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**Tarif and ors. Vs. Phool Singh and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/476923

**Court** : Allahabad

**Decided On :** Nov-15-1926

**Reported in** : AIR1927All274

**Appellant** : Tarif and ors.

**Respondent** : Phool Singh and ors.

**Judgement** :

**Iqbal Ahmad, J.**

1. This is a plaintiffs' appeal and arises out of a suit for possession of certain zemindari property.

2. The property in dispute admittedly belonged to two brothers Badan and Jhanda who were Jats in equal share. Badan died about 50 years prior to the institution of the suit, and was succeeded by his widow Bahalo, who entered into possession of the property of Badan. Within few years of the death of Badan, Bahalo re-married one Khubi. Jahanda remained in possession of his share till the year 1906, in which year he sold his share to one Bhopal and the latter in his turn sold the same to Mt. Bahalo on the 12th of June 1907. Notwithstanding her remarriage, Bahalo remained in possession of Badan's property in her lifetime. Mt. Bahalo died on the 23rd of February 1910, leaving a daughter Mt. Sis Kunwar by Khubi who obtained mutation of the name over the entire property in dispute. Sis Kunwar sold the property to Defendant No. 1 and the predecessor of Defendants Nos. 2 to 4, On

the l6th of February 1918. The plaintiffs, on the other hand, secured a sale-deed of the entire property in dispute from Jhanda on the 20th of October 1921.

3. The plaintiffs' case was that Mt. Bahalo remained in possession of Badan's share as a Hindu widow and on her death Jhanda, who survived Bahalo, became entitled to the share of Badan. As regards the property of Jhanda purchased by Mt. Bahalo from Bhopal, the plaintiffs maintained that Bahalo having purchased that property with the income of her husband's property, that property partook of the same nature as the property of Badan of which she was in possession as a widow, and as such she had no interest in the property of Jhanda higher than that of a widow, and on her death, Jhanda also became entitled to that share. The plaintiff alleged that Sis Kunwar had no interest in the property in dispute and as such no title passed to the defendants by the sale made by her on the 16th of February 1918.

4. The defendants' case was that under a custom prevailing among the Jats, Bahalo on her re-marriage with Khubi, forfeited all her rights to Badan's property, and as she continued in possession of the same after her re-marriage for a period of more than 12 years, she acquired an absolute title to Badan's share by adverse possession, and that by purchase of Jhanda's share she became full owner of that share and as such the plaintiffs were not entitled to a decree with respect to any portion of the property in dispute. Both the Courts below have held that the custom set up by the defendants has been proved, and as by virtue of that custom Bahalo had lost her rights in her first husband's property on re-marrying Khubi, her possession of Badan's share after her re-marriage, must be regarded as adverse to the reversionary heirs of Badan, and as Bahalo had remained in adverse possession for more than 12 years after her remarriage, she became an absolute owner of the share of Badan and the same on her death passed to her daughter Sis Kunwar. In the view that both the Courts below took of the nature of possession of Bahalo over Badan's share, they held that the purchase by her of Jhanda's share, conferred an absolute title on her even with respect to the property so purchased by her, and the same on the death of Bahalo also passed to Mt. Sis Kunwar. On these grounds the Courts below held that Jhanda was not entitled to any portion of the property in dispute and as such he could not pass a

title to any portion of the property in dispute to the plaintiffs, and that the defendants by their purchase from Sis Kunwar obtained a good title to the entire property in dispute. On these findings the plaintiffs' suit was dismissed by both the Courts below.

5. The findings of the Courts below as to the existence of the custom set up by the defendants-respondents have not been challenged before me in appeal, and the decrees of the Courts below have been assailed before me only on two grounds.

6. It is argued that the Courts below were wrong in holding that Bahalo by continuing in possession of Badan's property after her re-marriage completed by adverse possession, an absolute title to the estate. It is urged, that though by her re-marriage she forfeited her rights to the property of Badan, and though Jhanda then became entitled to the possession of the same still by being allowed to continue in possession she could prescribe a title only with respect to the limited estate of which she was in possession before her re-marriage and for nothing more. In other words Bahalo must be deemed to have continued in possession of the same limited estate of which she came into possession as a widow of Badan on the latter's death, and as such she could not by adverse possession for more than 12 years, prescribe a title to an estate of a different quality to that of which she was in possession. On these grounds it is urged that the Courts below were wrong in holding that Bahalo became an absolute owner of Badan's share and the same did not pass to Jhanda on the death of Bahalo. The learned Counsel for the respondents maintains that as Bahalo on her re-marriage forfeited all her rights to the property of Badan, her possession thereafter was adverse to Jhanda, who became entitled to the immediate possession of the property, and Jhanda not having claimed that property, within 12 years of the date of re-marriage, Bahalo by continuing in adverse possession of the same acquired a complete title to Badan's share and Jhanda lost all his rights with respect to that property. It is said that the necessary consequence of the forfeiture was that the widow's estate of which Bahalo was in possession was divested, and thereafter Bahalo continued in possession of the property not in the limited capacity of a Hindu widow, but as a person in possession of full proprietary rights adversely to the person who on her remarriage had become entitled to possession of that property.

7. I am unable to agree with the contention of the learned Counsel for the respondents. Bahalo was in possession of Badan's property as a Hindu widow and the only right that she forfeited by her re-marriage was the right to possession of Badan's property in her capacity as a Hindu widow. Therefore, by being allowed to continue in possession of the property notwithstanding the forfeiture, she could only prescribe a title to the widow's estate of which she was in possession before her re-marriage. In short by being allowed to remain in possession of Badan's share after her re-marriage, there could not be an automatic enlargement of her estate but she must be presumed to have continued in possession of the same limited estate of which she was in possession since the death of Badan, The inaction of the reversioners for a period of twelve years from the date of the re-marriage could only result in vesting a complete title in Bahalo to the widow's estate in respect of Badan's share. This was the view taken by a learned Judge of this Court in the case of Umrao Singh v. Pirthi : AIR1925 All369 , and that decision was affirmed on Letters Patent Appeal No. 148 of 1924 on the 6th July 1925. The decision of this Court was based on the decision of their Lordships of the Privy Council in the case reported as Lajwanti v. Safa Chand A.I.R. 1924 P.C. 121. In that case it was held that:

if possessing as widow she possesses adversely to anyone as to certain parcels, she does not acquire the parcels as stridhan but she makes them good to her husband's estate.

8. The learned Counsel for the respondents has placed reliance on the case of Kali Charan v. Peare A.I.R. 1924 All. 740. In my opinion that case has no application to the present case.

9. In Kali Charan's case A.I.R. 1924 All. 740 the two widows who successfully claimed an absolute title to the property by adverse possession, were the widows, not of separated Hindus but the widows of some of the deceased members of a joint Hindu family. Those widows during the continuance of the joint Hindu family, had no right to possession of any portion of the joint family property in the capacity of a widow; all that they were entitled to was to be maintained from the joint family property. Here the case is essentially different. Mt. Bahalo, as the widow of a

separated Hindu, came into possession of the property of her deceased husband, as a Hindu widow and as such it appears to me that the case comes within the principle of law laid down in Lajwanti's case A.I.R. 1924 P.C. 121. For these reasons, I am of opinion that the decrees of the Courts below as regards the share of Badan cannot be sustained.

10. Now, I proceed to consider the ground on which the decrees of the Courts below as regards the share of Jhanda are assailed on behalf of the appellants. It is argued that if, as I have already held, Bahalo was in possession of Badan's property as a widow, the purchase by her of Jhanda's property must be regarded as an acquisition to the estate of her husband. It is pointed out that the fact that the estate acquired by Bahalo was the same in extent which she already had and that the same belonged to her husband's brother and the further fact that no attempt to dispose of the estate so acquired, or to deal with it in a manner different from the estate of her deceased husband, was made by Bahalo, lead to the inevitable conclusion that the acquisition of Jhanda's property by Bahalo was an acquisition to the estate of her deceased husband. In support of this argument reliance is placed on the cases of Isre Dutt Koer v. Hansbutti Koerain [1884] 10 Cal. 324 and Sheolochun Singh, v. Saheb Singh [1887] 14 Cal. 387. It is argued that it lay on the respondents to show, that the acquisition made by the lady was of a different kind of estate, and was not an acquisition to the estate of her deceased husband, and this they having failed to do, the plaintiffs were right in asserting that the share of Jhanda having been purchased by Bahalo, with the income of her husband's property partook of the same nature and she had no higher interest than that of a widow in the same. I am unable to agree with this contention.

11. The two cases relied on by the learned Counsel for the appellants in support of his argument are an authority for the proposition that where a widow in possession of the property of her deceased husband invests the income of that property in the purchase of some other property, the presumption is that the property so purchased would be an accretion to the husband's estate. But, in my opinion, the facts of the present case do not invite the application of the rule of law laid down in those cases. The application of those cases is limited to the cases in which a Hindu widow has remained in possession as an heir to her deceased husband and

not to cases where she has prescribed a title to the widow's estate by adverse possession of the same as Bahalo had done in the present case.

12. By prescribing a title to the widow's estate, Bahalo, entitled herself to the usufruct of the property, not in the capacity of a widow of Badan, but because she had become entitled to the widow's estate by virtue of her adverse possession. In other words the income that she received from Badan's property, after prescribing a title to the same, came in her hands not as the widow of Badan, and the acquisition that she made with that income was an acquisition made by her in the capacity of a person who had become entitled to the income of Badan's property not as his widow but in her own right. The intention to treat the newly purchased property as an accretion to the husband's estate can only be imputed to a widow so long as she remains in possession of her husband's property as his widow. Here, as said above Bahalo ceased to remain in such possession of Badan's property from the date of her re-marriage.

13. For the reasons given above, in my judgment, the rights of the case, as regards the share of Jhanda, were entirely with the defendants and not with the plaintiffs.

14. The result is that I modify the decrees of the Courts below by decreeing the plaintiffs' claim with respect to half of the property in dispute. The rest of the plaintiffs' suit is dismissed. As both the parties have succeeded and failed in the litigation to an equal extent I direct the parties to bear their own costs throughout.

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