Bench Judgment of Orissa High Court **in the case of Hira Dei vs. Bodhi Sahu and others, AIR 1954 Orrisa 172 (Vol. 41, C.N.50)** which considered number of judgments delivered on the issue by different High Courts including the two decisions referred to above, rendered by Allahabad High Court and Hyderabad High Court and siding with the view taken by Hyderabad High Court and many other High Courts on the issue that upon remarriage, unless a contrary custom is proved, widow would be divested of title or interest in the property of her deceased husband. Learned counsel for the appellant also placed reliance upon the Supreme Court's decision in the case of *Velamuri Venkata Sivaprasad (supra)* where the Supreme Court has examined and analysed the scheme of Section 2 of the Act of 1856 and has authoritatively pronounced that upon remarriage, widow would be divested of interest in the property of the deceased husband. It is submitted that the aforesaid decision of the Supreme Court concludes the matter and therefore, it is not necessary for this Court to examine any other aspect with reference to the decision rendered by the different High Courts.

12. On the first substantial question of law as to whether upon remarriage, widow of Alva / defendant No.3 divested her of interest in the estate of her deceased husband Alva under the Act of 1856, it is to be noted that both the parties in their pleadings have not specifically pleaded in this regard. However, Sukhmen (DW2) has clearly stated in her evidence the fact of remarriage. In para 4 of her cross-examination, she has stated that Manohar is her brother-in-law. She was married to Bahalram, brother of Manohar and then stated that she was taken as Bandhwa (bonded). She then further admits that a son was born out of her relation with Bahalram, whose name is

Keshavram and she had two daughters also from this wedlock with Bahalram. In para 5 of her cross-examination, she admits that after death of her husband, she resided with her parents in the parental house for 2 to 3 years and thereafter, Bahalram took her away as Bandhwa (bonded). She has further deposed in para 6 of her cross-examination that after going to Harratikra, she came to Village-Gorta 2 to 3 times and resided with her daughters in Village-Gorta. The aforesaid evidence of Sukhmen (DW2) leaves no manner of doubt that after death of Alva, she remarried with one Bahalram of Village Harratikra. Not only this, she admits that out of her wedlock with Bahalram, three issues were born, two daughters and one son. It is also clearly borne out from her evidence that after 2 to 3 years of death of her former husband Alva, she solemnized marriage with Bahalram. It is not in dispute between the parties that Alva died in the year 1946. Thus, even according to the evidence of Sukhmen (DW2), she remarried in the year 1948-49 with Bahalram. There is no need for this Court to examine evidence of any other witness on the aspect of marriage because Sukhmen herself has admitted her marriage with Bahalram, 2 to 3 years after death of Alva.

13. The legal consequence of such remarriage therefore, needs to be examined in the light of provision contained in Section 2 of the Act of 1856.

14. The aforesaid Act No.15 of 1856 which came into effect and force on 25.07.1856 provided for determination of widow's right in the deceased husband's property under Section 2 of the Act of 1856 in following words :

“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 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.

A perusal of the aforesaid provision on its plain reading reveals that upon remarriage, all rights and interests to the widow 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. The legislative intention of a total disassociation of widow upon remarriage is clearly manifested by providing that upon remarriage, all interests and rights would cease and determine as if she had then died. This provision of strong import of civil death of the widow upon remarriage is sufficiently indicative of legislative intention that remarriage shall lead to determination and cessation of all rights and interests of widow in the property of the deceased. The provision is comprehensive in nature and every possible rights and interests which a widow might have in the property of the deceased including limited estate of maintenance have been brought within the ambit of the provision.

15. It is not necessary for this Court to dwell into the aspect relating to existence of custom of remarriage or any custom to the contrary, in the light of what has been held by various High Courts as the issue has been set at rest by the Supreme Court in its verdict in the case of *Velamuri Venkata Sivaprasad (supra)*. It was held -

“17. Section 2 of the Act of 1856, therefore, has taken away the right of the widow in the event of remarriage and the statute is very specific to the effect that the widow on remarriage would be deemed to be otherwise dead. The words “*as if she had then died*” (emphasis supplied) are

rather significant. The legislature intended therefore that in the event of a remarriage, one loses the rights of even the limited interest in such property and after remarriage the next heirs of her deceased husband shall thereupon succeed to the same. It is thus a statutory recognition of a well-reasoned pre-existing Shastric law.

18. An attempt has however been made as regards overriding effect of the Hindu Succession Act in terms of Section 4(1) thereof. Section 4(1) provides as below:

“4. Overriding effect of Act.—(1) Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubt it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.”

19. Mr Nageshwara Rao, learned counsel appearing for the respondents contended that by reason of the overriding effect of the Act of 1956, the question of reliance on Section 2 of the Act of 1856 does not arise. On the next count it was contended that remarriage envisaged under Section 2 must be a valid remarriage and since Lakshamma got married to a person while he was having a spouse living, being Lakshamma’s own sister’s husband, that is to say Lakshamma got married to her own brother-in-law in the year 1953, the question of there being a valid remarriage does not and cannot arise. It is on this count, the learned counsel contended that the Act of

1949 [the Madras Hindu (Bigamy Prevention and Divorce) Act] which declares all marriages wherein one spouse has a spouse living, be a nullity and as such the question of there being any valid marriage in terms of the Act of 1856 does not and cannot arise.

16. The submission of learned counsel for the respondents is that the issue with regard to the applicability of the provision in a given circumstance where there existed a custom of remarriage or where contrary is proved, pales into insignificance, in view of the aforesaid decision of the Supreme Court wherein no such exception has been taken in the matter of application of Section 2 of the Act of 1856. Therefore, what logically follows from the above discussion is that irrespective of the custom, the provision of Section 2 of the Act of 1856 shall take effect on a mere proof of the fact of widow's remarriage.

17. The irresistible conclusion based on above analysis is that Sukhmen upon her remarriage within 2 to 3 years of death of her former husband Alva, divested her of every interest or right, which she might have had in her husband's property. Alva, died in the year 1946 and according to Sukhmen (DW2) herself, she married Bahalram within 3 years thereof that means between 1946 to 1949. Thus, Sukhmen was divested of any right or interest in the property of her former husband Alva after her remarriage in view of provision contained in Section 2 of the Act of 1856.

18. At the time of commencement of the Hindu Succession Act, 1956 (for short "the Act of 1956") with effect from 17.06.1956 respondent Sukhmen had no subsisting interest or estate in the property of her husband. For that reason, there is no occasion of application of Section 14 of the Act of 1956 in the present case to the aid of the defendant Sukhmen because Section 14 of the Act of 1956 provides that limited estate shall become absolute in favour of a female survivor. The provision by itself does not create any new right

or estate which the widow or the female relative did not have at the time of coming into force of the said Act.

19. Learned counsel for the respondent could not point out any law in force at the time of death of Alva under which his minor daughters were entitled to inherit to his property.

20. The issue as to whether the possession of the daughters over the suit land along with their mother ripened into full ownership after the commencement of Hindu Succession Act, 1956 has to be answered against the defendant because the evidence of the defendant has failed to prove that after death of Alva, respondent were in cultivating possession in exercise of any right under the then existing law with regard to succession and inheritance or under the provision of any other law for the time being in force including the Hindu Widow's Remarriage Act, 1856.

21. The evidence of Sukhmen itself shows that her two daughters were married and she herself remarried within three years from the date of death of Alva in the year 1946. She failed to produce any documentary evidence of her long continued possession much less possession under any semblance of right or interest at the time of coming into force of Hindu Succession Act. In her cross-examination, she has admitted that after death of Alva, she remarried with one Bahalram of Village Harratikra, where, she lived with her second husband and three issues were also born. She has stated that after she remarried, she came to Village-Gotra 2-3 times where she resided with her daughter. There is no other cogent and reliable evidence to prove that defendants were enjoying the property of the deceased by remaining in cultivating possession or getting the sale proceeds of the agricultural produced or any other amount of maintenance of the property of the deceased Alva.

22. Therefore, in the result, this appeal has to be allowed in favour of the appellant and against the defendants holding that upon remarriage, Sukhmen divested her of all rights and interests and title

in the property of her deceased husband and Section 14 of the Hindu Succession Act will not come to her aid. Accordingly, the appeal is allowed and the impugned judgment and decree of the learned Lower Appellate Court is set aside and judgment and decree of the Trial Court is affirmed. Decree be drawn accordingly.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E