SUPREME COURT OF INDIA

Cherotte Sugathan

Vs.

Cherotte Bharathi & Ors.

C.A.No.1323 of 2008

(S.B. Sinha and V.S. Sirpurkar JJ.)

15.02.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Whether Section 2 of the Hindu Widows Re-Marriage Act, 1856 would apply to the facts of the present case is the question in this appeal.

3. The fact involved herein is as under:

> "The properties in dispute belonged to one Sri Pervakutty. He had three sons and two daughters, namely, Sugathan, Surendran, Sukumaran @ Soman, Soumini and Karhiayani. He allegedly executed a will on 11.10.1975 bequeathing the said properties in favour of his sons. In the said Will, provisions were allegedly made for payment of monthly allowance to the wife of Sri Pervakutty, defendant No.3 (since deceased) as also right of residence in the house situated therein. Sri Pervakutty died on 20.10.1975. Sukumaran died on 2.8.1976. "

4. First respondent is his widow. First respondent remarried one Elambilakkat Sudharkaran. Sudhakaran died on 12.9.1979. She filed a suit on 31.12.1985 for partition claiming 1/3rd share in the suit property. Appellant herein, inter alia, contended that she, in terms of Section 2 of the Hindu Widows Re-marriage Act, 1856, having ceased to have any right in the properties inherited by her from her husband Sukumaran, the suit was not maintainable. Respondent Nos. 2 and 3, the daughter of Sri Pervakutty, inter alia, raised a contention that the purported Will dated 11.10.1975 was not a valid one.

5. By a judgment and order dated 31.3.1992, the said suit for partition was decreed declaring 1/3rd share in the suit properties in favor of the first respondent. It was opined that since the

testator bequeathed the tenancy right as contained in item No.2 of the schedule, the same was available for partition. Appellants preferred an appeal there against. Respondent Nos.2 and 3 (defendants No. 4 and 5) also preferred separate appeals.

6. By reason of the impugned judgment, the High Court allowed the appeals preferred by the respondent Nos. 2 and 3 holding:

> "In this case, the plaintiff has claimed succession on the basis of Will. If that be so, the lower court was correct in holding that Section 23 of the Hindu Succession Act is not applicable to defendants 1 and 2. But if the succession is not on the basis of Will, then defendants 1 and 2 will be entitled to the benefit of Section 23 of the Hindu Succession Act."

7. In regard to the applicability of the 1856 Act, it was held:

> "So far this case is concerned, according to us, Section 24 of the Hindu Succession Act applies and the plaintiff is entitled to succeed."

8. It was directed in the above view of the matter, the appeals are disposed of as follows:

> "The case is remanded to the lower court to frame issue regarding the validity of the Will and to give an opportunity to the parties to adduce evidence regarding the same and decide the issue whether the Will is valid or not. The other findings in the judgment are upheld except the finding regarding the building house in Item No.1 of A schedule. If the court below takes the view that the Will is not valid, then the contention of defendants 1 and 2 regarding residence in the building house should be considered again."

9. Mr. K. Rajeev, learned counsel appearing on behalf of the appellant, in support of the appeals, would submit that keeping in view the provisions of Section 2 of the 1856 Act, Respondent No.1 could not have been held to have any right in the properties inherited by her from her husband as she remarried on 12.2.1979.

10. Mr. Raghunath, learned counsel appearing on behalf of the respondent, however, would support the judgment.

11. Hindu Widows Remarriage Act was enacted to remove all legal obstacles to the marriage of Hindu widows.
Section 1 of the said Act encompasses within its fold the said legal policy. Section 2 reads as under:

> "Rights of widow in deceased husbands property to cease on her re-marriage. All rights and interests which any widow may have in her deceased husbands property by way of maintenance, or by inheritance to her husband 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."

12. Applicability of the said provision must be tested having regard to the provisions contained in Hindu Succession Act, 1956. Section 4 of the Act provides for the overriding effect of the Act stating. 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 in so far as it is inconsistent with any of the provisions contained in this Act."

13. The Act brought about a sea change in Shastric Hindu Law. Hindu widows were brought on equal footing in the matter of inheritance and succession along with the male heirs. Section 14(1) stipulates that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, will be held by her as a full owner thereof. Section 24, as it then stood, reads as under:

"Certain widows remarrying 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 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 remarried."

14. Upon the death of Sukumaran, his share vested in the first respondent absolutely. Such absolute vesting of property in her could not be subjected to divestment, save and except by reason of a statute.

15. 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, 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 1856 Act. Section 2 of the 1856 Act would not prevail over the provisions of the 1956 Act having regard to Section 4 and 24 thereof.

16. The question posed before us is no longer res Integra.

> "In *Chando Mehtain & Ors. v. Khublal Mahto & Ors*[1], the Patna High Court opined 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 in so far as they are inconsistent with any of the provisions contained in this Act. In *Kasturi Devi v. Deputy Director of Consolidation*[2], this Court categorically held that a mother cannot be divested of her interest in the deceased sons property either on the ground of un chastity or remarriage. *Kerala High Court, in Thankam v. Rajan*[3], held that remarriage of the wife cannot be a ground for her loosing right to succeed to her deceased husbands property."

17. Yet again this Court, in *Velamuri Venkata Sivaprasad (Dead) by LRs. v. Kothuri Venkateswarlu (Dead) by LRs & Ors*[4] held:

> "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 pre-deceased son or son of a pre-deceased 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 legalized 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."

18. For the reasons aforementioned, we do not find any infirmity in the judgment of the High Court. The appeal, therefore, is dismissed without any order as to costs.

[1] *AIR 1983 Patna 0033*
[2] *AIR 1976 SC 2595*
[3] *AIR 1999 Kerala 0062*
[4] *(2000) 2 SCC 0139*