

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.395 of 2002**

1. Smt. Fekan Bai (died and deleted)
2. Bharat S/o Umend Singh, aged about 35 years (Son);
3. Smt. Durpati Bai W/o Ganga Ram, aged about 37 years (Daughter)
Appellant No.2 and 3 R/o Village Kampa, P.O. Kanhera, Tahsil Bemetara, Distt. Durg (CG)
4. Smt. Saraswati Bai W/o Shri Krishna, aged about 36 years (Daughter) R/o Village Amlidih, P.O. Dhegabhat, Tahsil Nawagarh, Distt. Durg (CG)
5. Smt. Milapa Bai (Died and deleted)

---- Appellants**Versus**

- 1.(A) Sukhdev Dhruw, S/o Late Samodi aged about 55 years, occupation Teacher, R/o Village-Kampa, Tahsil & District Bemetara
- 1.(B) Smt. Shiv Kumari, W/o Vishnu, R/o Village-Kahri, aged about 50 years, Tahsil-Lohara, District-Kawardha (CG)
2. State of Chhattisgarh Through Collector, Durg, District Durg
3. Smt. Radha Bai W/o Amoli Gond, R/o village Kuteli, P.S. Kawardha, Tehsil & Distt. Kawardha (CG)
4. Radhia Bai W/o Sidhha Ram, Agriculturist, R/o village Bamhani, Tehsil & Distt. Kawardha
5. Smt. Bhagvantin Bai W/o Late Lakhan, Aged about 70 years
6. Mani Ram S/o Lakhan, Aged about 28 years,
7. Herau Ram S/o Lakhan, Aged about 18 years,

Respondents No.5 to 7 are residents of village Hirapur, P.S. Piperiya, Tehsil & District Kawardha (Respondent 5 to 7 are the legal representatives of deceased defendant Lakhan)

---- Respondents

For Appellants	:	Mr.P.R.Patankar, Advocate
For Respondent No.1(A):	:	Mr.Amit Sahu, Advocate
For Respondent No.2	:	Mr.Rahul Tamaskar, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

05/12/2018

1. The substantial question of law involved, formulated and to be answered by this Court in this second appeal preferred by legal representatives of defendant No.1 is as under:-

“Whether the learned Courts below were justified in law in holding that in the matter of succession, general law of succession of Hindus prior to enactment of Hindu Succession Act, 1956 will operate to dis-entitle Samunda Bai to get any share after death of his father ?”

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) The suit property was originally held by Jagannath, who had two sons i.e. original plaintiff-Samodi and original defendant No.1-Umend and one daughter-Samunda Bai. Defendants No.3 and 4 are daughters of Samunda Bai and defendant No.2-Lakhan is husband of Samunda Bai. It is the case of the parties that original land holder Jagannath partitioned the suit property during his life time and given 1.39 hectares of land to original plaintiff-Samodi and 1.17 hectares of land to defendant No.1-Umend and reserved 1.25 hectares of land in favour of his wife Parwat Bai, who died in

the year 1985. The dispute relates to this suit property after her death, which was left and reserved for Parwat Bai. Original plaintiff-Samodi filed a suit on 23.10.90 for declaration of title, partition, possession and *mesne* profit with damages stating inter-alia that he is entitled for ½ of share in the property left by Parwat Bai admeasuring 1.25 hectares of land situated at village Kampa, District Bemetara claiming to be governed by the Hindu Succession Act, 1956 (hereinafter called as “the Act of 1956”).

(2.2) Defendant No.1 filed his written statement stating inter-alia that they are governed by their customs being an aboriginal tribe and the plaintiff is not entitled for ½ of share in the suit property left by Parwat Bai.

(2.3) The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 21.9.98, decreed the suit and held that the plaintiff is entitled for ½ of share in the suit property as Samunda Bai died in the year 1962 and during that time, unamended Section 164 of the Madhya Pradesh Land Revenue Code, 1959 was applicable and therefore, she is not entitled for any share in the property left by her father.

(2.4) Defendant No.1-Umend preferred first appeal on the ground that the provisions contained in the Act of 1956 would not be applicable as they are governed by their customs, which the First Appellate Court did not find favour and dismissed the appeal.

(2.5) Being aggrieved and dissatisfied with the judgment and decree passed by the First Appellate Court, this second appeal under Section 100

of the CPC has been filed by defendant No.1 who died during pendency of the second appeal, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.

3. Mr.P.R.Patankar, learned counsel for the appellants, would submit that both the Courts below are absolutely unjustified in holding that the parties are governed by the provisions of the Act of 1956, whereas they are governed by their customs in which daughter Samunda Bai is also entitled for 1/3 of share. He would further submit that the trial Court is absolutely unjustified in granting $\frac{1}{2}$ of share to the plaintiff and defendant No.1, as such, the second appeal deserves to be allowed. He placed reliance of the judgment passed by this Court in **Smt. Butaki Bai & others v. Sukhpati & others**¹.

4. On the other hand, Mr.Amit Sahu, learned counsel for respondent No.1(A), would submit that defendants No.3 and 4 are daughters of Samunda Bai, they did not appear before the trial Court and did not even prefer appeal before the First Appellate Court and also did not question the decree order of the trial Court or the First Appellate Court. He would further submit that defendant No.1, who has already got $\frac{1}{2}$ of share in the suit property, has no cause of action for preferring appeal as he is not the aggrieved person, as such, the second appeal deserves to be dismissed.

5 I have heard learned counsel for the parties and considered their

¹ 2014(3) C.G.L.J. 590

rival submissions made herein-above and also went through the records with utmost circumspection.

6. It is the case of the plaintiff that the parties are governed by the provisions of the Hindu Succession Act 1956, which the trial Court has accepted holding that defendant No.1 has not brought any evidence to establish the custom prevalent among them and which governs their line of succession. From perusal of the evidence available on record, it is clear that except self-serving statement of defendant No.1-Umend, there is no other evidence brought on record to hold that custom is prevalent among them in which daughter is also entitled for share in her father's property. Samunda Bai, daughter of late Jagannath, died in the year 1962, her daughters-defendants No.3 and 4 did not take any steps to contest the suit and remained ex-parte when the trial Court granted $\frac{1}{2}$ of share to the plaintiff and defendant No.1, they did not prefer appeal before the First Appellate Court to claim $\frac{1}{2}$ of share in the suit property and allowed the order of the trial Court to become final and when the First Appellate Court affirmed the judgment and decree of the trial Court, even then they did not prefer second appeal before this Court. Only defendant No.1 has preferred second appeal claiming that defendants No.3 and 4 i.e. daughters of Samunda Bai are entitled for $\frac{1}{3}$ of share in the property left by Parwat Bai, as such, defendants No.3 and 4 have accepted the judgment and decree of the trial Court in which they have not given any share in the suit property and decided not to prefer first appeal and second appeal, defendant No.1, who got $\frac{1}{2}$ of share in the suit property, has no right to

contend that defendants No.3 and 4 are also entitled for 1/3 of share in the suit property. Defendant No.1 having got ½ of share in the suit property is not entitled to contend on behalf of defendants No.3 and 4 and they are not seeking any relief except for defendants No.3 and 4 in absence of appeal being preferred by them and present defendants are not the aggrieved person. The judgment cited by Mr.P.R.Patankar, learned counsel for the appellants, is distinguishable to the facts of the present case.

7. In view of aforesaid analysis, I do not find any merit in this second appeal. The substantial question of law is answered in favour of the plaintiff and against defendant No.1. The second appeal is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

8. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-