

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 13TH DAY OF JUNE, 2019

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S DIXIT

WRIT PETITON No.57579 OF 2018 (GM-CPC)

BETWEEN:

A.N. Amruth Kumar,
S/o. Late Nagarajasetty,
Aged about 37 years,
R/o: Proprietor Hanuman
Provision stores,
Bellary road, 1st Cross,
Chellakere Town-577522.

.....Petitioner

(By Sri. H.V.Manjunatha, Advocate for
Smt. R.Manjuladevi, Advocate)

AND

1. A.N.Vanitha,
W/o. Late Nagarajasetty,
Aged about 47 years, Housewife.
2. A.N.Vanni,
D/o. H.Nagarajasetty,
Aged about 16 years.

Both are residing at
Ananda nilaya,
Vasavi Colony,
Challakere Taluk,
Chitradurga District-577522.

3. A.N.Sandeep Kumar,
S/o. Late Nagarajasetty,
Aged about 26 years,
R/o: Proprietor Hanuman
Provision stores,
Bellary road, 1st cross,
Chellakere Town-577522.

... Respondents

This writ petition is filed under Article 227 of the Constitution of India praying to call for records; set aside the impugned order dated 22.11.2018 made on I.A.No.7 filed under Order XXI Rule 97 and 101 read with Section 151 of the Code of Civil Procedure filed by the petitioner/respondent No.1 in FDP No.5/2012 on the file of Senior Civil Judge at Challakere vide Annexure-A and to reject the said application by allowing this petition and etc.

This Writ Petition coming on for Preliminary Hearing this day, the Court made the following:

ORDER

Petitioner, being the respondent in FDP NO. 5/2012 arising from the judgment and decree in a partition suit in O.S.No.2/2008 is invoking the writ jurisdiction of this Court for assailing the order dated 22.11.2018 whereby the Court below has rejected his application in IA No.7 as obstructor under order XXI Rule 97 & 101 read with Section 151 of CPC, 1908.

2. Learned counsel for the petitioner argues that his application in his application in IA NO.7 filed Under Order XXI Rule 97 & 101 read with Section 151 of CPC, 1908 for re-adjudication of rights of the parties under the decree could not have been rejected a cost of Rs.5,000/- inasmuch as the contesting respondent had contracted the second marriage after the death of

her first husband and therefore, there ought to have been an adjudication of the rights afresh qua the said respondent.

3. I have heard the learned counsel for the petitioner and I have perused the petition papers.

4. The suit for partition and separate possession of the subject property is of the year 2008; the matter was carried forward in RA No. 85/2010 & RA No. 86/2010 wherein the Preliminary Decree came to be passed; further the matter came in RSA No. 1367/2011 which this Court dismissed on 13.06.2017, petitioner's review petition in RP No. 671/2017 also came to be rejected; now the FDP 05/2012 instituted by the contesting respondent is at an accomplishing stage.

5. When above was the position, petitioner being the opponent in the FDP has filed the subject application for re-adjudicating the rights of the parties that are already decided by the partition decree. It is ununderstandable how a party to the decree can maintain an obstructor's application under Order XXI

Rule 97 & 101 read with Section 151 of CPC, 1908 that too without taking up a contention as to the accrual of an independent cause of action that would legally constitute a ground for obstruction to the execution of decree or for redetermination of the rights of the parties that are decided under the decree, already.

6. The learned counsel for the petitioner is not in a position to show any provision of law or a ruling of the Apex Court or of the other High Courts in support of his contention that the property vested in a widow goes out of her hands by divestation if and when she contracts a second marriage. In our civilized legal system no widow can be deprived of the property vested in her on account of her contracting a second marriage, subject to any just exceptions.

7. The question whether a Hindu widow on contracting marriage is divested of the property that has been vested in her by way of succession to the estate of the deceased husband, is succinctly answered in Mulla's Hindu Law, 13th Edition, at Page 796 after analyzing the provisions of the Hindu Succession Act,

1956 and the Hindu Widows' Remarriage Act, 1856, in the following words:

“Remarriage of a widow is not now under the Act a ground for divesting the estate inherited by her from her husband. The Hindu Widows' Remarriage Act, 1856 though it legalized the remarriage of a Hindu widow, had the effect of divesting the estate inherited by her as a widow. By her second marriage she forfeited the interest taken by her in her husband's estate, and it passed to the next heirs of her husband as if she were dead (S.2 of that Act). The rule laid down in that enactment cannot apply to a case covered by the present Act and a widow becomes full owner of the share or interest in her husband's property that may devolve on her by succession under the present section. Her remarriage, which would evidently be after the vesting in her of her share or interest on the death of the husband would not operate to divest such share or interest. The Hindu Widcw's Remarriage Act, 1856, is not repealed but Section of the present Act in effect of a widow who succeeds to the property of her has the effect of vesting in her that interest or share in her husband's property as full owner of the same.”

8. The Apex Court in the case of **CHEROTTE SUGATHAN VS. CHEROTTE BHARATHI (2008) 2 SCC 610**, after analyzing the provisions of Hindu Widows' Remarriage Act, 1856 and the provisions of Hindu Succession Act, 1956, has observed as under:

“11. 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:
 “24. Certain widows remarrying may not inherit as widow.- Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a predeceased 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.”*

It is relevant to note that the Parliament has repealed the Hindu Widows' Remarriage Act, 1856 w.e.f. 31.08.1983. Thus, even otherwise also an argument that could have been constructed on the basis of Section 2 of the said Act to deny property to the widow because of she contracting the marriage for rebuilding her life now does not avail at all. If unchastity or remarriage of a Hindu widower is not a ground to divest the property vested in him, it strikes at the root of law, at reason and justice to divest a Hindu widow of the property vested in her only because she has contracted a second marriage, especially when the Constitution of India mandates Gender Equality. This view is supported by the decisions of several High Courts in the

Country i.e., **UMA SAHU VS. SABITRI SAHU, 2017
SCC ONLINE ORI 869; DINANTH VERMA VS.
GOKARAN, MANU/UP/1660/2002; CHANDO
MAHTAIN VS. KHUBLAL MAHTO, AIR 1983 PAT 33;
MANTORBAI VS. PARETANBAI AIR 1972 MP 145.**

In the above circumstances, no other ground having been urged, this writ petition is rejected in limine.

**Sd/-
JUDGE**

KTY