

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.308 of 2007

Kavi Lal, S/o Late Shri Ghasiya, aged about 55 years, by caste
Rajgond, R/o Village Airla, Tahsil Kondagaon, District Bastar (C.G.)
(Plaintiff)
---- Appellant

Versus

1. Ratni (Died and deleted)
2. Sivati (Died and deleted)
3. Jago, W/o Gajdhar, aged about 35 years, R/o Airela, Post Bijapur,
Tahsil Kondagaon, District Bastar (C.G.)
4. Balmati (Died and deleted)
5. State of Chhattisgarh, through Collector, Bastar (C.G.)
(Defendants)
---- Respondents

For Appellant:	Mr. Shobhit Koshta, Advocate.
For Respondent No.3:	None present, though served.
For Respondent No.5 / State: -	Mr. Sanjeev Kumar Agrawal, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

09/12/2019

1. This second appeal preferred by the appellant / plaintiff was admitted for hearing by formulating the following substantial question of law: -

“Whether the learned Court below was justified, on the basis of material available on record, in holding that the parties are governed by Hindu Succession Act?”

2. The said substantial question of law is reformulated as under: -

“Whether the first appellate Court was justified in holding that though Ratni – wife of Ghasia, has remarried Sonadhar, yet she will inherit the property of her husband by virtue of Sections 4 and 24 of the Hindu Succession

Act, 1956?

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the suit before the trial Court.)

3. The suit property was originally held by Ghasia. Ratni was his wife and the plaintiff is his son. It is the case of the plaintiff that Ratni subsequently started living with Sonadhar, as she ran away from the house of Ghasia and alleged to have married Sonadhar from the wedlock of which, she has three sons and three daughters, these three daughters are arrayed as defendants No.2, 3 & 4 in the plaint. On 21-1-2004, the defendants illegally partitioned the land of Ghasia and mutated their names in the revenue records as legal heirs of Ghasia which necessitated the filing of instant suit for declaration, mutation and for declaring the order of mutation as null and void.
4. The defendants filed their written statement and admitted that the plaintiff is son out of the wedlock of Ratni with Ghasia, but denied that defendants No.2, 3 & 4 are not daughters of Ghasia. It was further pleaded that after the death of Sonadhar, Ratni returned back to Ghasia and thereafter, Ratni and Ghasia lived as husband and wife and defendants No.2, 3 & 4 were born. It was also pleaded that Ghasia himself during his lifetime, had partitioned the suit property between the plaintiffs and the defendants.
5. The trial Court after evaluating oral and documentary evidence on record, decreed the suit in full holding that there is no evidence that Ghasia during his lifetime partitioned the suit property between the plaintiff and the defendants; the defendants have failed to prove

that defendants No.2, 3 & 4 are daughters of Ghasia with Ratni; and defendant No.1 herself has admitted that she lived with Sonadhar for about 40-45 years and thereafter, again lived with Ghasia, but the factum of remarriage has not been proved.

6. On appeal being preferred by the defendants, the first appellate Court partly allowed the appeal holding that though Ratni – wife of Ghasia, has admitted second marriage with another person during the lifetime of her first husband, but still she would be considered as wife and is entitled for half share in the suit property which the plaintiff has succeeded under Section 8 of the Hindu Succession Act, 1956.
7. Challenging judgment & decree of the first appellate Court, the plaintiff preferred second appeal under Section 100 of the CPC in which substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.
8. Mr. Shobhit Koshta, learned counsel appearing for the appellant / plaintiff, would submit that the first appellate Court is absolutely unjustified in interfering with the judgment & decree of the trial Court, as such, the appeal deserves to be allowed by setting-aside the decree of the first appellate Court and restoring the decree of the trial Court.
9. None present for respondent No.3 / defendant No.3, though served.
10. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
11. The suit property was originally held by Ghasia and Ratni was

admittedly his wife. Plaintiff Kavilal is son of Ghasia out of his wedlock with Ratni. The trial Court has held that the plaintiff being the son of Ghasia out of his wedlock with Ratni, would be entitled for the entire property and since Ratni had remarried Sonadhar during the lifetime of Ghasia and during the subsistence of her marriage with Ghasia, therefore, on account of remarriage, she would lose her property right which she had in the property of Ghasia, but the first appellate Court interfered with that finding and held that even if she had remarried another person during the subsistence of her first marriage and during the lifetime of her first husband, her right to property of Ghasia would not go in the light of Section 14 of the Hindu Succession Act, 1956.

12. Now, the question would be, what is the effect of alleged remarriage of Ratni with Sonadhar in the light of Section 2 of the Hindu Widow's Remarriage Act, 1856?

13. Section 2 of the Hindu Widow's Remarriage Act, 1856 (for short, 'the Act of 1856') provides as under: -

“2. Rights of widow in deceased husband's property to cease on her remarriage.—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.”

14. A focused glance of the aforesaid provision would show that the said provision has taken away the right of the widow in the event of remarriage and the provision is very specific to the effect that the

widow on remarriage would be deemed to be otherwise dead and in the event of remarriage, one loses the rights of even limited interest in such property.

15. This position continued till the Hindu Succession Act, 1956 came into operation with effect from 17-6-1956. Section 4 of the Hindu Succession Act, 1956 provides as under: -

“4. Over-riding 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 in so far as it is inconsistent with any of the provisions contained in this Act.”

16. This provision provides for an overriding application of the provisions of the Act in effect. It lays down that in respect of any of the matters dealt with in the Act, it seeks to repeal all existing laws, whether in shape of enactment or otherwise, which are inconsistent with this Act. The Act also supersedes the rules of succession contained in any Central or State enactment and any other law in force immediately before it came into operation by enacting all other laws and shall cease to apply to Hindus, insofar as it is inconsistent with any of the provisions contained in the Act.

17. Section 24 of the Hindu Succession Act, 1956, as it then stood, provides as under: -

“24. Certain widows re-marrying may not inherit as widows.—Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as

such widow, if on the date the succession opens, she has re-married.”

18. The provisions of the Hindu Widows' Remarriage Act, 1856 were not repealed by the Hindu Succession Act, 1956. It was repealed by the Hindu Widows' Remarriage (Repeal) Act, 1983 with effect from 31-8-1983, but Section 4 of the Act of 1956 has overriding effect and it abrogates the operation of the Hindu Widows' Remarriage Act, 1856.

19. The question whether a Hindu widow on remarrying is divested of her husband's property already vested in her by way of succession, has been noticed in Mulla's Hindu Law, 13th Edition, (page 796) considering the provisions of the Hindu Widows' Remarriage Act, 1856 and the Hindu Succession Act, 1956. It was held as under: -

“Remarriage of a widow is not now under the Act a ground for divesting the estate inherited by her from her husband. The Hindu Widows' Remarriage Act, 1856 though it legalized the remarriage of a Hindu widow, had the effect of divesting the estate inherited by her as a widow. By her second marriage she forfeited the interest taken by her in her husband's estate, and it passed to the next heirs of her husband as if she were dead (S.2 of that Act). The rule laid down in that enactment cannot apply to a case covered by the present Act and a widow becomes full owner of the share or interest in her husband's property that may devolve on her by succession under the present section. Her remarriage, which would evidently be after the vesting in her of her share or interest on the death of the husband would not operate to divest such share or interest. The Hindu Widow's Remarriage Act, 1856, is not repealed but Section of the present Act in effect of a widow who succeeds to the property of her has the effect of vesting in her that interest or share in her husband's property as full owner of the same.”

20. In the matter of Cherotte Sugathan (Dead) Through LRs. and others v. Cherotte Bharathi and others¹, the Supreme Court relying upon its earlier judgment in the matter of Velamuri Venkata

¹ (2008) 2 SCC 610

Sivaprasad (Dead) by LRs. v. Kothuri Venkateswarlu (Dead)

by LRs. and others², has held that by virtue of Sections 4 and 24 of the Act of 1956, the provisions thereof shall prevail over the provisions of Section 2 of the Act of 1856 and observed as under: -

“13. Succession had not opened in this case when the 1956 Act came into force. Section 2 of the 1856 Act speaks about a limited right but when succession opened on 2-8-1976, the first respondent became an absolute owner of the property by reason of inheritance from her husband in terms of sub-section (1) of Section 14 of the 1956 Act. Section 4 of the 1956 Act has an overriding effect. The provisions of 1956 Act, thus, shall prevail over the text of any Hindu Law or the provisions of the 1856 Act. Section 2 of the 1856 Act would not prevail over the provisions of the 1956 Act having regard to Sections 4 and 24 thereof.

14. The question posed before us is no longer *res integra*. In *Chando Mahtain v. Khublal Mahto*³ the Patna High Court opined: (AIR p. 34, para 6)

“6. ... The Hindu Widows' Remarriage Act, 1856 has not been repealed by the Hindu Succession Act, 1956 but Section 4 of the latter Act has an overriding effect and in effect abrogates the operation of the Hindu Widows Remarriage Act, 1856. According to Section 4 of the Hindu Succession Act all existing laws whether in the shape of enactments or otherwise shall cease to apply to Hindus insofar as they are inconsistent with any of the provisions contained in this Act.”

15. In *Kasturi Devi v. Dy. Director of Consolidation*⁴ this Court categorically held that a mother cannot be divested of her interest in the deceased son's property either on the ground of unchastity or remarriage.

16. The Kerala High Court in *Thankam v. Rajan*⁵ held that remarriage of the wife cannot be a ground for her losing right to succeed to her deceased husband's property.

17. Yet again this Court in *Velamuri Venkata Sivaprasad v. Kothuri Venkateswarlu* (*supra*) held: (SCC p. 165, para 52)

2 (2000) 2 SCC 139

3 AIR 1983 Pat 33

4 (1976) 4 SCC 674

5 AIR 1999 Ker 62

“52. Incidentally, Section 24 of the Succession Act of 1956 placed certain restrictions on certain specified widows in the event of there being a remarriage; while it is true that the section speaks of a predeceased son or son of a predeceased son but this in our view is a reflection of the Shastric Law on to the statute. The Act of 1956 in terms of Section 8 permits the widow of a Hindu male to inherit simultaneously with the son, daughter and other heirs specified in Class I of the Schedule. As a matter of fact she takes her share absolutely and not the widows estate only in terms of Section 14. Remarriage of a widow stands legalised by reason of the incorporation of the Act of 1956 but on her remarriage she forfeits the right to obtain any benefit from out of her deceased husbands estate and Section 2 of the Act of 1856 as noticed above is very specific that the estate in that event would pass on to the next heir of her deceased husband as if she were dead. Incidentally, the Act of 1856 does not stand abrogated or repealed by the Succession Act of 1956 and it is only by Act 24 of 1983 that the Act stands repealed. As such the Act of 1856 had its fullest application in the contextual facts in 1956 when Section 14(1) of the Hindu Succession Act was relied upon by Defendant 1.”

We respectfully agree with the said view.”

21. Thus, in view of the aforesaid crystallised legal position, even if it is held that Ratni had remarried Sonadhar after leaving her husband Ghasia, but the fact of remarriage of Ratni stands legalised by reason of the incorporation of the Act of 1956, as the provisions of the Act of 1956 stand abrogated by Act 24 of 1983 and that would not take the right to property held by Ratni in the property of her former husband and that cannot be a ground for her losing right to succeed to her husband's property.
22. In view of the aforesaid legal position, the finding recorded by the first appellate Court that despite remarriage of Ratni with Sonadhar, she will not be disqualified from the property of Ghasia (who died after coming into force of the Act of 1956) which she is otherwise entitled for, is a finding of fact based on correct legal premises and

the first appellate Court has rightly modified the judgment & decree of the trial Court holding that Ravilal – son of Ghasia out of his wedlock with Ratni, would be entitled for $\frac{1}{2}$ share in the suit property and Ratni would be entitled for $\frac{1}{2}$ share in the suit property. As such, I do not find any illegality or perversity in the judgment & decree of the first appellate Court. The substantial question of law is answered accordingly and the second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

23. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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