IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12012 of 2018

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Khushboo Gupta, Wife of Late Prem Kumar Yadav @ Bablu Kumar, Daughter of Mr. Sunil Kumar Gupta, South Mandir, Kath Ka Pul, P.O. - G.P.O., P.S. - Budha Colony, District - Patna.

... ... Petitioner/s

Versus

1. The Life Insurance Corporation Of India Through Executive Director (CRM), Yogakshema Building, Jeevan Bima Marg, Mumbai-400021.
2. The Executive Director (CRM), Yogakshema Building, Jeevan Bima Marg, Mumbai - 400021.
3. The Regional Manager (CRM), LIC Customer East Central Zone, BSFC Building, 1st Floor, Near All India Radio, Fraser Road, Patna-800001.
4. The Branch Manager, Life Insurance Corporation of India, Patna Branch - II, BSFC Building, 1st Floor, Near All India Radio, Fraser Road, Patna-800001.
5. Mahasundari Devi, Wife of Late Jay Prakash Yadav, Resident of Makhania Kuan, Babu Tola Lane, Near Dr. Gopal Prasad Clinic, P.S. - Pirbahore, P.O. - Bankipur, District - Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sanjeet Kumar, Adv.
Mr.Raj Kamal, Adv.
For the Respondent nos.1to4: Mr.Sanjay Kumar No.1, Adv.
For the Respondent no.5 : Mr. Shailendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT
Date : 25-09-2019

Petitioner in the present case is seeking a writ in the nature of mandamus directing the respondent Life Insurance Corporation of India (in short 'LIC') and its authorities to pay the death claim arising out of life insurance policy no.517337070 which was obtained by one Prem Kumar Yadav @ Bablu Kumar (since deceased). It is the case of the petitioner that while taking the life insurance policy, the said Prem Kumar Yadav @ Bablu Kumar had nominated his mother Mahasundari

Devi (respondent no.5) and by virtue of that nomination now after death of life assured the respondent no.5 is claiming the entire insurance proceeds. The petitioner has a grievance because after obtaining the policy the said Prem Kumar Yadav @ Bablu Kumar had solemnized marriage with the present petitioner on 22.04.2015. The petitioner is claiming herself a legally wedded wife of the deceased life assured and is looking for 50% of the proceeds of the death claim.

2. Mr. Sanjit Kumar, Learned counsel representing the petitioner has submitted before this Court after death of the life assured, the petitioner has re-married but even after her re-marriage the petitioner would be entitled to receive at least 50% of the proceeds by virtue of her being a class-I legal heir of her deceased husband. Learned counsel has submitted before this Court that earlier when the Hindu Widows' Re-Marriage Act, 1856 (hereinafter referred to as the 'Act of 1856') was in force, under Section 2 of the said Act in case of re-marriage any right to the property inherited or succeeded from the husband would have ceased and determined as if she had then died, but the Act of 1856 has already been repealed by Act No.24 of 1983 with effect from 31st August, 1983. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of **Cherotte**

Sugathan (Dead) through LRS. & Ors. Vs. Cherotte Bharathi & Ors. reported in **(2008) 2 SCC 610** to submit that once a right has been vested in the widow in the estate of her husband by dying intestate, the subsequent marriage conducted by the widow would not take away the vested right of her to receive the half of the policy proceeds in the facts of the present case. Learned counsel has also relied upon a Division Bench judgment of this Court in the case of **Jagdish Mahton VS. Mohammad Elahi & Ors.** reported in **AIR 1973 Patna 170**.

3. It is further submitted that Section 39 of the Insurance Act, 1938 does not vest any beneficial interest in the nominee as the nomination is always subject to the law of succession. In this connection he has relied upon a judgment of the Hon'ble Supreme Court in the case of Smt. Sarbati Devi & Anr. V. Smt. Usha Devi reported in AIR 1984 SC 346=1984 BBCJ 26. Learned counsel has further relied upon a judgment of the Hon'ble Apex Court in the case of Shipra Sengupta Vs. Mridul Sengupta & Ors. reported in 2010(2) PLJR SC 1= (2009) 10 SCC 680.

4. The writ application has been opposed by respondent no.5. In her counter affidavit she has admitted that on 22.04.2015 her son had solemnized marriage with the

petitioner. It is however contended that her son had never changed the nomination in the policy. The grievance of respondent no.5 is that after death of her son, the petitioner has performed second marriage with another person and is living separately. Some further allegations have been made that the petitioner is torturing respondent no.5 and has taken away all the articles etc. for which the a police case is registered with the Mahila P.S. This Court finds that those are not at all relevant for the purpose of present case.

5. The respondent no.5 has filed an affidavit stating that if the respondent no.5 is allowed to receive the entire death claim, she will keep 50% of the amount in safe fixed deposit subject to result of the case in which the entitlement of the petitioner to receive 50% of the death proceeds may be adjudicated. The contention is that the entitlement of the petitioner may be declared by only a competent civil court, hence, for the present no interference is required to be made at the instance of the petitioner as the respondent no.5 may receive the amount and can give a good discharge to the insurer.

Consideration

6. In the facts of the present case the question which has arisen for consideration before this Court is as to whether on

the admitted facts that this petitioner has re-married after death of her husband, she would be entitled to receive half of the death claim proceeds or not.

Case-laws on the legal status of a Nominee under Section 39 of the Insurance Act, 1938

7. In order to answer the aforesaid issue, this Court would first take note of the settled legal position with regard to a nomination under Section 39 of the Insurance Act. In the case of Smt. Sarbati Devi (supra) was considering a question as to whether a nominee under Section 39 of the Act gets an absolute right to the amount due under the life insurance policy on the death of the assured. Paragraphs 3, 5, 8 and 12 are quoted hereunder for a ready reference:-

> "**3.** The only question which requires to be decided in this case is whether a nominee under Section 39 of the Act gets an absolute right to the amount due under a life insurance policy on the death of the assured. Section 39 of the Act reads:
>
> "39. *Nomination by policy-holder.*—(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:
>
> Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.
>
> (2) Any such nomination in order to be

effectual shall unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement, or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his

heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section the said Section 6 shall be deemed not to apply or not to have applied to the policy."

5. We shall now proceed to analyse the provisions of Section 39 of the Act. The said section provides that a holder of a policy of life insurance on his own life may when effecting the policy or at any time before the policy matures for payment nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. If the nominee is a minor, the policy-holder may appoint any person to receive the money in the event of his death during the minority of the nominee. That means that if the policy-holder is alive when the policy matures for payment he alone will receive payment of the money due under the policy and not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or changed, but before such cancellation or change is notified to the insurer if he makes the payment bona fide to the nominee already registered with him, the

insurer gets a valid discharge. Such power of cancellation of or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned under Section 38 of the Act, the nomination automatically lapses. If the nominee or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to sub-section (7) of Section 39 of the Act here. But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy-holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy-holder. If that is so, on the death of the policy-holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a 'statutory testament' in para 16 of the decision of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . If Section 39 of the Act is contrasted with Section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. It is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules

governing the testamentary succession is not relaxed even where wills are registered.

8. We have carefully gone through the judgment of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . In this case the High Court of Delhi clearly came to the conclusion that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring up only on the death of the assured. The Delhi High Court having reached that conclusion did not proceed to examine the possibility of an existence of a conflict between the law of succession and the right of the nominee under Section 39 of the Act arising on the death of the assured and in that event which would prevail. We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law. The second error committed by the Delhi High Court in this case is the reliance placed by it on the effect of the amendment of Section 60(1)(*kb*) of the Code of Civil Procedure, 1908 providing that all moneys payable under a policy of insurance on the life of the judgment debtor shall be exempt from attachment by his creditors. The High Court equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all 'plus and minus points'. We find it difficult to treat a nominee as being equivalent to an heir or legatee having regard to the clear provisions of Section 39 of the Act. The exemption of the moneys payable under a life insurance policy under the amended Section 60 of the Code of Civil Procedure instead of 'devaluing' the earlier decisions which upheld the right of a creditor of the estate of the assured to attach

the amount payable under the life insurance policy recognises such a right in such creditor which he could have exercised but for the amendment. It is because it was attached the Code of Civil Procedure exempted it from attachment in furtherance of the policy of Parliament in making the amendment. The Delhi High Court has committed another error in appreciating the two decisions of the Madras High Court in *Karuppa Gounder* v. *Palaniamma* [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] and in *B.M. Mundkur* v. *Life Insurance Corporation of India* [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . The relevant part of the decision of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] reads thus: (AIR p. 40, paras 10, 11)

> "10. In *Karuppa Gounder* v. *Palaniamma* [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] , *K* had nominated his wife in the insurance policy. *K* died. It was held that in virtue of the nomination, the mother of *K* was not entitled to any portion of the insurance amount.

11. I am in respectful agreement with these views, because they accord with the law and reason. They are supported by Section 44(2) of the Act. It provides that the commission payable to an insurance agent shall after his death, continue to be payable to his heirs, but if the agent had nominated any person the commission shall be paid to the person so nominated. It cannot be contended that the nominee under Section 44 will receive the money not as owner but as an agent on behalf of someone else, vide *B.M. Mundkur* v. *Life Insurance Corporation* [AIR 1977

Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . Thus, the nominee excludes the legal heirs."

12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in *Fauza Singh case* [AIR 1978 Del 276] and in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the

> insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

8. The aforesaid judgment has been relied upon by the Hon'ble Supreme Court in the case of Shipra Sen Gupta. Paragraphs 17, 18 and 19 of the judgment of the Hon'ble Apex Court in the case of Shipra Sen Gupta are quoted hereunder for a ready reference:-

> **"17.** The controversy involved in the instant case is no longer res integra. The nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession. In terms of the factual foundation laid in the present case, the deceased died on 8-11-1990 leaving behind his mother and widow as his only heirs and legal representatives entitled to succeed. Therefore, on the day when the right of succession opened, the appellant, his widow became entitled to one-half of the amount of the general provident fund, the other half going to the mother and on her death, the other surviving son getting the same.
>
> **18.** In view of the clear legal position, it is made abundantly clear that the amount under any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with the law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case the amounts so received are to be distributed according to the Hindu Succession Act, 1956.

> **19.** State Bank of India is directed to release half of the amount of the general provident fund to the appellant now within two months from today along with interest. The appeal filed by the appellant is accordingly allowed and disposed of, leaving the parties to bear their own costs."

Law Commission's Report on necessity to repeal the Act of 1856.

9. Learned counsel for the petitioner has placed before this Court the 81st Report of the Law Commission of India on the Hindu Widows Remarriage Act, 1856. The Law Commission has taken a view that after enactment of (1) The Hindu Marriage Act, 1955; (2) The Hindu Succession Act, 1956; (3) The Hindu Minority and Guardianship Act, 1956; and (4) The Hindu Adoption and Maintenance Act, 1956, the subject matter of the Act of 1856 has been fully covered and these Acts override all the rules of Hindu Law, custom and usage having the force of law. The Commission, therefore took a view that Act of 1856 has become absolute and is no longer of practical utility and should therefore be repealed. Chapter 2 of the Report which deals with re-marriage, maintenance and succession. It would be beneficial to reproduce the entire Chapter 2 of the Report as under:-

"**CHPATER 2**

RE-MARRIAGE, MAINTENANCE AND SUCCESSION

"2.1. The Act of 1856 is an Act removing all legal obstacles to the marriage of Hindu widows[1]. It was enacted because, as the first paragraph of the preamble to the Act stated in 1856, Hindu widows, with certain exceptions were, by reason of their having once married, held to be incapable of contracting a second valid marriage and the offsprings of such widows by any second marriage were held to be illegitimate and incapable of inheriting property. The object of the Act, as marrated in the third paragraph of the preamble to the Act, was to "relieve all such Hindus from this legal incapacity of which they complained[2] and the removal of all legal obstacles to the marriage of Hindu widows".

2.2. The Act, therefore, first removed the disability under which Hindu widows had been suffering and allowed them to re-marry by providing in section 1, "no marriage contracted between Hindus shall be invalid and the issue of no such marriage shall be illegitimate, by reason of the woman having been "previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding".

2.3. This section renders the re-marriage of a widow valid and secures the legitimacy of children. But in view of section *5(i)* of the Hindu Marriage Act, 1955 which provides that a marriage may be solemnised between[3] any two Hindus if neihter party has a spouse living at the time of the marriage, the special provision contained in section 1 of the Act of 1856 is not now necessary. Clause *(i)* of section 5 permits a widow to re-marry, as her spouse is not living at the time of marriage. Under this

1. C'f: Peacock C. J. in *Akora Suth v..liorcani,* (1868) 2 13.L.R. 199, 205.

2.See Appendix for historical background.

3. Section 5(i), Hindu Marriage Act. 1955.

clause, all that is necessary is that the woman intending to marry or re-marry must not have a spouse living at the time of the marriage; it makes no difference whatsoever whether she was or she was not betrothed to another person at the time of the marriage. Section 1 of the Act of 1856 has thus become *otiose* and should be repealed.

2.4. Indeed, it has been impliedly repealed by section 4 of the Hindu Marriage Act, 1955 which runs thus :—

"4. Save as otherwise expressly provided in this Act, –

(a). any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b). any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

This section gives overriding application to the provisions of the Hindu Marriage Act and in respect of any of the matters dealt with in the said Act, it makes ineffective all existing laws whether in the shape of an enactment or otherwise which are inconsistent with the Act. The necessary implication of section 4 of the Hindu Marriage Act is that in effect Section 1 of the Act of 1856 has been repealed. An express repeal of the provision is, however, desirable.

2.5. Next, turning to section 2 of the Act of 1856, it is as follows :—

"2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a

limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same".

2.6. This section deals with *(a)* maintenance, *(b)* intestate succession, and *(c)* testamentary succession.

As to maintenance, the widow on re-marriage loses all rights and interests she may *have* in her deceased husband's property by way of maintenance. The forfeiture of the widow's right to be maintained out of the estate of her first husband follows also from sections 19 and 22 of the Hindu Adoptions and Maintenance Act, 1956, which, in chapter 3, contains the law of maintenance applicable to Hindus[1]. Under section *19, a* widow can claim maintenance from her father-in-law, but this obligation of the father-in-law ceases if the widow re-marries. Section 21 of that Act includes, in the definition of the word "dependants", a widow so long as she does not re-marry. Section 22 of that Act lays down rules relating to the right of dependants to be maintained, by the heirs of a deceased Hindu and others, who have inherited the estate of such deceased person. That Act also contains a provision, namely, section 4, giving overriding application to the provisions of the Act. The effect of section 4 is that it renders ineffective all existing laws in respect of any of the matters dealt with in the Hindu Adoptions and Maintenance Act, 1956. That being so, section 2 of the Act of 1856, in so far as it deals with the forfeiture of the rights and interests which a widow may have in her deceased husband's property by way of maintenance, must give way to sections 19, 21 and 22 of the Maintenance Act, 1956. It now serves no useful purpose.

2.7. Section 2 of the Act of 1856 speaks

1. Sections 4, 19,1121 and 22, Hindu Adoptions and Maintenance Act, 1956.

also of the forfeiture, on the re-marriage of a widow, of her rights and interests in her husband's estate. A widow who succeeds to the property of her deceased husband under section 8 of the Hindu Succession Act, 1956, is under section 14 of that Act, full owner thereof[2] There is no provision in the Hindu Succession Act enacting that on re-marriage a widow is divested of the estate inherited from her husband. *If,* therefore, section 2 of the Act of 1856 is read as applying to a widow having an absolute estate, it would be repugnant to the Hindu Succession Act[3].

2.8. Several High Courts[4] have taken the view that section 2 of the Act of 1856 has no application to an absolute estate.

Further, it has been. held[5] that once a widow succeeds to the property and acquires an absolute right under the Act of 1956, she cannot be divested of that right on her re-marriage.

2.9. Some differences have arisen amongst writers on the subject. The matter has been put thus in Mulla[6].

"Re-marriage of a widow, is not now under the Act a ground for divesting the estate inherited by her from her husband. The Hindu Widows Re-marriage Act, 1856, though it legalised the re-marriage 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*[7] or interest in her

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2(a) Pzmithavalli Animal v. Ramalingam. A.I.R. 1970 S.C. 1730.
(b) Kasturi Devi v. Dy. Director of Consolidation, A.I.R. 1976 S.C. 2595.
'3.Pandurang Narayan v. Sindhu, A.1.R. 1971 Born. 413 (Chandrachud & Malvankar D.)
4.(a) Ram Piari v. Board of Revenue, A.I.R. 1972 All. 492.
(b)Pandurang Narayan v. Sindhu, A.I.R. 1971 Born. 413, 415, para 10.
(c)Sasanka Bhowmick v. Amiya, (1973) 78 C.W.N. 1011, 1020.
(d)Sankaribala v. Asita Barani, A.I.R. 1977 Cal. 289, 292.
(e)Lakshmi Amoral v. Thangaavel Asari, A.I.R. 1957 Mad. 534.
(f)Jagdish Mahton v. Mohammad Maki, A.I.R. 1973 Pat. 170.
(g)Smt. Bhuri Bai v. Sntt. Champi Bai, A.I.R. 1968 Raj. 139.
6.Jagdish Mahton v. Mohammad Elahi, A.I.R. 1973 Pat. 170 (D.B.)
7. Mulla's Hindu Law (14th edition, 1974) page 869.
'Emphasis added.

husband's property that may devolve on her by succession under the present section. Her re-marriage, 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 Widows Re-marriage Act, 1856 is not replealed but section 4 of the present Act in effect abrogates the operation of that Act in the case of a widow who succeeds to the property of her husband under the present section and section 14 has the effect of vesting in her that interest or share in her husband's property as full owner of the same."

A different view has, however, been expressed by Gupte[1]. According to the learned author, section 2 of the Hindu Widows Re-marriage Act,1856 has not been abrogated by section[4] of the Hindu Succession Act, 1956; that "although section 2 of the Hindu Widows Re-marriage Act, 1856 was drafted at a time when a widow succeeding to her husband's or to his lineal successor took only a limited estate, the language of that section is capable of applying to a widow having an absolute estate". He further states "it is however still possible to *urge as* a matter of construction of section 2 of the Hindu Widows Re-marriage Act that she would forfeit her estate, "though full, especially, *as that Act has not been repealed*[2]. If an estate is liable to forfeiture, it should make no difference whether the estate is converted into a full estate by section 14 or not. Any estate either absolute or limited may in law still be liable to forefeiture in certain circumstances and situations by an independent rule such as the rule in section 2 of the Hindu Widows Re-marriage Act which has not been repealed."

2.10. It is not necessary to enter into a controversy whether section 2 of the Act of 1856 Need for has been abrogated by the

1.Gupte, Hindu Law of Succession (1972), pages 457-458.
2.Emphasis added.

Hindu Succession Act[3], or whether section 2 applies to a widow having an absolute estate. If section 2 has not been abrogated and applies to a widow having as an absolute estate, then a *fortiori* it must be expressly repealed. It cannot be allowed to stand so as to give the anachronic result of the divestiture, on the re-marriage of a widow, of the estate devolving on her by succession under the Hindu Succession Act, 1956. The repeal of the section would set at rest whatever conflict of opinion has arisen[4] on the construction of the section and its applicability to a widow having an absolute estate.

2.11. It may be noted that the repeal of section 2 as recommended above[5] will in no way affect the operation of section 24 of the Hindu Succession Act[6] which disqualifies the widow of a predeceased son or the widow of a predeceased son of a predeceased son or the widow of a brother, from succeeding to the property of an intestate as such a widow, if, on the date the succession opens, she has remarried. That provision will continue to apply to cases falling within its scope.

2.12. In regard to the application of section 2 to testamentary dispositions, we may note that section 30 of the Hindu Succession Act provides that any Hindu may dispose of, by will or other testamentary disposition, any property in accordance with the provisions of the *Indian Succession Act*, 1925 or any other law for the time being in force applicable to Hindus. Disabilities in regard to such dispositions would therefore be governed by the Indian Succession Act[7], or other law where applicable and unless a will specifically provides for forfeiture of a bequest on re-marriage, there would be no statutory forfeiture of the bequest. This part of section 2 of 1856 Act is, therefore, not in keeping with the Indian Succession

3. Para 2.8, supra, See also Harabati v. Sasadhar, A.I.R. 1977 Orissa 142.
4. See para 2.9, supra.
5. Para 2. 10 supra.
6. Section 24, Hindu Succession Act, 1956.
7. Cfo Section 74, Indian Succession Act, 1925.

> Act and should be scrapped.
> 2.13. The foregoing discussion makes it clear that the whole of section 2 of the Hindu Widows Re-marriage Act should be repealed.

10. After the aforesaid report was submitted the Act of 1856 has been repealed vide Hindu Widows Re-marriage Act, 1856 (Act No.24 of 1983). Even prior to repeal of the Act of 1856, a Division Bench of this Hon'ble Court had occasion to consider the effect of Section 14 of the Hindu Succession Act, 1956 on Section 2 of the Act of 1856. The Hon'ble Division Bench held that Section 2 of the Act of 1856 will be in consistent with Section 14 of the Act of 1856 and, therefore, in valid to the extent of in consistency by virtue of Section 4(1)(b) of the Act of 1856. The paragraphs 16 and 17 of the judgment ofthe Hon'ble Division Bench in the case of Jagdish Mahto are quoted hereunder for a ready reference:-

> "16**.** I am in entire agreement with my learned Brother Mukharji, J., that Section 2 of the Hindu Widows' Re-marriage Act is inconsistent with Section 14 of the Hindu Succession Act, and, therefore, in cases, where a Hindu widow gets absolute right by inheritance in her husband's property, she cannot be divested of that right by virtue of Section 2 of the Hindu Widows' Re-marriage Act in my opinion, Section 2 aforesaid merely divests a Hindu widow on re-marriage of limited interest held by her. It has been expressly so stated with regard to her husband's property coming to her by virtue of

any Will or testamentary disposition. If the interest conferred upon her in her husband's property by virtue of will or testamentary disposition is not limited but absolute, the section has got no application. It appears that the section has also got no application where she gets her deceased husband's property by virtue of a non-testamentary disposition. Rights and interest acquired by her in her husband's property by inheritance to her husband or to his lineal successors were limited interest before the passing of the Hindu Succession Act Rights and interest acquired by her in her deceased husband's property by way of maintenance except by a grant conferring upon her absolute right were also a limited interest. In view of the fact that the section was not made applicable to her deceased husband's properly coming through non-testamentary disposition, it is doubtful whether the property given to her by way of maintenance by a grant conferring absolute right on her could be divested on her remarriage. For the purpose of decision of the appeal, that point need not be examined in any further detail and, be that as it may, ordinarily Section 2 of the Hindu Widows' Remarriage Act was not intended to apply to cases where a widow acquired an absolute interest in her deceased husband's property.

17. After the passing of the Hindu Succession Act, by virtue of Section 14 of that Act, a widow gets an absolute interest in her deceased husband's property possessed by her. If Section 2 of the Hindu Widows' Re-marriage Act was to apply to cases where a Hindu widow has got an absolute interest in her deceased husband's property, that will be inconsistent with the provisions of the Hindu Succession Act and, therefore, invalid to the extent of inconsistency by virtue of the provisions of Section 4(1)(b) of the Hindu

Succession Act. Learned Counsel for the appellant placed reliance on Section 15 of the Hindu Succession Act according to which, in absence of the heirs expressly mentioned in clause (a) of sub-section (1), the property inherited by a female Hindu from or father or mother was on her dying intestate to devolve on the heirs of her father while the property inherited by a female Hindu from her husband was to devolve upon the heirs of the husband. According to him, this showed that the intention of the makers of the Hindu Succession Act was that the property in the hands of a Hindu female should not go out of the hands of the branch to which it originally belonged. Section 15 applies only to cases where a female Hindu dies intestate.

It impliedly shows that she has been given full power in respect of the property possessed by her, be that of hen father or mother or of her husband, to give it to any one she likes by a testamentary or non-testamentary disposition. It cannot, therefore, be said that the framero of the Hindu Succession Act intended to divest a Hindu female of absolute right acquired by her in case of re-marriage or any other contingency. Section 23 of the Hindu Succession Act imposes some restriction on the power of a Hindu widow in respect of dwelling houses. Section 24 debars the widow of a pre-deceased son, widow of a pre-deceased son of a pre-deceased son or the widow of a brother from succession to the property of a Hindu dying intestate as such widow, if on the date the succession opens, she has re-married. Had the framero of the Act intended to divest a Hindu widow of the property inherited by her and possessed by her on ground of re-marriage, they would have made specific provisions for that in the Act itself. Sections 25 and 26 of the said Act also make provisions

> which are applicable to both males and females debarring them from succession or inheritance in certain cases and, thereafter, comes Section 28 which says that no person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity or save as provided in the Act on any other ground whatsoever. In my opinion, therefore, it is manifest from the provisions of the Act that the framers thereof never intended to divest a Hindu Widow of her interest in her deceased husband's property on the ground of remarriage and Section 2 of the Hindu Widows' Re-marriage Act is inconsistent with the provisions of the Act. This view is directly supported by a Bench decision of the Madras High Court in AIR 1971 Mad 433 and impliedly supported by the decision of the Supreme Court in (1970) 1 SCC 570 : AIR 1970 SC 1730 wherein it has been held that the estate taken by a Hindu widow under Section 14(1) of the Hindu Succession Act is not defeasible by the subsequent adoption made by her to he? deceased husband. My learned Brotheo Mukherji, J., has already referred to these two decisions and I need not refer to them in any further detail."

Case-laws on the Right of a Widow upon re-marriage

11. In the case of Cherotte Sugathan (Dead) through LRS. & Ors. (supra), the Hon'ble Supreme Court was considering the case of the first respondent who was a widow had remarried one Elambilakkat Sudhakaran. Sudhakaran died on 12.09.1979. She filed a suit on 31.12.1985 for partition claiming 1/3rd share in the suit property. A plea was raised that in terms of Section 2 of the Act of 1856, the plaintiff would

cease to have any right in the property inherited by her from her husband Sukumaran. Let it be clarified that the plaintiff had first married to Sukumaran who had died on 02.08.1976 and after his death she had married to Sudhakaran who died on 12.09.1979. In the aforesaid context while dealing with the law on the subject, the Hon'ble Apex Court took note of the case laws on the subject in paragraph 14 and 15 and agreed with the same. In paragraph 14 and 15 of the judgment in Cherotte Sugathan (supra) are quoted hereunder for a ready reference:-

> "**14.** The question posed before us is no longer res integra. In *Chando Mahtain* v. *Khublal Mahto* [AIR 1983 Pat 33] the Patna High Court opined: (AIR p. 34, para 6)
> "*6*. … The Hindu Widows' Re-marriage Act, 1856 has not been repealed by the Hindu Succession Act, 1956 but Section 4 of the latter Act has an overriding effect and in effect abrogates the operation of the Hindu Widows' Re-marriage Act, 1856. According to Section 4 of the Hindu Succession Act all existing laws whether in the shape of enactments or otherwise shall cease to apply to Hindus insofar as they are inconsistent with any of the provisions contained in this Act."
> **15.** In *Kasturi Devi* v. *Dy. Director of Consolidation* [(1976) 4 SCC 674 : AIR 1976 SC 2595] this Court categorically held that a mother cannot be divested of her interest in the deceased son's property either on the ground of unchastity or remarriage."

Conclusion and Direction

12. From the aforementioned discussions, it is crystal clear that by virtue of the nomination under Section 39 of the Insurance Act, 1938, the respondent no.5 in the present case cannot claim 100% of the death claim proceeds, in fact she has not questioned the status of the petitioner as a widow of her son and therefore this Court would have no difficulty in coming to a conclusion that both the petitioner as well as the respondent no.5 are class-I legal heirs under the Hindu Succession Act, 1956. The succession in the present case was opened on 22.06.2017 when the life assured died. By virtue of Section 14 of the Act of 1956, therefore, the petitioner became entitled to receive the death claim proceeds arising out of the death of the life assured, simultaneously with her mother in law (respondent no.5) who is another class-I legal heir under the Act of 1956. Once this right has vested with the petitioner, she cannot be divested of her right to receive the proceeds equally with her mother-in-law, even though after death of life assured the petitioner has gone for a remarriage. The law on succession and the nomination being well settled, this Court allows the writ application and directs the LIC of India and its authorities to pay the entire proceeds to the petitioner as well as respondent no.5

by dividing the same equally between the two of them after getting due discharge.

13. Let it be recorded that the learned counsel for the Life Insurance Corporation of India has not disputed the claim and has submitted that the LIC would be abide by the orders of this Court. Let the entire payments be made within a period of thirty days from the date of receipt/production of a copy of this order.

(Rajeev Ranjan Prasad, J).

arvind/-

AFR/NAFR	AFR
CAV DATE	16.09.2019
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