

Narain and anr. Vs. Mohan Singh

Narain and anr. Vs. Mohan Singh

SooperKanoon Citation : sooperkanoon.com/458390

Court : Allahabad

Decided On : Dec-22-1936

Reported in : AIR1937All343

Appellant : Narain and anr.

Respondent : Mohan Singh

Judgement :

Niamatullah, J.

1. This is a plaintiffs' appeal arising out of a suit for declaration and in the alternative, for possession of certain zamindari property originally belonging to a Jat named Mohar Singh, who died leaving a widow, Mt. Diali. The latter contracted a second marriage in the Karao form. The plaintiffs' case is that, at the time when she remarried, their ancestor was the nearest reversioner. Mt. Diali died recently, and it is not disputed by the plaintiffs that at the time of her death they were not the nearest reversioners. Their suit is based on the allegation that Mt. Diali forfeited her husband's estate on remarriage and that their ancestor succeeded to it as the nearest collateral of her first husband, Mohar Singh. The defendant denies that Mt. Diali forfeited her husband's estate and claims to be entitled to Mohar Singh's estate on the death of Mt. Diali, when admittedly he was the nearest reversioner. One of the issues framed by the trial Court was, whether the share of Mt. Diali was lost to her after her remarriage in the Karao form. It will be seen that it threw the

onus or proving forfeiture on the plaintiffs. The Court found that the plaintiffs failed to establish a custom prevailing in the community of Jats under which a widow forfeits her husband's estate on remarriage. On that finding the plaintiffs suit was dismissed. Their appeal to the lower appellate Court was also dismissed.

2. A long current of authorities of this Court, ending in *Bhola Umar v. Mt. Kausilla* : AIR1932 All617 has held that, where a widow remarries under a custom obtaining in the community to which she belongs and not under the Hindu Widows' Remarriage Act, she does not, in the absence of a custom to the contrary forfeit her husband's estate. If the validity of the remarriage arises from the statutory provisions contained in Section 1, Hindu Widows Remarriage Act, and is not independent of it, Section 2 of that Act must apply, and the widow on remarriage would forfeit her husband's estate. As to whether forfeiture should follow remarriage as a matter of course or should depend on proof of a special custom entailing forfeiture on remarriage depends upon the further question whether the remarriage has been contracted under the Act or under a custom wholly independent of the Act. In the present case, the remarriage of Mt. Diali and its validity are common ground. The plaintiffs alleged in their plaint that in the community, to which the parties belong, the widow loses her husband's estate on remarriage. They do not, however, say that the marriage itself is under a custom, and not under the Act. Their allegations as regards custom of forfeiture 'are consistent with a practice of forfeiture coming into existence in consequence of the Act. In the defendant's written statement it is specifically alleged that Mt. Diali remarried under a custom obtaining in the Jat community. If this allegation is correct and implies that the custom of widow remarriages is independent of the Act, Mt. Diali did not, prima facie, incur the forfeiture of her husband's estate, unless the plaintiffs establish that there is a custom in their community which entails forfeiture on the remarriage of a widow. After the Full Bench decision in *Bhola Umar v. Mt. Kausilla* : AIR1932 All617 it was held in the same case by the Division Bench which disposed of the case that, unless the remarriage was under the custom, forfeiture would occur. To ascertain whether the remarriage had taken place under a custom prevailing from before 1856 issues were remitted to the trial Court. The following observations are relevant in the present case:

Now in view of the provisions of the Hindu Widows' Remarriage Act (15 of 1856), remarriage of a widow is permissible in the entire Hindu community. The statement made on behalf of the defendant above referred to goes no further than to admit that a widow's remarriage is valid. It is silent on the further question whether the validity arises from the provisions of the Hindu Widows' Remarriage Act or from an ancient custom prevailing in the community, wholly apart from the Act. The practice of the widow remarriage after 1856 in this community or in any other section of the Hindus may well be referable to the provisions of the Hindu Widows' Remarriage Act, and would not necessarily be indicative of an ancient custom existing before the passing of that Act. Unless, therefore, it is shown that the present practice is in pursuance of an ancient custom and not under the Act, the remarriage of a widow cannot be held to be under the custom of the caste.

3. Before the plaintiffs can be called upon to establish a custom entailing forfeiture of the widow's estate, it must be found that Mt. Diali validly contracted a second marriage under a custom independent of the Hindu Widows' Remarriage Act. One of the attributes of a custom is that it should be ancient. If the practice of remarriage has come into existence since the passing of the Hindu Widows' Remarriage Act, it cannot be considered to be a custom properly so called. It is nothing but a repetition of instances of remarriages deriving their validity from the Hindu Widows' Remarriage Act. To show that the custom now obtaining is not the result of that Act, but wholly apart from it, some evidence ought to be forthcoming to prove that the custom was in existence before the Act was passed. In the state of the record as I find it, it is difficult to say whether the custom of remarriage, set up by the defendant, exists as such. I remit the following issue to the trial Court for a finding to be returned through the lower appellate Court within three months:

Was Mt. Diali remarried after the death of her husband Mohar Singh under a custom obtaining in the community of Jats of the locality?

4. Parties shall be at liberty to produce fresh evidence. Ten days shall be allowed for objections.