

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No.563 of 2015

1. Biselal Thakur S/o Late Hiralal Thakur, Aged About 61 Years Gond Adivasi, R/o P.H.No. 19/72, Village- Risali, P.O.- Risali, Revenue Division- Durg, Tahsil & District- Durg, Chhattisgarh
2. Tikaram Thakur S/o Late Motilal Thakur, Aged About 54 Years Gond Adivasi, R/o P.H.No. 19/72, Village- Risali, P.O.- Risali, Revenue Division- Durg, Tahsil & District- Durg, Chhattisgarh(Plaintiffs)

---- **Petitioner**

Versus

1. Smt. Motim Bai D/o Late Mukundi Thakur, Aged About 74 Years Housewife, R/o Village- Piperchedi, Tehsil & District- Durg, Chhattisgarh
2. State Of Chhattisgarh, Through: Collector, Durg, Chhattisgarh
(Defendants)

---- **Respondent**

For Appellants	:	Shri B. P. Rao, Advocate
For Respondent/State	:	Shri Ramakant Pandey, Dy.AG

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/01/2016

Heard on admission.

2. Learned counsel for appellants submits that the Courts below have committed gross illegality in dismissing the suit, even though, there is ample and overwhelming evidence on record including various judgments to prove that as per custom in "Gond" tribe, patrilineal succession is valid and the daughters are not entitled to succeed in the parental property. After death of Mukundi and his wife-Barmati, sons to the exclusion of daughters were entitled to succeed to the property, therefore, property legally devolved upon two sons namely Hiralal and Motilal to the exclusion of their sister-defendant- Motim Bai.

3. The Courts below have dismissed the suit of the plaintiff holding that after death of Mukundi, even though, Motim Bai did not claim share in the property, his brothers Hira lal and Motilal have voluntarily given 1/3 share in the property and partitioned also. The respondent-defendant was in possession of the property throughout and no dispute was ever raised by Hiralal and Motilal during their lifetime. The two brothers never took any proceedings to recover possession of the land in dispute from Motim Bai.

4. It was only after death of Hiralal and Motilal, their sons Biselal and Tikaram have filed a suit seeking declaration and injunction against Motim Bai.

5. In view of the aforesaid concurrent finding of fact that the disputed land was voluntarily released by Hiralal and Motilal in favour of his sister, which was never challenged by their sons- Biselal and Tikaram during their lifetime, dismissal of the suit and appeal by the Court below does not warrant any interference.

6. In the result, the appeal is dismissed.

Sd/-
Manindra Mohan Shrivastava
Judge