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HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on : 27.07.2018Judgment delivered on : 09.08.2018**SA No. 278 of 2005**

Kalyan Singh S/o Shri Uderam, aged about 30 Years R/o Village Jhal, Tahsil Bemetara, District Durg, Chhattisgarh (Plaintiff)

---- Appellant

Versus

1. Radha Bai Wd/o Shobharam, aged about 48 Years.
2. Kawala Bai D/o Shobharam, aged about 20 Years.
3. Vimla Bai D/o Shobharam, aged about 18 Years.
4. Meena Bai D/o Shobharam, aged about 8 Years

No. 3 & 4 are Minors through wali Mother Radha Bai.

All R/o Village Jhal, Tahsil Bemetara, District Durg, Chhattisgarh.

5. Mogra Bai W/o Shathrugan Singh, aged about 22 Years R/o Village Kewachi, Via Khandsara, Tahsil Bemetara, District Durg, Chhattisgarh.
6. Kamalin Bai W/o Durjan Singh, aged about 20 Years R/o Village Karchuba, Tahsil Bemetara, District Durg, Chhattisgarh.
7. Bhukhin Bai Dead Through Lrs
 - 7-A) Kapil Singh Verma S/o Late Bishnath Singh Verma, aged about 54 years, R/o Gram Jhar, Tahsil Bemetara, District- Durg (C.G.)
8. Mahrin Bai Dead Through Lrs
 - 8-A) Parebhin Bai D/o Kartik Ram, aged about 35 Years
 - 8-B) Narsingh S/o Kartik Ram, aged about 40 Years

Both R/o village- Kewachi, Tashil- Bemetara, District- Bemetara (C.G.)

9. State of Chhattisgarh, Through Collector, Durg, District Durg, Chhattisgarh (Impleaded During Appeal, formal party).

---- Respondents

and**SA No. 271 of 2001**

Kapil Singh Verma S/o Late Bishnath Singh Verma, aged about 54 Years R/o Gram Jhar, Tahsil Bemetara, District Durg, Chhattisgarh (Defendant No.1).

---- Appellant

Versus

1. Radha Bai Wd/o Sobha Ram, aged about 40 Years.
2. Kawala Bai D/o Sobha Ram, aged about 20 Years.
3. Bimla Bai D/o Sobha Ram, aged about 18 Years.
4. Meena Bai D/o Sobha Ram, aged about 8 Years.

The respondent No. 3 to 4 are minor, through their natural guardian Smt. Radha Bai.

All R/o Village Jhal, Tahsil- Bemetara, District- Durg, Chhattisgarh.

5. Smt. Mongra Bai W/o Satrudhan Singh, aged about 22 Years R/o Village- Kewachi, Via- Khandsara, Tahsil- Bemetara, District- Durg, Chhattisgarh.
6. Smt. Kamalin Bai W/o Durjan Singh, aged about 20 Years R/o Village- Karchuba, Via- Kewachi, Tahsil- Bemetara, Distt. Durg, Chhattisgarh (Defendants No. 2 To 7).
7. Moharin Bai Dead Through Lrs.

7-A Narsingh S/o Kartik Ram, aged about 40 Years
7-B Parebhinbai D/o Kartik Ram, aged about 35 Years

Both R/o Village- Kewachi, Tahsil Bemetara, District- Bemetara (C.G.)

8. Kalyan Singh S/o Uday Ram, aged about 30 Years, R/o Village- Jhal, Tahsil- Bemetara, District- Durg, Chhattisgarh (Plaintiff).
9. State of Chhattisgarh, through the Collector, Durg, District- Durg, Chhattisgarh.

---- Respondents

For Appellant	:	Ms. Akanksha Jain & Ms. Anuradha Jain, Adv & for Respondent No. 8 in SA No. 271 of 2001.
For Respondents 1 to 5	:	Mr. Viprasen Agrawal, Advocate (in both appeals)
For Respondent 7A	:	Mr. Vishnu Koshta & Mr. Shobhit Koshta, Adv. & for the appellant in SA No. 271 of 2001.
For Respondents 8A & 8B	:	Mr. R.S. Patel & Mr. Kaushal Yadav, Adv & for Respondent No. 7A & 7B in SA No. 271 of 2001.
For State	:	Mr. Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. Since both the second appeals are preferred against the same decree/judgment, they are heard analogously and are being disposed of by

this common judgment.

2. These second appeals are preferred against judgment/decreed dated 08.05.2001 passed by Additional District Judge, Bemetara, Civil District-Durg (C.G.) in Civil Appeal No. 10-A/1983.
3. Second Appeal No. 278 of 2005 is admitted for hearing on the following substantial question of law:-

“Having upheld the trial Court's finding that by virtue of sale deed (Ex. P-1), Kalyan Singh acquired title in respect of share of Khel Bai, whether learned lower appellate Court was justified in reversing the finding on appellant/plaintiff's title in respect of lands purchased by him vide Ex. P-2, P-3, P-4 & P-5 only on the oral evidence that he was cultivating the land jointly with his father.”

4. A suit was filed before the court of Civil Judge Class-I, Bemetara, Civil District-Durg (C.G.) for land mentioned in Schedule-A & B. Land of Schedule-A is pertaining to village-Chauranga, Jhal, Panderbhatta, Kewachi and Singhpur. As per decree of first appellate court, this land is declared to be joint hindu family property and it was divided between successor of Uderam & Shobharam. Present applicant Kalyan Singh & wife of Uderam namely Shyamkunwar Bai were allotted half share of land of Schedule-A and $\frac{1}{2}$ share to successor of Shobharam namely Radha Bai (wife) and five daughters namely Kawala Bai, Vimala Bai, Meena Bai, Mongra Bai & Kamalin Bai, who are respondents No. 1 to 6.
5. The question for consideration by this Court is whether land mentioned in Schedule-B of the plaint situated at village- Chauranga is joint hindu family property or self acquired property of Kalyan Singh.
6. The first appellate court decided that by virtue of sale deed (Ex.P-1), the

appellant acquired title in respect of share of Khel Bai which is not challenged in the appeal and that attained finality.

7. As per sale deed (Ex. P-2 to P-5), all the land is purchased by the appellant and as per sale deed, he is owner of the land mentioned in the said sale deed and lands mentioned in sale deed (Ex. P/1 to P/5) is mentioned in Schedule-B of the plaint.
8. Learned counsel for respondent No. 7A submits that the land mentioned in Schedule-B is purchased out of income of joint hindu family property which is mentioned in Schedule-A and therefore, the property of Schedule-B is not self acquired property of the appellant.
9. On the other hand, learned counsel for the appellant submits that the appellant has proved by cogent evidence that the property of Schedule-B is purchased out of income of property which was given to his mother Shyamkunwar Bai by his father Sukhram.
10. As per evidence on record, maternal grand father Sukhram had two daughters namely Shyamkunwar and Khel Bai and after death of Sukhram, they acquired the land of Sukhram by operation of law through succession and it was 16 acres of land. Both the successors Shyamkunwar and Khel Bai succeeded 8 acres of land and out of income of that land, Kalyan Singh purchased the land mentioned in sale deed (Ex. P-1 to P-5).
11. In the present case, from the evidence it is not established that any ancestral land mentioned in Schedule-A is sold for purchasing the land of Schedule-B. Again there is no evidence regarding income of land of Schedule-A and regarding account of the said land as to who kept the earning from the land of Schedule-A as a member of joint hindu family. Even, the income from land of Schedule-A is not established from evidence. Therefore, there is no evidence to establish that land of Schedule-B is

purchased out of income of joint hindu family property.

12. It is well settled law that court has to consider statement of any witness as a whole in its totality. A stray sentence either in examination in chief or in cross-examination cannot be picked up and utilized for arriving at a conclusion.
13. The first appellate court in its judgment (para 33) recorded the finding on the basis of statement of Kalyan Singh and took one sentence of his cross-examination that his father was keeping the income of agriculture and he purchased the land from that income.
14. It is settled law that no amount of evidence could be looked into apart from pleadings. The suit was filed before the trial court by the appellant on the ground that the land of Schedule-B is self acquired property and there is no evidence on record to show as to whether any income accrued from the property of Schedule-A and it is also not proved as to who kept the income of the said property therefore, it is not established that the land of Schedule-B is purchased out of income of property of joint hindu family. Therefore, first appellate court was not right in reversing the finding regarding title in respect of land purchased by appellant Kalyan Singh vide Ex. P-2 to P-5. Finding of first appellate court is not sustainable.
15. Accordingly, finding of the first appellate court is reversed and substantial question of law is answered in negative. It is declared that the property of Schedule-B is self acquired property of the appellant.
16. In the result, the appeal is allowed and it is ordered that property of Schedule-A be partitioned between successor of Uderam and Shobharam equally. Successor of Uderam, appellant Kalyan Singh and Shyam Kunwar will get half of the share in the said land and respondent No. 1 to 6 will get half share in property of Schedule-A. It is further declared that property

mentioned in Schedule-B is self acquired property of Kalyan Singh.

17. The trial court will modify and execute the decree accordingly.

SA No. 271 of 2001

1. As per the late appellant (Bhukhin Bai), she married with Shobharam 40 years ago as per custom of Churi Pratha. She and Shobharam recognized as wife and husband in the society and the trial court recorded finding in her favour, but the first appellate court reversed the said finding without substance and therefore, finding of the first appellate court against the present appellant be reversed and she be declared legally married wife of Shobharam.
2. This appeal is admitted for hearing on the following substantial question of law:-

“Whether the learned lower Appellate Court was justified in law in holding that Bhukhin Bai was not the legally wedded wife of late Shobharam?”
3. The said appellant pleaded customary marriage prevailing in the area and as per the appellant, marriage is performed by Churi Pratha. For establishing the said custom, appellant was under obligation to prove the custom as a whole with instance because bald statement is not sufficient to establish such marriage.
4. Uderam (PW-2), Sibli (DW-7) (Para 7) and Nohar Singh (DW-9) (Para 5) deposed before the trial court that Churi custom is recognized only for already married woman. It is also deposed by them that marriage of Bhukhin Bai was performed earlier with a person who was resident of village- Kobia. Bhukhin Bai (DW-3) (Para 6) admitted the fact that she was earlier married with a person who was resident of village- Kobia.
5. As per statement of Uderam, Sibli & Nohar Singh, it is established that if a

married woman wants remarriage after leaving his husband, she is duty bound to pay amount for the same to her husband. Bhukhin Bai (Para 5) admitted that she has not paid any amount to her husband who was resident of village- Kobia. As per custom, unless the said amount is paid to the present husband, the woman cannot perform marriage by Churi Pratha with some other person.

6. In the present case, admittedly, the appellant has not paid any amount to her previous husband before marriage with Shobharam. As per custom, the marriage was not in accordance with the custom and therefore, marriage between appellant and Shobharam was not legal.
7. It is contended by the appellant that Shobharam and appellant is living as husband and wife and therefore, they acquired status of husband and wife, as they are recognized by the society as husband and wife.
8. In the matter of **B.S. Lokhande Vs. State of Maharashtra** reported in **AIR 1965 SC 1564**, the Hon'ble Apex Court held that the bare fact of the man and woman living as husband and wife, does not, any rate, normally give them the status of husband and wife even though they may hold themselves out before the society as husband and wife and the society treats them as such. The following extracts is useful for this purpose.

"Prima facie, the expression 'whoever.... marries' must mean 'whoever.....marries validly' or 'whoever.....marries and whose marriage is a valid one'. If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law. The bare fact of a man and a woman living as husband and wife does not, at any rate, normally give them the status of

husband and wife even though they may hold themselves out before society as husband and wife and the society treats them as husband and wife.”

9. In the matter of **Surjit Kaur Vs. Garja Singh & others** reported in **(1994) 1 SCC 407**, it is held by Hon'ble Apex Court that pleading any custom prevalent in the area and proof of such marriage according to the custom is essential for treating a male and a female as husband and wife.
10. In the present case, marriage of present appellant was not performed according to custom of Churi Pratha as mentioned above. Therefore, the appellate court was justified in the law in holding that the appellant was not legally wedded wife of late Shobharam. Substantial question of law is answered in affirmative.
11. In view of the above, the appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge