

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.560 of 2003**

1. Mahoran S/o Dalsai (since died) Through his Legal representatives

1(A) Mu. Laxmaniya Wd/o Mahoran Aged about 55 years,

1(B) Shiv Prasad S/o Late Mahoran Aged about 15 years through his natural guardian (Mother) Laxmaniya Wd/o Mahoran Aged about 55 years

All R/o Village Bariyo, P.S. Bariyo, Tah. Dharpur, Distt.Sarguja (CG)

2. Katan S/o Dalsai Gond (since died) through legal representatives

A.Rudo Bai Wd/o Katan Aged about 40 years,

B. Thakur Prasad S/o late Bandhu Age about 21 years

C. Patwari S/o Late Bandhu Age about 19 years

D. Vifal S/o Late Bandhu Aged about 18 years

3. Manjhi S/o late Dalsai Gond Aged about 55 years

4. Sanjhi S/o Late Dalsai Gond (since died) Aged about 55 yrs through his legal representative

A. Banmet Wd/o Sanjhi Aged about 55 years

B. Amarsai S/o Late Sanjhi Aged about 25 years

C. Dasrath S/o Late Sanjhi Aged about 22 years

5. Baldev S/o Late Dalsai Gond Aged about 45 years

All above R/o Village Boriyo, P.S. Bariyo, Tahsil-Dhaurpur, Distt. Sarguja (CG)

---- Appellants

Versus

1. Fadku S/o Late Dakhal Gond Aged about 40 years Occupation Agriculture R/o Village Bariyo Police Station Bariyo, Rajpur, Tah.-Ambikapur, Dist.Sarguja

2. Nansai S/o Vikram R/o Village Bariyo, P.S. Rajpur, Tah. Ambikapur, Dist.Sarguja

3. State of Chhattisgarh Through Collector, Sarguja, Ambikapur (CG)

---- Respondents

For Appellants/Plaintiffs	:	Mr.Manoj Paranjape and Mr.Anurag Singh, Advocates
For Respondents No.1 & 2/	:	None present

Defendants
For Respondent No.3 : Mr.Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

24/01/2019

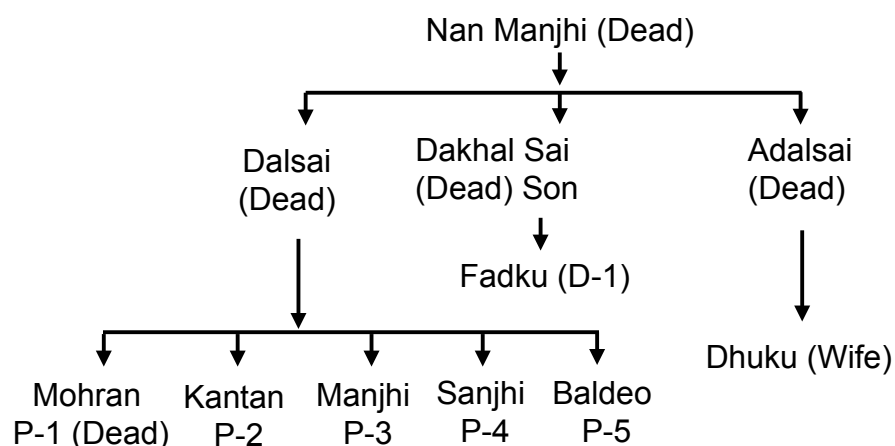
1. The substantial questions of law involved, formulated and to be answered in the second appeal preferred by the plaintiffs are as under:-

“1. Whether the lower appellate Court travelled beyond the pleadings of the parties to hold that the parties were governed by Hindu Succession Act which was not the case of either parties ?

2. Whether the lower appellate Court which is final Court of facts was justified in holding that the Gonds community is not governed by their own customs despite the admission of the defendants ?”

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

2. The following genealogical tree would demonstrate the relationship among the parties:-



- 3.** The appellants/plaintiffs filed a suit for declaration of title, possession and *mesne* profit stating inter-alia that they are sons and daughters of Dalsai and defendant No.1 is son of Dakhalsai. The dispute relates to the property left by Adalsai described in Schedule “A” of the plaint, which was his self-acquired property. It was further pleaded that Kondi was second wife of Adalsai without there being any marriage with her, who died on 27.6.90. Prior to her death, she sold the suit property vide Exs.D/1 and D/2 in favour of defendants No.1 and 2, as such, sale made by Kondi in favour of defendants No.1 and 2 is null and void and not binding on them and the plaintiffs are entitled for ½ share in the suit property.
- 4.** The defendants filed their written statement denying the plaint allegations and stating inter-alia that Kondi is legally wedded wife of Adalsai in chudi form, as such, she was entitled to alienate and rightly alienated the suit property in favour of defendants No.1 and 2. Therefore, the suit deserves to be dismissed(s). The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 27.10.2000, holding that Kondi was wife of Adalsai and alienation made by Kondi in favour of defendants No.1 and 2 is not proved to be illegal legal and thereby dismissed the suit, which was upheld by the First Appellate Court in first appeal. Questioning legality and validity of the impugned judgment and decree of the First Appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs, in which substantial questions of law have been

framed by this Court, which have been set out in the opening paragraph of this judgment.

5. Mr. Manoj Paranjape, learned counsel for the appellants/plaintiffs, would submit that both the Courts below concurrently erred in dismissing the suit by holding that Kondi had right & title over the suit land and she has rightly alienated the suit property in favour of defendants No.1 and 2, as such, substantial questions of law deserve to be granted in favour of the plaintiffs and against the defendants and thereby the suit be decreed accordingly.
6. None present for respondents No.1 and 2 though served.
7. I have heard learned counsel for the appellants/plaintiffs, perused the impugned judgment and decree and went through the records with utmost circumspection.
8. The suit property was admittedly held/owned by Adalsai and dispute relates to that property and Kondi is said to have second wife of Adalsai, who has sold the suit property vide Exs.D/1 and D/2 in favour of defendants No.1 and 2 as she has been held to be second wife of Adalsai by two Courts below, which is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. The defendants in para-7 of their written statement have clearly admitted that the provisions of the Hindu Succession Act are applicable to the parties and widow had full right over the property left by her husband. Both the Courts below relied upon the statement of the plaintiffs witness and reached to the

conclusion that the the parties become Hindus and possession among them is also governed by the provisions of the Hindu Succession Act and therefore, Kondi, widow had full right to alienate the property left by her husband, which is the finding of fact based on evidence available on record. Even otherwise, the suit property was alienated by Kondi, wife of Adalsai on 15.3.90 and the suit was filed after her death on 9.7.90 in which relief for setting aside of sale made by Kondi in favour of defendants No.1 and 2 has not been asked for, which was necessary as the suit property has already been transferred in favour of defendants No.1 and 2. The finding of fact recorded by two Courts below holding that Kondi has full right to alienate the suit property in favour of defendants No.1 and 2 is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Accordingly, the substantial questions of law are answered in favour of the defendants and against the plaintiffs.

9. The second appeal being devoid of merit is liable to be and is hereby dismissed. No cost(s).

10. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge