

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 341 of 2003**

1. 1.A - Sardar Singh S/o Budhan Singh, Aged About 35 Years R/o Village Sundarpur, Tehsil Sonhat, Distt. Korla, Chhattisgarh
 1.B - Shivrathi Singh S/o Late Budhan Singh, Aged About 32 Years R/o Village Sundarpur, Tehsil Sonhat, Distt. Korla, Chhattisgarh
 1.C - Kamleshwar Singh S/o Late Budhan Singh, Aged About 29 Years R/o Village Sundarpur, Tehsil Sonhat, Distt. Korla, Chhattisgarh
 1.D - Lalan Singh S/o Late Budhan Singh, Aged About 20 Years R/o Village Sundarpur, Tehsil Sonhat, Distt. Korla, Chhattisgarh
2. Smt. Kaushilya Bai Deleted
3. Smt. Sumitra Bai Dead Through LRs
 3.1 - Pratap Singh S/o Jailal Gond, Aged About 40 Years R/o Village- Charcha, Tahsil- Baikunthpur, District- Korla, Chhattisgarh
 3.2 - Rajkumar Singh S/o Jailal Gond, Aged About 36 Years R/o Village- Charcha, Tahsil- Baikunthpur, District- Korla, Chhattisgarh
 3.3 - Vijay Singh S/o Jailal Gond, Aged About 32 Years R/o Village- Charcha, Tahsil- Baikunthpur, District- Korla, Chhattisgarh
 3.4 - Soni Bai D/o Jailal Gond, Aged About 50 Years W/o Rama Singh, R/o Village- Dondibhara, Tahsil- Baikunthpur, District- Korla, Chhattisgarh

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1. Smt. Kaushilya Bai W/o Baldeo Prasad Gond, Aged About 30 Years D/o Bhola Singh, Occupation- Agriculture and Household, R/o Village Sundarpur, Tehsil Baikunthpur, Distt. Surguja, Chhattisgarh
2. Smt. Kaikai Bai Dead Through LRs
 2.1 - Tilak Dhari Singh Dead Through LRs
 2.1a - Daulat Singh S/o Late Tilak Dhari Singh, Aged About 35 Years
 2.1b - Kanojh Singh S/o Late Tilak Dhari Singh, Aged About 25 Years
 2.1c - Manoj Singh S/o Late Tilak Dhari Singh, Aged About 25 Years
 2.1d - Bhanu Singh S/o Late Tilak Dhari Singh, Aged About 20 Years
 2.2 - Shiv Mangal Singh S/o Mohar Singh, Aged About 25 Years
3. Surendranath Singh S/o Ramsagar Singh Thakur, Aged About 35 Years R/o Village Katkona, P.S. Patna, Tehsil Baikunthpur, Distt. Surguja, Chhattisgarh
4. The State Of M. P. (Now Chhattisgarh) Through Collector, Surguja, At / Post Ambikapur, Chhattisgarh

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For Appellant	:	Shri A.K.Prasad, Advocate
For Respondent / State	:	Shri Sanjay Kumar Agrawal, Govt. Adv. for the State.

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment On Board

29/08/2019

This appeal is directed against impugned judgment and decree dated 16/12/2002 passed in Civil Appeal No.11-A/2002 arising out of judgment and decree dated 24/09/1988 passed in Civil Suit No.10-A/84 whereby the appeal of the appellant / plaintiff has been dismissed affirming judgment and decree passed by the learned Trial Court.

2. This appeal was admitted on following two substantial question of law -
 - i) Whether the wife of Roop Sai namely Nanki Bai who executed the sale deed, had limited interest being the widow in the property of Roop Sai ?
 - ii) Whether the suit property had devolved on the plaintiffs as reversioner after death of their mother in the year 1978 ?

3. The appellant / plaintiffs filed a suit against purchaser impleading one of their sister – Kaushalya also and subsequent purchaser on the pleadings, *inter alia*, that the plaintiffs and defendant No.2 – Kaushalya, are daughters of one Roopsai who died in the year 1958. According to the plaintiff's pleading, the law of succession which was applicable to plaintiff's tribal community of Gond in the State of Koriya (Baikunthpur), provided that upon death of male, when there were no male descendants (heirs), the property would devolve upon the survivor widow who could enjoy only limited interest and not absolute interest in the property. The plaintiff's mother – Nanki Bai, widow of Roopsai, had only limited right of

maintenance out of the property which she received from her deceased husband but she had no right to sell the property which was received by her from her husband. It was pleaded that unless there was legal necessity, the widow mother could not have sold the property. Later on, the plaintiffs came to know that their mother sold a part of the property to defendant No.1. According to the plaintiff's pleading, out of total area of 27.45 acres in the hands of Nanki Bai, she sold 10.40 acres of land to defendant No.1 – Bhola Singh on 05/02/1964 for a consideration of Rs.900/- and later on, a registered deed of sale was also prepared on 10/02/1964. According to the plaintiff, late Nanki Bai could not have sold the property. According to the plaintiffs, after death of Nanki Bai, Bhola Singh ceased to have any interest in the property by virtue of sale deed executed in his favour. By way of amendment, pleadings with regard to subsequent transfer of interest in the property in favour of defendant No.3 and 4 were made.

4. According to plaintiff's pleading, Gond tribes residing in the State of Koriya were governed by Hindu Law of Succession and not by any other customary law of succession.

5. The defendant / purchaser – Bhola Singh and other defendants, except Kaushalya, resisted plaintiff's claim stating that Hindu Law was not applicable to Gond tribe residing in Koriya State and under their own customary law of succession, upon death of husband, the widow was entitled to take full interest in the property and not merely limited interest and therefore, Nanki Bai had all the right to sell the property.

6. Learned Trial Court framed as many as 15 issues. The most important issue was as to whether Hindu Succession Law of Mitakshara school was prevalent and applicable to the parties who are Gond Tribes and whether after death of Roopsai,

his wife – Nanki succeeded only to limited interests. Learned Trial Court also framed issues as to whether after death of Nanki, the property in dispute reverted to the plaintiffs as the reversioners. Learned Trial Court also framed issue as to whether the property was sold by Nanki Bai without any legal necessity. Learned Trial Court recorded all the findings against the plaintiff and having recorded that the plaintiffs failed to prove that in the matter of succession, Hindu Law of Succession is applicable to the parties who are Gond tribes, dismissed the suit.

7. Aggrieved by the judgment and decree of the Trial Court, plaintiffs filed an appeal which was also dismissed by the learned lower Appellate Court holding that upon death of a Kashtkar, in the absence of there being a son, grand son or great grand son, the widow would succeed to the property and the daughters would not get any interest in the property.

8. Learned counsel for the appellant would argue that the learned Courts below, while appreciating the evidence of the plaintiffs and the defendants, have ignored clear admission made by the defendant's witnesses that in the matter of succession, Hindu Law of Succession was made applicable and prevalent amongst Gond Tribes of Koriya State and upon death of a Kashtkar, widow would take only limited interest and she could sell the property only on legal necessity, otherwise, she had no absolute right to sell the property and after her demise, the property would devolve upon the daughters. He would argue that the evidence of defendant's witnesses, particularly, what has been stated by them in the cross-examination, fully supported the plaintiff's case but the Courts below, without properly appreciating the evidence, have recorded a perverse finding that the plaintiff failed to prove that the Hindu Law is applicable and upon death of a Kashtkar, widow would take only limited interest and she could not sell the property except for legal necessity and after her death, the property would revert to the

plaintiff. He would further argue that the learned Courts below, while appreciating the evidence, have committed patent illegality in ignoring that once there was an admission on the part of the defendants, that was the best piece of evidence and learned Courts below erred in recording finding against the appellant. Reliance has been placed in the case of **Union of India v. Ibrahim Uddin and anr., 2012 (8) SCC 148** and **Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar v. Chandran and ors, 2017 (3) SCC 702.**

Reliance has also been placed on judgment of Madhya Pradesh High Court in the case of *Manraj v. Jaikaran* and ors. decided on 11/08/1986 in S.A.No.436/81. In that case, death had taken place in the year 1947 whereas in the present case, death of Roopsai, according to the petitioner, had taken place in the year 1958. In that case, the law with regard to succession was examined which was prevalent on the date in that case i.e. in the year 1947 based on certain provisions contained in C.P. States Land Tenure Order, 1949.

9. Learned State counsel submits that the State is a formal party.

10. I have heard learned counsel for the parties and perused the record.

11. The plaintiff's case has been that there was no separate customary law applicable to the Gond tribes in the Koriya State and it is the Hindu Law of Succession which was prevalent and applicable in their community under which, the widow would only have limited interest and she could sell the property only out of legal necessity and she did not enjoy any absolute interest in the property. The defendant's case has been that the widow would take the property in absolute right. The plaintiffs have examined as many as three witnesses namely Sumitra Bai, Ram Singh and Basant Singh who have stated regarding the customary law applicable to Hindu in the matter of succession that the widow would have limited right to

maintain herself during her lifetime and witnesses have stated that she could sell the property only for legal necessity and only on her death, the property would revert to daughters.

12. On the other hand, defendant's witnesses namely Bhola Singh, Gobind Singh and Bhagwan Singh have stated that after death of a Kashtkar, if he had no son or son's son, the property would revert to Gautiya and if she is alive, she would earn the property until she re-marries as stated by Bhola Singh (DW1). Gobind Singh (DW2) has also stated that after death, the property would be received by the widow and daughters would not get any right. The third witness has stated that if there was no son, upon death of Kashtkar, the property would go to his widow and daughters are not entitled to succeed to the property.

Though in the cross-examination, these witnesses have given different statement and the evidence is that the widow would be having limited interest and she could sell the property out of legal necessity. However, in the cross-examination, they did not admit that after death of widow, only daughters will take the property.

13. Learned counsel for the appellant is correct in submitting that from what has been stated by the defence witnesses in their cross-examination, on preponderance of probability, the defendants would have a better case. However, these are all matters in the realm of appreciation of evidence. It is not a case that the defendants have admitted their case in the pleadings. The defendants have also denied the plaint allegations. However, there are discrepancies in what they have stated in the examination-in-chief and cross-examination.

14. In order to establish that in the tribe community of Gond in Koriya State, only Hindu law was prevalent and applicable, much more credible evidence was

required to be led. The plaintiffs were required to lead specific instances that upon death of a Kashtkar, leaving behind no successors, the widow will enjoy only limited interest and after her death, the property would revert back to surviving female members of the family. Except making statement that Hindu law is applicable, no specific instances have been given in the plaintiff's evidence. The burden was on the plaintiffs to prove this aspect. The findings, therefore, as to whether Hindu Law was applicable or not, is essentially a finding of fact and in the absence of patent illegality or perversity in the order, this Court is not inclined to interfere with those findings.

15. It is also to be noticed that having specifically pleaded that Nanki Bai had sold the property in dispute vide registered sale deed in favour of defendant No.1, the plaintiffs have not sought any relief of declaration that the sale deed is void *ab initio*, illegal or perverse because plaintiffs having clearly pleaded in the plaint that the property was sold by registered sale deed, unless a relief of getting the sale deed, avoided is appropriately made, the suit was also liable to be dismissed only on this ground.

16. In the result, no case is made out for interference by this Court. This appeal is accordingly dismissed. Parties to bear their respective costs. Let appellate decree be drawn accordingly.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge