

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.662 of 2003

1. Sona Dei, W/o Late Lakhmu, aged about 63 years.
2. Vishehwar, S/o Late Lakhmu, by caste Rawat, aged about 33 years.

Both R/o Village Bhalugudapara, Bastar, Tehsil Jagdalpur, District Bastar (C.G.)

(Defendants)
---- Appellants

Versus

1. Mst. Tulsa (Dead) Through LRs

(Plaintiff)

(A)1. Balram, S/o Jhulu, aged about 40 yers, R/o Village Pujari Para, PO Bastar, Tehsil Jagdalpur, Distt. Bastar (C.G.)

(A)2. Lakhe Ram, S/o Jhulu, aged about 35 years, R/o Village Pujari Para, PO Bastar, Tehsil Jagdalpur, Distt. Bastar (C.G.)

B. Smt. Chandi, W/o Baldev Raut, aged about 39 years, R/o Village Bastar, Tehsil Jagdalpur, Distt. Bastar (C.G.)

2. The State of Chhattisgarh, Through the Collector, Bastar (C.G.)

(Defendant No.3)
---- Respondents

For Appellants: Mr. Hari Agrawal, Advocate.

For Respondents No.1(A)1, 1(A)2 and 1(B): -

Mr. Prafull Bharat and Mr. Harshal Chouhan, Advocates.

For Respondent No.2 / State: -

Mrs. Meha Kumar, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

21/02/2019

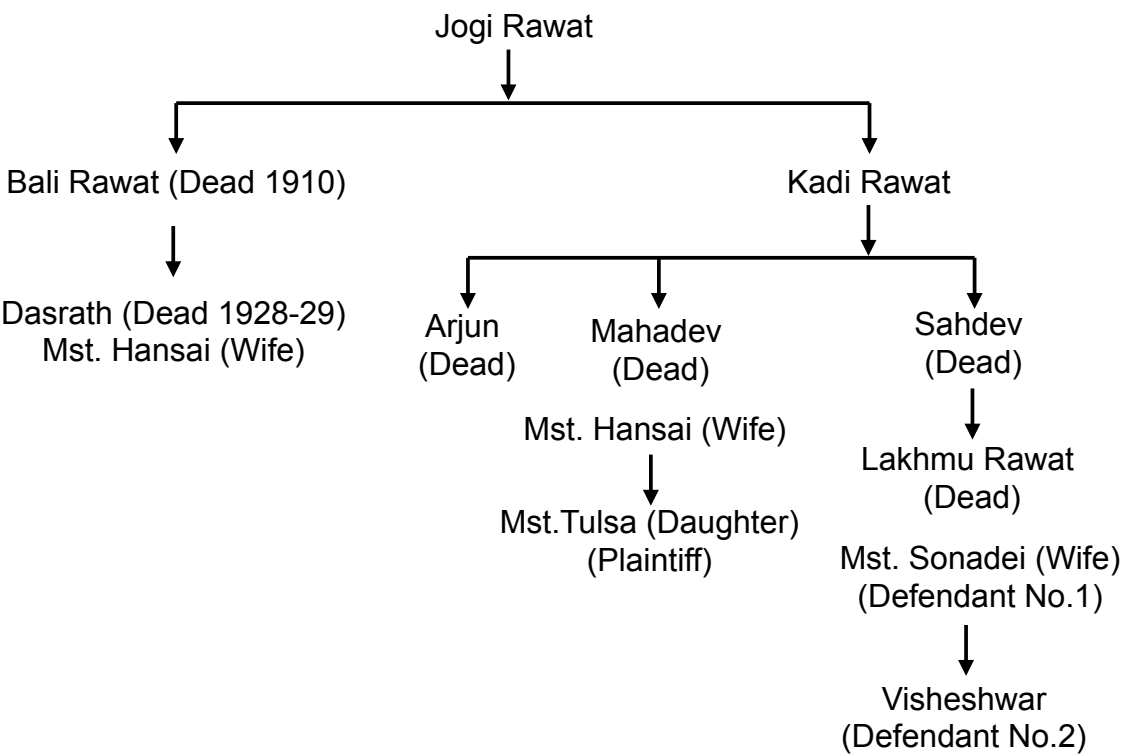
1. In this second appeal preferred by the defendants, following substantial question of law was formulated for determination at the time of admission: -

“Whether the Learned Lower Appellate Court was justified in law in reversing the decree of the Trial Court and granting decree in favour of respondent/plaintiff by holding that after death of Dashrath, his property devolved upon his widow Hansai and further that after death of Mahadev, his

property devolved upon Hansai and thus, the plaintiff being sole daughter of Hansai entitled to succeed to the property?”

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

2. The following genealogical tree would demonstrate the relationship among parties: -



3. The suit property was originally held by Dashrath who died in the year 1928 leaving widow – Hansai who inherited the suit property, but immediately thereafter, in the same year, she was remarried to Mahadev, S/o Kadi Rawat and the plaintiff is daughter of Hansai out of her remarriage with Mahadev. Suit was filed by the plaintiff stating inter alia that Dashrath died in the year 1928 issue-less and after death of Dashrath, his wife Hansai inherited the suit property and she being widow, remarried to Mahadev in *chudi* form and with the consent of Hansai, her property came to be recorded in the name of Mahadev and since Hansai had no son with Mahadev and the plaintiff being daughter of Mahadev & Hansai is entitled to inherit the property.

It was also pleaded in para 9 of the plaint that after death of Hansai, name of the plaintiff could have been recorded in the revenue records, but taking advantage of illiteracy of the plaintiff, defendant No.1 got her name recorded and the said mutation does not confer any right, title and interest to said Lakhmu and her title on the suit land has not extinguished and the plaintiff being in possession is entitled to inherit the property and is entitled for declaration and confirmation of possession.

4. Defendants No.1 & 2 filed their written statement stating inter alia that the plaintiff is not the legitimate daughter of Mahadev and as such she is not entitled to inherit the property and the suit be dismissed with cost(s).
5. The trial Court after appreciating oral and documentary evidence on record came to a specific conclusion that since the suit property was held by Dashrath and Dashrath died in the year 1928 and after death of Dashrath, the plaintiff's mother Hansai remarried to Mahadev, therefore, by virtue of her remarriage, she had lost her right over the property of Dashrath and since she had no any semblance of legal right in her favour, therefore, that will not ripen into full right by virtue of Section 14(1) of the Hindu Succession Act, 1956 and therefore, after death of Hansai in the year 1965, the plaintiff is not entitled for any property right in the property left by Dashrath and dismissed the suit holding so.
6. On appeal being preferred by the plaintiff, the first appellate Court allowed the appeal and decreed the suit of the plaintiff leading to filing of second appeal before this Court under Section 100 of the CPC in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.

7. Mr. Hari Agrawal, learned counsel appearing for the appellants herein / defendants No.1 & 2, would submit that the first appellate Court has lost sight of the provision contained in Section 2 of the Hindu Widow's Remarriage Act, 1856 by which 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, shall upon her remarriage cease and determine as if she had then died. As such, since Hansai has right, she has lost on her remarriage with Mahadev, therefore, the question of limited right blossoming into full right under Section 14(1) of the Hindu Succession Act, 1956 does not arise and therefore the plaintiff is not entitled to inherit the property left by Dashrath through her mother Hansai, as such, the judgment & decree passed by the first appellate Court deserve to be set aside.
8. Mr. Prafull Bharat, learned counsel appearing for the LRs of the original plaintiff, while opposing the submission would vehemently submit that the first appellate Court is absolutely justified in granting decree in favour of the plaintiff and took my attention through the plaint averments painstakingly to demonstrate that the plaintiff is entitled to inherit the property of her mother Hansai and her father Mahadev and as such, the first appellate Court is absolutely justified in granting decree in favour of the plaintiff and the second appeal deserves to be dismissed.
9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the records with utmost circumspection.
10. Admittedly and undisputedly, the suit property was held by Dashrath

who died in the year 1928 leaving his widow Hansai with no issue. But immediately thereafter, she (Hansai) was remarried to Mahadev, S/o Kadi Rawat in *chudi* form in 1928 and Mahadev also died before the death of Hansai leaving the sole daughter i.e. the original plaintiff herein. The original plaintiff herein claims the property of Dashrath averring that after death of Dashrath, the suit property devolved upon her and thereafter, the suit property came to be recorded in the name of Mahadev and Hansai and since Mahadev – father of the plaintiff has died and after the death of her mother, the plaintiff is entitled to inherit the property.

11. The first question for consideration would be, what is the effect of remarriage of Hansai in the light of Section 2 of the Hindu Widow's Remarriage Act, 1856?
12. Section 2 of the Hindu Widow's Remarriage Act, 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.”

[The Hindu Widow's Remarriage Act, 1856 was repealed by the Hindu Widows' Re-marriage (Repeal) Act, 1983 with effect from 31-8-1983.]

13. 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. This position continued till the Hindu Succession Act, 1956 came into operation with effect from 18-5-1956. Section 4 of the of the Hindu Succession Act, 1956 has an overriding effect. The provisions of the 1956 Act, thus, shall prevail over the text of any Hindu law or the provisions of the 1856 Act and Section 2 of the 1856 Act would not prevail over the provisions of the 1956 Act having regard to Sections 4 and 24 thereof. (See Cherotte Sugathan (Dead) Through LRs. and others v. Cherotte Bharathi and others¹.) However, in this case, the Hindu Widow's Remarriage Act, 1856 would apply, as Hansai remarried to Mahadev in the year 1928 prior to coming into force of the Hindu Succession Act, 1956.

14. The Supreme Court in the matter of Raghubar Singh and others v. Gulab Singh and others² while holding that marriage between two Hindus is a sacrament observed as under: -

“14. According to the old *Shastric Hindu law*, marriage between two Hindus is a sacrament — a religious ceremony which results in a sacred and a holy union of man and wife by virtue of which the wife becomes a *part and parcel* of the body of the husband. She is, therefore, called *ardhangani*. It is on account of this status of a Hindu wife, under the *Shastric Hindu law*, that a husband was held to be under a personal obligation to maintain his wife and where he dies, possessed of properties, then his widow was entitled, *as of right*, to be maintained out of those properties. The right of a Hindu widow to be maintained out of the properties of her deceased husband is, thus, a spiritual and moral right, which flows from the spiritual and temporal relationship of husband and wife, though the right is available only so long as the wife continues to remain chaste and does not remarry.”

15. The Supreme Court in the matter of Velamuri Venkata Sivaprasad (Dead) by LRs. v. Kothuri Venkateswarlu (Dead) by LRs. and

1 (2008) 2 SCC 610

2 (1998) 6 SCC 314

others³ while considering the effect of remarriage prior to the Act of 1956 had formulated the following question for determination: -

“... firstly, whether remarriage of a widow prior to the Hindu Succession Act, 1956 would divest her of even the limited ownership of her deceased husband's property, having due regard to the provisions of Section 2 of the Hindu Widow's Remarriage Act, 1856 ...”

16. Their Lordships of the Supreme Court while considering the effect of Section 2 of the Hindu Widow's Remarriage Act, 1856 have held that in the event of a remarriage, the widow loses the rights of even the limited interest in the property and after remarriage the next heirs of her deceased husband shall thereupon succeed to the same and further holding it to be a statutory recognition of a well-reasoned pre-existing Shastric law observed as under: -

“17. [Section 2](#) of the Act 1856, therefore, has taken away the right of 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.”

17. The next question would be, whether under Section 14(1) of the Hindu Succession Act, 1956, limited right of widow would convert into full ownership right?

18. The Supreme Court in the matter of V. Tulasamma and others v. Sesha Reddy (Dead) by LRs.⁴ with regard to the applicability of Section 14(1) of the Hindu Succession Act, 1956, held as under: -

“The words “possessed by” used by the Legislature in Section 14(1) are of the widest possible amplitude and include the State of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a

³ (2000) 2 SCC 139

⁴ (1977) 3 SCC 99

preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.”

19. Further, the Supreme Court in Velamuri Venkata Sivaprasad (supra), relying upon the decision in V. Tulasamma (supra) has held that there would be no occasion to get such non-existing limited right converted into full ownership right under Section 14(1) of the Hindu Succession Act, 1956, as by operation of Section 2 of the Hindu Widow's Remarriage Act, 1856, a widow would divest her of even the limited ownership of her deceased husband's property. It was observed in paragraph 25 of the report {Velamuri Venkata Sivaprasad (supra)} as under: -

“25. It has to be kept in view that [Section 14\(1\)](#) of the Hindu Succession Act, in the light of the explanation thereto, clearly indicates that if a Hindu widow is given in lieu of her pre-existing right of maintenance, any property with limited interest, the said interest would mature into full ownership under [Section 14\(1\)](#) of the Act. It has further to be kept in view that under the will of Rosaiah, the first wife's pre-existing right of maintenance was recognised and in recognition of the very same right by the compromise decree she was given limited interest to recover maintenance from the earmarked properties mentioned in the same decree. It has, therefore, to be held in the light of the judgment in *Tulasamma* case that if her right of maintenance had survived till the coming into operation of [Section 14\(1\)](#) of the Act, then her limited interest in the properties concerned over which the said right was exercised as per consent terms could have matured under [Section 14\(1\)](#) of the Act and to that extent the Division Bench judgment upsetting the view of the learned Single Judge cannot be found fault with. However, in the light of the admitted fact on record on re-marriage of Rosaiah's widow in 1953, her right to claim maintenance from the ex-husband's properties got extinguished prior to 1956, as will be further seen from our discussion on the second issue. Hence, the ultimate decision rendered by the learned Single Judge will remain well sustained and the Division Bench judgment upsetting the same cannot be sustained on this ground. Issue 1, therefore, will have to

be answered in favour of the appellant and against the respondent.”

20. The M.P. High Court in the matter of Mst. Bisarti w/o Lachchi Lodhi v. Mst. Sukarti w/o Durjan, and another⁵ dealing with similar question relating to the expression “possessed by a female Hindu” in Section 14 of the Hindu Succession Act, 1956, held that remarriage of Hindu widow before coming into force of the Hindu Succession Act, 1956 and consequent divesting of estate, widow cannot get absolute estate merely because she continued in possession till after coming into force of the Act and observed in paragraph 6 as under: -

“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 under [Section 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.”

21. The Supreme Court in the matter of Eramma v. Veerupana and others⁶ has clearly held that Section 14 of the Hindu Succession Act, 1956 cannot be attracted where female Hindu is in possession of property, without any right to it; it does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title; and in other words, the provisions of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act without any right to property. It was

⁵ AIR 1960 MP 156

⁶ AIR 1966 SC 1879

observed in paragraph 7 of the report as under: -

“(7) It is true that the appellant was in possession of Eran Gowda's properties but that fact alone is not sufficient to attract the operation of S. 14. The property possessed by a female Hindu, as contemplated in the section is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to S. 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-section (1) of S. 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, S. 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to sub-section (1) of S. 14 defines the word 'property' as including "both movable and immovable property acquired by a female Hindu by inheritance or devise". Sub-section (2) of S. 14 also refers to acquisition of property. It is true that the Explanation has not given any exhaustive connotation of the word 'property' but the word 'acquired' used in the Explanation and also in sub-s. (2) of S. 14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of a female Hindu and it does not confer any title on a mere trespasser. In other words, the provisions of S. 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the 'date of the commencement of the Act when she is only a trespasser without any right to property.”

22. Reverting to the facts of the case in the light of the legal position as enunciated by Their Lordships in Velamuri Venkata Sivaprasad (supra), it is quite vivid that though plaintiff's mother Hansai did inherit the property from her former husband Dashrath on his death in 1928,

but immediately after her remarriage with Mahadev in the same year, she has lost the rights of even the limited interest in such property of Dashrath by virtue of Section 2 of the Hindu Widow's Remarriage Act, 1856 and as such, after remarriage, the next heirs of her deceased husband shall thereupon succeed to the same. Therefore, after her mother's remarriage with Mahadev before coming into force of the Hindu Succession Act, 1956 and after death of Mahadev and Hansai, the plaintiff would not be entitled to inherit the property of her mother which she had inherited after death of Dashrath, as the plaintiff's mother lost the rights of even the limited interest in the property on her remarriage with Mahadev, as stated above.

23. In view of the aforesaid legal analysis, I have no hesitation to hold and I unhesitatingly hold that Hansai did not have any semblance of legal right qua the property of Dashrath after remarriage with Mahadev prior to coming into force of the Hindu Succession Act, 1956 with effect from 18-5-1956, as she had lost right to property of her late husband Dashrath by virtue of Section 2 of the Hindu Widow's Remarriage Act, 1856 and therefore after death of Mahadev and Hansai, the plaintiff cannot have any right over the property left by Dashrath through her mother Hansai and as such, the first appellate Court is absolutely unjustified in holding that she is entitled to inherit the property and entitled for declaration and confirmation of possession.

24. The Supreme Court in the matter of Gurvachan Kaur and others v. Salikram (Dead) Through LRs.⁷ has held that in exercise of power under Section 100 of the CPC, this Court (High Court) can interfere with the finding of fact recorded by the first appellate Court which is final court of fact, if the finding of fact is found to be perverse. In the

⁷ (2010) 15 SCC 530

present case, the finding of fact recorded by the first appellate Court is perverse and contrary to law. Accordingly, the judgment & decree of the first appellate Court is set-aside and that of the trial Court is restored. The substantial question of law is answered accordingly and the second appeal is allowed to the extent indicated herein-above. No order as to cost(s).

25. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma