

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.425 of 2004**

1. Bahadur Khairwar s/o Late Ganpat Khairwar, age 26 years
2. Parmeshwar Khairwar, s/o Late Ganpat Khairwar, age 21 years.
3. Dhanpat Khairwar, s/o Late Hari Khairwar, age 41 years

All by Caste Khairwar, Occupation Agriculturist, R/o village Kanakpur, P-Chiniya, P.S. Ramanujganj, Teh. Pal, Distt-Surguja (CG)

---- Appellant/Plaintiff

Versus

1. Sahoari d/o Late Hari Khairwar, age 51 yars, (dead) through LRs:

- 1.A Suresh s/o Ram Khelawan, age 45 years.
- 1.B Khuneshar s/o Ramkhelawan, age 42 years.
- 1.C Vidyasagar s/o Ramkhelawan, age 40 years
- 1.D Mahendra s/o Ramkhelawan, age 38 years

All by caste Khairwar, Occupation Agriculture, r/o village Kanakpur, Tehsil Pal, (Ramanujganj) Surguja (CG)

- 1.E Ramkhelawan s/o Late Somaru, age 70 years, Caste-Khairwar, r/o Kanakpur, Tehsil Pal, District Surguja (CG)

- 1.F Smt. Hirapati d/o Ramkhelawan w/o Thakur Prasad, age 30 years.

- 1.G. Smt. Rajpati d/o Ramkhelawan, w/o Devdhari Singh, age 26 years

Both by caste Khairwar, r/o Village Tikidiri, P.S. Ramchandrapur, Teh. Pal, Distt. Surguja (CG)

2. Balkeshari d/o Late Hari Khairwar, age 46 years, Caste Khairwar, Occupation-Agricuture, r/o village Kanakpur, Post Chiniya, P.S. Ramanujganj, Tehsil Pal, District Surguja (CG)

3. Birbal Khairwar s/o Late Ganpat Khairwar, age 26 years

- 4.a Chandrika Singh S/o late Nanhku Khairwar, aged about 30 years.

- 4.b Mundrika Singh S/o Late Nanhku Khairwar, aged about 20 years.

- 4.c Jai Singh S/o late Nanhku Khairwar, aged about 19 years

All R/o Village Kanakpur, P.S. & Tahsil – Ramanujganj, District – Balrampur – Ramanujganj (CG)

- 4.d Sitapati W/o Mahesh Singh, aged about 26 years, R/o Devgai, P.S. & Tahsil Ramanujganj, District – Balrampur – Ramanujganj (CG)

4.e Anarpati W/o Nakul Singh, aged about 24 years, R/o Village Kudrum, P.S. Ranka, Tahsil Gardwa, District Gardwa (Jharkhand)

4.f Champa W/o Vijay Singh, aged about 24 years, R/o Village Anirudhpur, P.S. Ramchandrapur, P.S. & Tahsil Ramanujganj, District – Balrampur – Ramanujganj (CG)

5. Rajnath Khairwar s/o Late Munda Khairwar, aged about 41 years.

Respondents No.3 and 5 r/o village Kanakpur, all by caste Khairwar, Occupation agriculture, P.C. Chiniya, P.S. Ramanujganj, Tehsil Pal, Distt. Surguja (CG)

6. The State of M.P. (Now C.G.) through Collector, Surguja, Ambikapur

---- Respondents

For Appellants	:	Mr.A.K.Prasad and Mr.S.S.Paikra, Advocates
For Respondents No.1 to 5	:	Ms Priyanka Mehta, Advocate
For Respondent No.6	:	Mr.Salim Kazi, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

02.07.2019

1. The substantial questions of law involved, formulated and to be answered in the second appeal preferred by defendants No.2 to 4 are as under:-

- “1. Whether the first appellate Court was justified in reversing the well reasoned order passed by the Trial Court on the ground that the plaintiffs have got right over the suit property on the ground of right to inheritance under Hindu Succession Act ?
2. Whether the finding arrived at by the first appellate Court is contrary to the evidences which have come on record ?
3. Whether the suit of the plaintiffs is barred by limitation ?”

[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 suit property was originally held by Sodhu, Bakhouri and Munda. According to Surguja Settlement, patta was granted in favour of three persons namely Sodhu, Bakhouri and Munda, in which Sodhu and Bakhouri had jointly 2/3rd share and Mundu had 1/3d share in the suit property. The dispute relates to 2/3rd share jointly held by Sodhu and Bakhouri as Bakhouri died issueless and Sodhu had one daughter namely Etwariya. The plaintiffs are daughters of Etwariya, whereas defendants No.1 to 3 are grand sons of Etwariya and defendant No.4 is son of Etwariya. The plaintiffs filed a suit for partition of the property left by their mother Etwariya stating that each of them are having 1/4th share in the suit property as the defendants No.1 to 4 are denying their share in the suit property.
3. The defendants filed their written statement and controverted the plaint allegations stating inter-alia that they are Khairwar by caste i.e. tribes and in scheduled tribes, daughters do not get share in the property left by their father/mother and since Sodhu Ram had two sons namely Ganpat & Dhampat and therefore, the plaintiffs not being gharjiha daughters are not entitled for share in the suit property left by their father/mother.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 31.3.1999 dismissed the suit on merits as well as barred by limitation, which the first appellate Court interfered with and held that the suit is not barred

by limitation and further held that the plaintiffs are entitled for 1/4th share in the suit property. Against which, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants No.2 to 4, 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.A.K.Prasad and Mr.S.S.Paikra, learned counsel for the appellants, would submit that the first appellate Court is absolutely unjustified in reversing the well merited and well reasoned finding of the trial Court dismissing the suit as the plaintiffs being daughters of Etwariya will not get any share in the suit property as they are scheduled tribes and in scheduled tribes, daughters do not get any share in the property left by their father/mother and they are also not being gharjiha daughters and as such, the first appellate Court committed legal error in granting the decree in their favour, as such, the judgment and decree of the first appellate Court deserves to be set aside.
6. Ms Priyanka Mehta, learned counsel for respondents No.1 to 5, would support the impugned judgment and decree.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.
8. It is not in dispute that the plaintiffs, defendant No.4 and father of defendants No.1 to 3 were brothers & sisters. The suit property was jointly held by Sodhu & Bakhouri. Bakhouri died issueless. Etwariya

being Sodhu's daughter inherited 2/3rd share in the suit property and the plaintiffs being daughters of Etwariya claimed the suit property with his brother defendant No.4. Defendants No.1 to 3 are sons of their brother Ganpat. The case of the defendants is that since in schedule tribe community, daughters do not get share in the property of their father and they not being gharjiha daughters are not entitled to get any share in the property left by their father/mother. The trial Court dismissed the suit finding no merit, whereas the first appellate Court decreed the suit. The defendants in para-4 of their written statement have clearly stated that the plaintiffs being daughters of Etwariya in presence of their two brothers Ganpat and Dhampat will not succeed, but they can succeed if they are kept as gharjiha daughters. Defendant No.4-Dhanpat has been examined as DW-1. In para-7 of his cross-examination, he has clearly admitted that after death of Sodhu, Etwariya, the plaintiffs and defendant No.4's mother exclusively succeeded the suit property and after death of Etwariya, the plaintiffs and the defendants have succeeded the property. He has also admitted that marriages of the plaintiffs were performed in gharjiha form. He has admitted that partition has not been affected between the parties.

9. The aforesaid piece of evidence clearly demonstrate that after death of Sodhu, the suit property was succeeded by Etwariya, plaintiffs mother and after death of Etwariya, it was succeeded by the plaintiffs and the defendants as well. The trial Court ignored the admission made by defendant No.4 in his cross-examination, which the first

appellate Court has corrected and held that the plaintiffs and defendant No.4 each of them will be entitled for 1/4th share in the property left by Etwariya. The first appellate Court has clearly held that the suit is within limitation and the plaintiffs are co-owners of the suit property and there cannot be any adverse possession in favour of the defendants and against the plaintiffs and relying upon the statement made by defendant No.4 has clearly come to the conclusion that the plaintiffs have also succeeded along with their brothers Ganpat and Dhanpat. Even otherwise, their marriages were performed as gharjiha form where daughters are kept in the house of mother, as such, clear finding has been recorded by learned first appellate Court based on the evidence contrary to the evidence of defendant No.4 (DW-1). The said finding recorded by the first appellate Court that the plaintiffs have also succeeded along with their brothers and their marriages were performed in gharjiha form and therefore, they are also entitled for 1/4th share in the suit property is the finding of fact based on evidence available on record. I do not find any illegality or perversity in the said finding. The substantial questions of law are answered against the defendants and in favour of the plaintiffs.

10. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

11. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge