

**Mula Vs. Partab**

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**SooperKanoon Citation :** [sooperkanoon.com/464307](http://sooperkanoon.com/464307)

**Court :** Allahabad

**Decided On :** Mar-16-1910

**Reported in :** 6Ind.Cas.116

**Judge :** John Stanley, C.J. and ;Banerji, J.

**Appellant :** Mula

**Respondent :** Partab

**Judgement :**

1. The suit, out of which this appeal has arisen, was brought by the plaintiff-respondent for possession of certain property which belonged to one Siria. He claims as the next reversioner to Siria. Siria died leaving a widow, Musammat Mathuri, and his mother, Musammat Tulsha. These ladies made a gift of the property in favour of one Nanda, who is now dead. Chhajju, the brother of Nanda, mortgaged apart of the property to Kabul defendant No. 3 and Sukh Ram, and he also sold a portion to the defendants Nos. 5, 6, 7 and 8. Musammat Tulsha is dead.

2. It has been found that the widow Musammat Mathuri has married again. The plaintiff claims the property on the ground that by reason of Mathuri's second marriage she has forfeited her rights to the property of her first husband, and that the plaintiff is, therefore, entitled to the possession of it. The parties belong to the caste of Taga Brahmans.

3. The Court below has found, and the correctness of its finding is not challenged in this appeal, that there are two classes of Taga Brahmans called respectively Beesa Taga, and Dasa Taga. The parties belong to the class of Beesa Tagas. Among Beesa Tagas, re-marriage, of widows is not allowed but if a widow does re-marry she becomes a Dasa Taga and this re-marriage, although it reduces her to the rank of Dasa Taga, is regarded as valid. The result of the finding, therefore, is that the second marriage of Musammat Mathuri is a valid marriage according to the custom of the caste, the effect of the marriage being to reduce the re-married wife to the rank of Dasa Tagas. The learned Judge of the Court below holds that as there has been a valid re-marriage of Musammat Mathuri, she forfeited her rights to the estate of her first husband under the provisions of Section 2 of Act XV of 1856.

4. It is contended that this conclusion is erroneous and that Act No. XV of 1856 doesnot apply to a case like this where a re-marriage is valid according to the custom of the caste and independent of the provisions of the Act. Having regard to the rulings of this Court, this contention seems to us to be correct. It has been held in a number of cases in this Court that where, according to the custom of the caste, the re-marriage of a widow is valid, Act XV of 1856 is inapplicable. This has been the course of rulings in this Court and although personally we may have hesitation in accepting the view adopted in those rulings, we think we are bound by the uniform course of decisions in this Court, and must, therefore, hold that Section 2 of Act No. XV of 1856 is inapplicable to a case like this. This being so, the decree of the Court below cannot be supported. The result is that we allow the appeal, set aside the decree of the Court below and dismiss the plaintiff's suit with costs in both Courts.