

SMT. KASTURI DEVI

v.

DEPUTY DIRECTOR OF CONSOLIDATION & ORS.

November 4, 1976

[Y. V. CHANDRACHUD, P. K. GOSWAMI AND S. MURTAZA FAZAL ALI, JJ.]

Hindu Succession Act, 1956—Whether remarriage would bar a mother from succeeding as son's heir.

On the demise of Karua, there were two rival claims for inheritance to his property. One by the appellant who claimed it as his widowed mother, and the other by his father's brother who contended that the appellant had remarried and was thereby barred from succeeding as Karua's heir. After the consolidation officer had decided against her, and the settlement officer, Etah Camp, Aligarh, in her favour, the Deputy Director of Consolidation decided a revision petition against the appellant holding that her remarriage excluded her from the inheritance. Thereafter, the appellant unsuccessfully filed a writ petition before the High Court.

Allowing the appeal, the Court

Held: Kasturi claimed inheritance not as a widow of her husband Madhua but as the mother of Karua. We are entirely in agreement with the view that "unchastity of a mother is no bar to her succeeding as heir to her son, nor does her remarriage constitute any such bar". Under the Hindu law, the bar of inheritance would not apply to a mother, as it would to a widow. [27B-D]

'Hindu Law' 14th Edn. clause iii) p. 116 followed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 789 of 1975.

(Appeal by Special Leave from the Judgment and Order dated 25.2.1975 of the Allahabad High Court in Civil Misc. Writ No. 3756 of 1971).

E. C. Agarwala, for the Appellant.

B. Datta, for Respondent No. 2.

The Judgment of the Court was delivered by

FAZAL ALI, J.—This appeal by special leave involves a pure question of law regarding inheritance to the property of one Karua. Briefly put, the case of the appellant was that the disputed Khata was recorded in the name of Karua the son of Madhua who died leaving behind his widow Kasturi and his son Karua. He had two brothers Khushi Ram and Lekhraj who claimed to be the next reversioners. It is obvious that on the death of Madhua, Kasturi as the widow got half share in the property and the other half went to Karua. The dispute seems to have arisen on the death of Karua when two rival claims were put forward, one by Kasturi who contended that she was entitled to inherit as mother of Karua, whereas Khushi Ram averred that as Kasturi had married Lekhraj she should be divested of her interest and excluded from inheritance as a result of which the property would pass on to Khushi Ram and Lekhraj in equal shares

A as next reversioners. The appellant also denied the fact that Kasturi had remarried Lekhraj. The first Court of the Consolidation Officer negated the claim of Kasturi and directed mutation to be made in the name of Khushi Ram under the provisions of the U.P. Consolidation of Holdings Act. The present appellant filed an appeal before the Settlement Officer, Etah Camp, at Alighrah, against the decision of the Consolidation Officer who reversed the finding of the Consolidation Officer and held that as the re-marriage of Kasturi with Lekhraj had not been proved, the appellant Kasturi was entitled to be recorded in the revenue papers. Against this decision there was a revision by Khushi Ram before the Deputy Director of Consolidation who set aside the order of the Settlement Officer and restored that of the Consolidation Officer. The Deputy Director of Consolidation held that there was abundant evidence to prove that Kasturi had re-married Lekhraj and, therefore, in law she would be excluded from inheriting the property and was not entitled to be mutated in respect of the Khata in question. The appellant thereupon unsuccessfully filed a writ petition before the High Court and hence this appeal before this Court.

D Learned counsel for the appellant has argued this appeal on the basis of the facts proved in this case. He has not, and could not, assail the finding of fact arrived at by the Deputy Director of Consolidation which was the last revisional court in this case. Before proceeding to determine the point in controversy, it may be necessary to state the admitted facts. In the first place it is not disputed that the claim of Kasturi was made after the death of Karua. By that time Kasturi as the widow of Madhua had already inherited half the share. So the dispute centered round the share of Karua alone. E The finding of fact arrived at by the Deputy Director of Consolidation that Kasturi had remarried Lekhraj cannot be disturbed. In fact there was some controversy regarding the dates of the death of Madhua or the re-marriage of Kasturi with Lekhraj. The position, however, seems to have been set at rest by the evidence of the respondent himself who deposed that Madhua died about 10 years from the date of deposition which would take us to the year 1960. F The witness further admits that Kasturi remarried Lekhraj 2 or 3 years after Madhua's death which would take us to 1963. The respondent further deposes that Karua died 1½ years from the date of deposition which fixes the death of Karua in the year 1970. These dates are important to show that inheritance of both Karua and Kasturi would be governed by the provisions of the Hindu Succession G Act which had come into force even during the lifetime of Madhua.

We may now examine the contentions raised by counsel for the appellant. Counsel submitted that assuming that Kasturi had remarried Lekhraj she had acquired an absolute interest in the property and no question of divestment of the property could arise in view of the provisions of the Hindu Succession Act. Secondly, H it was argued that Kasturi in the instant case put forward her claim for inheritance not as widow of Madhua but as mother of Karua, because it was the property of Karua which was in dispute. In the view that we take in the present appeal, it is not necessary at all to

decide as to whether or not Kasturi would be disinherited or divested of the property even after having acquired an absolute interest under the Hindu Law. This is a moot question and not free from difficulty. We will, however, assume for the sake of argument that as wife of Madhua Kasturi might be divested of her interest on her remarriage with Lekhraj. It is plain, however, in this case that the dispute arises over the property of Karua and *qua* Karua's property, Kasturi claimed inheritance not as a widow of her husband Madhua but as the mother of Karua. The Deputy Director of Consolidation seemed to think that the bar of inheritance would apply to a mother as such as to a widow and on this ground he refused to accept the claim of the appellant. Learned counsel for the respondents supported the stand taken by the Deputy Director of Consolidation. We are, however, unable to agree with the view taken by the Deputy Director of Consolidation which appears to be contrary to the written text of the Hindu Law. Mulla in his 'Hindu Law', 14th Edn, while describing the incidents of a mother regarding inheritance under clause (iii) observed at p. 116 as follows :

"(iii) Unchastity and remarriage—Unchastity of a mother is no bar to her succeeding as heir to her son, nor does remarriage constitute any such bar."

A large number of authorities have been cited in support of this view. We find ourselves entirely in agreement with this view. Our attention has not been invited to any text of the Hindu Law under which a mother could be divested of her interest in the property either on the ground of unchastity or re-marriage. We feel that the application of bar of inheritance to the Hindu widow is based on the special and peculiar, sacred and spritual relationship of the wife and the husband. After the marriage, the wife becomes an absolute partner and an integral part of her husband and the principle on which she is excluded from inheritance on re-marriage is that when she relinquishes her link with her husband even though he is dead and enters a new family, she is not entitled to retain the property inherited by her. The same, however, cannot be said of a mother. The mother is in an absolutely different position and that is why the Hindu Law did not provide that even the mother would be disinherited if she remarried.

In these circumstances we are satisfied that the view of the Deputy Director of Consolidation is legally erroneous. The High Court erred in not interfering with it even though a pure question of law was involved and has failed to exercise jurisdiction vested in it by law. As the case is a very old one and does not require any further investigation, we do not propose to remand the case to the High Court.

For these reasons, therefore, the appeal is allowed, the orders of the High Court and the Deputy Director of Consolidation are set aside, and the order of the Settlement Officer directing the mutation of the name of Kasturi is restored. In the circumstances of this case, there will be no order as to costs.