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HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 496 of 2014

{Arising out of judgment and decree dated 7-11-2014 in Civil Appeal No.35A/2014 of the Additional District Judge, Uttar Bastar Kanker}

Judgment reserved on: 21-9-2026

Judgment delivered on: 13-10-2026

Judgment (Full) uploaded on: 13-10-2026

Jagdish (**Dead**) Through LRs

(Defendant)

1a Kheminbai, aged about 40 years, W/o Late Jagdish.

1b Seema, aged about 26 years, D/o Jagdish

1c Hasina, aged about 22 years, D/o Jagdish

1d Sanjit, aged about 20 years, S/o Jagdish.

1e Pinki, aged about 13 years, D/o Jagdish

1f Sahil, aged about 7 years, S/o Jagdish

1e and f being minor through mother Kheminbai, aged about 40 years, W/o Jagdish.

All R/o Village Kanharpuri, Thana and Tahsil U.B. Kanker.

... Appellants

versus

1. Amila Bai, aged about 40 years, W/o Tularam, By Caste Gond, R/o Kanharpuri, Tahsil Kanker, Distt. U.B. Kanker
(Plaintiff)

2. The State of Chhattisgarh through Collector, Distt. U.B. Kanker
... Respondents

For Appellants : Mr. Parag Kotecha, Advocate.
For Respondent No.1 : Mr. D.N. Prajapati, Advocate.
For Respondent No.2 : Mrs. Shubha Shrivastava, Panel Lawyer.

Single Bench: -
Hon'ble Smt. Sushma Sawant, J.

C.A.V. Judgment

1. Invoking the appellate jurisdiction of this Court under Section 100 of the Code of Civil Procedure, 1908, the appellants herein/legal heirs of the original defendant have preferred this appeal challenging the judgment & decree dated **7-11-2014** passed by the **First Appellate Court** Additional District Judge, Uttar Bastar Kanker in **Civil Appeal No.35A/2014**, arising out of judgment & decree dated **17-7-2009** passed by the **Trial Court** Civil Judge Class-I, Uttar Bastar Kanker in **Civil Suit No.3A/2005**, by which the Trial Court has dismissed the suit for declaration and possession, finding no merit.
2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Trial Court.)

Factual Matrix

:-Case of the Plaintiff/Respondent No.1 herein before the
Trial Court:-

3. It is the case of the **/respondent/plaintiff No.1 Amila** herein that **21 acres of agricultural land** was recorded in the name of **Biju Gond** at Village Kanharpuri. Biju Gond died approximately **40 years ago**.

(SA No.496/2014)

After his death, the aforesaid property was divided equally amongst his **five sons**, and they continued to remain in possession and cultivation of their respective shares. One of the sons of Biju Gond, namely **Manher**, was issue-less. After his death, the agricultural land falling to his share was recorded in the name of his widow **Dukhiya Bai**. The particulars of the said land are as follows:

Khasra No.	Area	Land Revenue
887/6	0.16	—
912/1	0.04	—
1158/3	0.12	—
1150/2	0.11	3.25
1534/4	0.60	—
1582	0.04	—
1548/4	0.50	—
Total-7	1.57	3.25 paisa

*(For the sake of convenience, the aforesaid land shall hereinafter be referred to as the “**suit land**”.)*

4. The further pleading of the respondent/plaintiff before the Trial Court was that, the both parties belong to the **Gond community**. According to the custom applicable to their community, both sons and daughters have equal rights in ancestral property. The respondent/plaintiff Amila is the daughter of **Mahru**, who was a son of deceased **Biju Gond**. The two brothers of deceased **Mahru**, namely **Faguram and Manher**, died issue-less. The name of **Dukhiya Bai**, widow of Manher, was recorded over the land falling to **Manher's** share. None of the three sons of Biju Gond, namely **Fagu, Manher and Mahru**, had any male

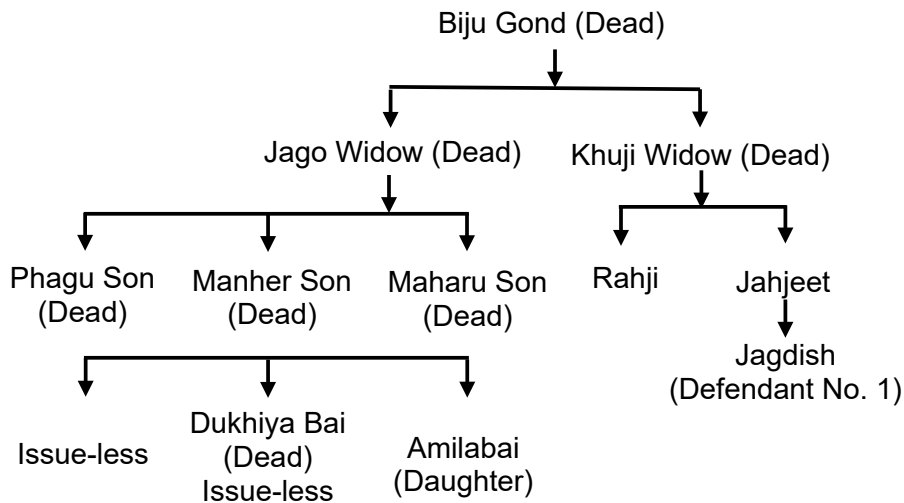
issue. Therefore, the plaintiff, being the daughter of **Mahru**, claims to have the **sole title/right over the property of Dukhiya Bai**.

5. It is alleged that the **original defendant No. 1**, after the death of Dukhiya Bai in the year **1997**, got his name mutated on the basis of a Will, without the knowledge of the respondent/plaintiff. According to the respondent/plaintiff, such mutation is illegal. It is further stated that the **original defendant No.1** had already obtained the share/property of the sons of **Khuji**, the second wife of Biju Gond.
6. The **Naib Tahsildar** passed mutation order dated **27-7-2000**. Against the said order, the original defendant No.1 preferred an appeal before the Court of the **Sub-Divisional Officer, Kanker**. In the said appeal, an order dated **28-6-2001** was passed directing that the matter be adjudicated by the Civil Court. Therefore, the respondent/plaintiff instituted a suit against the original defendant **Jagdish** seeking a declaration of her **title/right over the suit land**; seeking a declaration that the mutation in favour of the **original defendant No.1** is **illegal**; and further seeking recovery of possession from defendant No.1, if the respondent/plaintiff is found not to be in possession of the suit land.

-: Written Statement of Original Defendant No.1 – Jagdish
before the Trial Court :-

7. It is necessary to mention here that **original defendant No.1 Jagdish** has since died, and his legal representatives are on record as appellants.

8. **Original defendant No.1 Jagdish** has filed his written statement demonstrating the genealogy of the parties in the following manner: -



9. The original defendant No. 1 has stated in his written statement that he is the son of **Jahjit**, who was the son of **Khuji**; thus, he is the grandson of Khuji Gond. According to the original defendant No.1, in the **Gond community, daughters do not have any right of succession in the property of their father**. After the death of **Biju Gond**, his property devolved by succession upon his four surviving sons, namely **Manher, Mahru, Rahji and Jahjit**. The said four persons partitioned the property and remained in possession and cultivation of their respective shares. **Manher and Dukhiya Bai were issue-less**. They had kept defendant No. 1 with them. On **1-1-1994**, Dukhiya got the name of defendant No.1 recorded as a **sah khatadhari** over her agricultural land. On **20-11-1990**, Dukhiya executed a **Will in favour of defendant No.1**. The name of defendant No.1 was recorded over the suit land on **20-8-1997**. The said order has attained finality. Therefore, according to defendant No.1, the suit filed by the plaintiff deserves to be dismissed.

:- Proceedings before the Trial Court :-

10. The Trial Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under:-

S.No.	Questions for Consideration	Finding
1.	क्या वाद ग्रस्त सम्पत्ति पर वादिनी का एक मात्र स्वत्व है ?	"प्रमाणित नहीं"
2.	क्या प्रतिवादी क्रमांक-1 के पक्ष में दुखियाबाई द्वारा निष्पादित वसीयत नामा अवैध है ?	"प्रमाणित नहीं"
3.	क्या वादग्रस्त भूमि का कब्जा प्रतिवादी क्र.1 से वादिनी को दिलाया जा सकता है ?	"प्रमाणित नहीं"
4.	क्या वाद अवधि में है ?	"प्रमाणित नहीं"
5.	सहायता एवं वाद व्यय ?	निर्णय की अंतिम कंडिका के अनुसार

:- Evidence adduced before the Trial Court:-**Evidence led by the Plaintiff:-**

11. Before the learned Trial Court, the plaintiff has examined herself as **Amila Bai (PW-1)**, **Jadduram (PW-2)** and **Pinjuram (PW-3)** in support of her case. In support of her oral testimony, she has produced and exhibited seven documents, which were marked as **Exhibits P-1 to P-7**.

Evidence led by the Original Defendant:-

12. The original defendant in support of his case has examined himself as **Jagdish (DW-1)**, **Prabhuram (DW-2)** and **Samaram (DW-3)**. In support of his oral testimony, he has produced and exhibited six documents, which were marked as **Exhibits D-1 to D-6**.

Judgment of the Trial Court:-

13. Parties were given opportunity to adduce evidence and after completion of trial, the learned Trial Court vide judgment & decree dated 17-7-2009 **dismissed the suit on the ground that the plaintiff had failed to prove her case by leading cogent and reliable evidence.**

∴ Finding of the First Appellate Court/Impugned Judgment ∴

14. Being aggrieved by the judgment & decree dated 17-7-2009 passed by the Trial Court in Civil Suit No.3A/2005 (Amila Bai v. Jagdish and another) dismissing the suit, the plaintiff has filed appeal **(Civil Appeal No.35A/2014 – Amila Bai v. Jagdish and another)** before the First Appellate Court.
15. The learned First Appellate Court, upon consideration of the evidence and material available on record, while partly allowing the appeal, reversed the judgment and decree passed by the learned Trial Court and held that the **respondent/plaintiff Amila is entitled for ½ share** over the suit land along with the original defendant No.1.

∴ Proceedings before the Second Appellate Court:-

∴ Substantial Questions of Law ∴

16. This second appeal preferred by the original defendant/appellants herein was admitted on the following substantial questions of law:

“(i) Whether the learned Appellate Court was right in reversing the well considered judgment and decree of the learned Trial Court?

(ii) Whether the learned Appellate Court failed to consider that there is specific bar to the applicability

of Hindu Succession Act, 1956 as per Section 2 sub-section 2?”

17. Having heard learned counsel for the parties and upon perusal of the record, this Court proceeds to examine the substantial questions of law involved in the present appeal.

-: Submissions of the Appellants herein :-

18. Mr. Parag Kotecha, learned counsel for the appellants, referring to the grounds raised in the memorandum of appeal, has advanced detailed submissions contending that both the parties belong to the “**Gond Tribe**” community and, therefore, the provisions of the Hindu Succession Act, 1956 are not applicable to them. It is also submitted that the learned First Appellate Court, while deciding the appeal, failed to consider the specific exclusion contained in **Section 2 sub-section (2) of the Hindu Succession Act** and proceeded to adjudicate the rights of the parties by applying the provisions of the said Act.

19. It is further contended by learned counsel for the appellants that, in view of the statutory mandate contained in Section 2 sub-section (2) of the Hindu Succession Act having been overlooked, the impugned judgment and decree passed by the learned First Appellate Court cannot be sustained in law and are liable to be set aside.

-: Submissions of Respondent No.1 herein/Plaintiff :-

20. Per contra, Mr. D.N. Prajapati, learned counsel appearing for respondent No.1 herein/plaintiff, while supporting the judgment and decree passed by the learned First Appellate Court, has submitted that

the same does not suffer from any illegality or infirmity warranting interference in the present appeal. Learned counsel has placed reliance upon the relevant provisions of the **Central Provinces Laws Act, 1875** and contended that the said enactment governs the rights and succession of the parties in the present case. It is, therefore, submitted that the learned First Appellate Court has rightly applied the applicable law while adjudicating the rights of the parties, and the contention of the appellants regarding the applicability of Section 2 sub-section (2) of the Hindu Succession Act, 1956 is misconceived. On the aforesaid basis, learned counsel submits that the appeal deserves to be dismissed.

21. In this regard, reliance has been placed upon the judgments rendered by this Court in the matters of **Mst. Sarwango and others v. Mst. Urchmahin and others**¹ and **Daduram and others v. Bhuri Bai (Died & Deleted) and others**².

22. In addition, respondent No.1 has also placed reliance upon the judgment rendered by the Supreme Court in the matter of **Tirith Kumar and others v. Daduram and others**³, wherein the judgment rendered by this Court in **Daduram and others v. Bhuri Bai and others**, has been affirmed.

¹ AIR 2013 Chhattisgarh 98

² S.A.No.270 of 2003, decided on 6-2-2019

³ Civil Appeal No.13516 of 2024 arising out of SLP (C) No. 21506 of 2019, decided on 19-12-2024

:-Analysis:-

:-Consideration of Substantial Questions of Law (I) and (ii):-

23. Since both the aforesaid substantial questions of law are interconnected, they are being considered together.
24. The core issue which arises for consideration is, whether in view of the exclusion contained in sub-section (2) of Section 2 of the **Hindu Succession Act, 1956**, the provisions of the said Act were applicable to the parties and, consequently, whether the judgment and decree passed by the learned First Appellate Court reversing the judgment of the learned Trial Court, can be sustained?
25. No party has produced any documentary evidence to establish their caste or Scheduled Tribe status. However, from the record of the Trial Court and the submissions advanced by learned counsel for both parties before this Court, it emerges that **appellant/defendant Jagdish** and **respondent/plaintiff Amila Bai** belong to the “**Gond Tribe**” community. It further emerges from the record that neither **respondent/plaintiff Amila Bai** nor **appellant/defendant Jagdish** is a child of **Dukhiya Bai**, the original title-holder of the **suit land**. Rather, both parties are descendants of two brothers of the husband of Dukhiya Bai.
26. As per pleadings of both the parties, there is also no substantial dispute that, after the death of Dukhiya Bai’s husband, “**Manher**”, the suit land came to be inherited by Dukhiya Bai and respondent/plaintiff **Amila Bai** is the daughter of “**Mahru**”, one of Manher’s brothers, whereas

appellant/defendant **Jagdish** is the son of “**Jahjit**”, the other brother of Manher.

27. The real controversy between the parties is confined to the nature and extent of their respective rights therein. **Respondent/plaintiff Amila Bai** claims exclusive title over the suit land, whereas **appellant/defendant Jagdish** contends that Dukhiya Bai, during her old age, was residing with him and had got his name entered in the revenue records in respect of the suit land. It is further pleaded that subsequently, Dukhiya Bai executed a Will in his favour in respect of the suit land.
28. The learned Trial Court, while dismissing the suit filed by **respondent/plaintiff Amila Bai**, did not accept the alleged Will relied upon by **appellant/defendant Jagdish** as having been proved. However, the learned First Appellate Court, merely on the ground that the Will relied upon by **appellant/defendant Jagdish** was not proved, proceeded to hold that **respondent/plaintiff Amila Bai** was entitled to one-half share in the suit land, apparently proceeding on the premise that, in accordance with the principles of natural justice, she was also entitled to a share therein.
29. In this context, it is significant to note that there is no dispute that both the parties belong to the “**Gond Tribe**” community. Therefore, the applicability of Section 2 sub-section (2) of the Hindu Succession Act, 1956 requires consideration. The said provision, in clear terms, provides that:-

“2. Application of Act.—(1) xxx xxx xxx

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.”

30. The Supreme Court, in the matter of **Madhu Kishwar and others v. State of Bihar and others**⁴, has held that the provisions of the Hindu Succession Act do not apply to Scheduled Tribes governed by their customary law. It is, therefore, necessary for a party claiming succession on the basis of a custom to establish the existence and applicability of such custom. In the absence of any established or proved custom governing succession, the succession has to be determined in accordance with the applicable statutory law.
31. In this regard, the judgments rendered by this Court in **Mst. Sarwango** (supra) and **Daduram** (supra) and by the Supreme Court in **Tirith Kumar** (supra), cited **by respondent No.1/plaintiff Amila Bai** before this Court, also indicate the same position.
32. Thus, it is clear that the provisions of the Hindu Succession Act do not apply to members of the Gond Tribe, a position that has also been noted by the First Appellate Court in its judgment. Accordingly, Substantial Question of Law No.(ii) is answered in the affirmative, holding that the provisions of the Hindu Succession Act are not applicable.
33. The aforesaid judgments unequivocally lay down that, in matters of succession, the property of members of a Scheduled Tribe devolves in

⁴ (1996) 5 SCC 125

accordance with their customary law and, in the absence of an applicable custom, the matter is governed by the provisions of the **Central Provinces Laws Act, 1875**. The relevant provision of the aforesaid Act are reproduced herein-below:

“5. Rule of decision in cases of certain classes.-

In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption guardianship, minority, bastardy, family relations wills, legacies, gifts, partitions or any religious usage or institution, the rule of decision shall be the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, except in so far as such law has been by legislative enactment altered or abolished, or is opposed to the provisions of this Act:

Provided that when among any class or body of persons or among the members of any family any custom prevails which is inconsistent the law applicable between such persons under this section, and which, if not inconsistent with such law, would have been given effect to as legally binding, such custom shall, notwithstanding anything herein contained, be given effect to.

6. Rules in cases not expressly provided for.-

In cases not provided for by section 5, or by any other law for the time being in force, the Courts shall act according to justice equity and good conscience.”

34. Even if the matter is examined in the light of the submissions advanced by respondent No.1/plaintiff and the judicial precedents relied upon, it is particularly noteworthy that **respondent No.1/plaintiff Amila Bai** was required to establish that, under the customary law governing their community, the property of a paternal aunt (Dukhiya Bai) devolves upon her niece (respondent No.1/plaintiff). It was, therefore,

incumbent upon respondent No.1/plaintiff to plead and prove the existence of such a custom prevailing in their community.

35. The learned First Appellate Court, merely on the ground that the Will relied upon by original defendant No.1 Jagdish was not proved, proceeded to hold that one-half share in the suit land devolved upon respondent No.1/plaintiff Amila Bai. In doing so, the learned First Appellate Court disregarded the applicable statutory provisions and arrived at a conclusion unsupported by a proper determination of the rights of the parties. It neither examined the customary law governing succession between the parties nor considered the legal basis on which respondent No.1/plaintiff Amila Bai alone was entitled to claim a share in the suit land.

36. Even if the suit land was not held to belong to **appellant/defendant Jagdish** under the alleged Will, it was necessary to examine the manner in which the property inherited by **Dukhiya Bai** from her husband devolved and whether the other brothers of her husband, or their respective successors, also had any subsisting rights therein. The learned First Appellate Court failed to undertake this essential examination before granting **respondent No.1/plaintiff a one-half share in the suit land**. The suit land belonged to **Biju Gond**, and other legal heirs of Biju Gond were also alive. This fact is evident from **paragraph 8** of the cross-examination of **Amila Bai (PW-1)**, wherein she admitted that **Jahji and Rahji** had not asserted any claim in respect of the land of Manher and that she had not impleaded them as

parties to the suit. Thus, the testimony of **Amila Bai (PW-1)** itself clearly indicates the existence of other legal heirs of **Manher** (husband of Dukhiya Bai) who were not impleaded as parties to the suit.

37. Thus, the non-proof of the Will relied upon by the **appellant/defendant**, by itself, could not lead to the conclusion that the suit land necessarily devolved upon **respondent No.1/plaintiff Amila Bai**, daughter of brother of deceased **Dukhiya Bai's husband**. The question was required to be examined with reference to the legal position governing succession, including the applicable custom, if any, the other relevant circumstances appearing from the record, and the persons who were necessary parties to the suit.

38. The learned First Appellate Court ought to have first examined whether any such customary rule of succession had been pleaded and established by **respondent No.1/plaintiff Amila Bai**, under which, notwithstanding the existence of other paternal relations of the deceased, including her brothers and their children, the entire interest in the suit land would devolve exclusively upon respondent No.1/plaintiff. However, the learned First Appellate Court failed to consider this aspect of the matter.

39. This was all the more necessary because, from the evidence adduced by both parties, it stands established that the suit land originally belonged to **Biju Gond**, who had five sons. Respondent No.1/plaintiff is the daughter of **Mahru**, one of those sons, whereas original defendant No.1 Jagdish, is the son of **Jahjeet**, another son of Biju Gond, and Dukhiya

Bai was the wife of the third son **Manher**. In such circumstances, the presence of all persons having a potential interest in the suit land was necessary for proper adjudication of the dispute; alternatively, in their absence, specific pleadings were required to explain the basis on which respondent No.1/plaintiff alone was entitled to claim the suit land. However, no such specific pleading is shown to have been made and this material aspect was overlooked by the learned First Appellate Court.

40. In the matter of **Santosh Hazari v. Purushottam Tiwari (deceased) by LRs**⁵, the Supreme Court has held that the judgment of the First Appellate Court must reflect the conscious application of mind and record findings supported by reasons. Where doubt arises as to whether the First Appellate Court has properly discharged its appellate function, such doubt itself may give rise to a substantial question of law. Similarly, in the matter of **Azgar Barid (dead) by Legal Representatives and others v. Mazambi alias Pyaremabi and others**⁶ the Supreme Court has held that a perverse approach adopted by the First Appellate Court in arriving at its findings may give rise to a substantial question of law.

41. In the present case, such infirmity is clearly discernible, as the learned First Appellate Court has reversed the findings of the Trial Court without duly considering the applicable legal requirements and the material aspects of the evidence on record.

⁵ (2001) 3 SCC 179

⁶ (2022) 5 SCC 334

42.The learned First Appellate Court ought to have examined whether **respondent No.1/plaintiff** had discharged her burden of pleading and proving the customary rule of succession and whether all necessary parties had been impleaded, instead of proceeding merely on the non-proof of the Will. Having overlooked these essential legal requirements, the learned First Appellate Court has failed to determine the devolution of the suit land in accordance with law. The impugned judgment, therefore, warrants interference in the present second appeal.

-.Final Conclusion:-

43.In that view of the matter, both the substantial questions of law are answered in favour of the appellants herein/defendants. Consequently, judgment & decree dated **7-11-2014** passed by the **First Appellate Court** Additional District Judge, Uttar Bastar Kanker in **Civil Appeal No.35A/2014**, are hereby set-aside and judgment & decree dated **17-7-2009** passed by the **Trial Court** Civil Judge Class-I, Uttar Bastar Kanker in **Civil Suit No.3A/2005**, are affirmed.

44.In the result, the second appeal stands **allowed**.

45.Decree be drawn-up accordingly.

Sd/-
(Sushma Sawant)
JUDGE