

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 363 of 2003**

1. Bela Bai (Dead) through LR's. as Per Hon'ble Court Order 15/06/2015
 - (A) Mayaram S/o Late Chaitram, Aged About 58 Years R/o Village Kritbans, Tahsil, Post Office And Police Station Gandai, District Rajnandgaon Chhattisgarh, Chhattisgarh
 - (B) Radhelal S/o Late Chaitram, Aged About 45 Years R/o Village Kritbans, Tahsil, Post Office And Police Station Gandai, District Rajnandgaon Chhattisgarh
 - (C) Radheshyam S/o Late Chaitram, Aged About 32 Years R/o Village Kritbans, Tahsil, Post Office And Police Station Gandai, District Rajnandgaon Chhattisgarh
 - (D) Smt. Prem Bai W/o Saligram, D/o Chaitram, Aged About 60 Years R/o Village Lakhanpur, Tahsil And Police Station Sahaspur Lohara, P. O. Silhatti, District Rajnandgaon Chhattisgarh
 - (E) Smt. Paraniya W/o Late Itwari, D/o Late Chaitram, Aged About 52 Years R/o Village Gokna, Tahsil, Police Station And Post Office Gandai, District Rajnandgaon Chhattisgarh
 - (F) Smt. Radha W/o Panchram, D/o Late Chaitram, Aged About 50 Years R/o Village Beeja, Tahsil And Police Station Sahaspurlohara, Post Office Singhangarh, District Kabirdham Chhattisgarh
2. Ghasanin Bai (Dead) Through Legal LR's As Per Hon'ble Court Order 17/10/2019.
 - 2 (a) Arun Kumar S/o Hounjilal Aged About 50 Years Resident Of Village Aamgaon, Tahsil Chhuikhadan, District Civil And Revenue Rajnandgaon Chhattisgarh
 - 2 (b) Bade Lal S/o Hounsialal Aged About 47 Years Resident Of Village Aamgaon, Tahsil Chhuikhadan, District Civil And Revenue Rajnandgaon Chhattisgarh
 - 2 (c) Ramji S/o Hounsialal Aged About 34 Years Resident Of Village Aamgaon, Tahsil Chhuikhadan, District (Civil And Revenue) Rajnandgaon Chhattisgarh

---- Appellants

Versus

1. Adhinram Died Through LR's Through The Collector, Rajnandgaon, District Rajnandgaon, Chhattisgarh
 - 1.1 - Smt. Sheela Bai W/o Late Adhinram, Aged About 82 Years R/o Village Kritbans, Tahsil, Post Office And Police Station Gandai, District Rajnandgaon Chhattisgarh

1.2 - Smt. Janki Bai W/o Malik, D/o Late Adhinram, Aged About 63 Years R/o Village Kritbans, Tahsil, Post Office And Police Station Gandai, District Rajnandgaon, Chhattisgarh

1.3 - Smt. Malti W/o Sukalu Ram, D/o Late Adhin Ram, Aged About 61 Years R/o Dullapur, Tahsil, Police Office And Police Station Gandai, District Rajnandgaon Chhattisgarh

1.4 - Smt. Mankunwer W/o Shyam Lal, D/o Late Adhinram, Aged About 55 Years R/o Village Kritbans, Tahsil, Post Office And Police Station Gandai, District Rajnandgaon Chhattisgarh

1.5 - Smt. Dhankunwar W/o Mahalal, D/o Late Adhinram, Aged About 57 Years R/o Village Dhanaura, Tahsil And Police Station Sahaslohara, Post Office Silhatiya, District Rajnandgaon Chhattisgarh

1.6 - Smt. Ankaal W/o Devendra Kumar, D/o Late Adhinram, Aged About 45 Years R/o Mathpara, Durg, Tahsil, Police Station, Post Office And District Durg Chhattisgarh

2. State Of Chhattisgarh Through The Collector, Rajnandgaon, District Rajnandgaon Chhattisgarh

---- Respondents

For Appellant	:	Shri R.N.Jha, Advocate
For Respondent No.1	:	Shri S.K.Guha, Advocate on behalf of Shri R.S.Baghel, Advocate
For State	:	Shri Ankur Kashyap, Panel Lawyer

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

Order On Board

20/11/2019

This second appeal arises out of judgment and decree dated 29/04/2003 passed by the learned lower Appellate Court reversing the judgment and decree dated 17/01/2002 passed by the Trial Court in Civil Suit No.50-A/87. Learned lower Appellate Court decreed the suit of the plaintiff.

2. Respondent / plaintiff – Adhinram filed a suit seeking declaration of title and permanent injunction against his step mother – Leela Bai, the original defendant, on the pleadings *inter alia* that he is the son of Kehri who died prior to 1940. As

pleaded, respondent / Leela Bai was step mother with whom, Kehri had performed '*choori*' marriage. According to the plaintiff, his father – Kehri died prior to 1940, he being the only son and property in dispute described in schedule – C in the capacity of Maurusi (occupancy tenant), only plaintiff – Adhinram succeeded to the property and his step mother did not get any right in the property as a female successor. It was also pleaded that at the time of death of Kehri, plaintiff was minor, the disputed property was being managed by his mother and her name was also recorded without notice and knowledge of the plaintiff and taking undue advantage of this, when defendant – Leela Bai applied for partition by moving application before the Revenue Authority on 02/03/1987, cause of action arose for the plaintiff to seek declaration and permanent injunction.

3. Leela Bai, in her written statement denied plaintiff's claim and stated that Kehri died 35 - 40 years before the date of filing of her written statement and was survived by Adhinram, Leela Bai and two daughters – Bela Bai and Ghasnin Bai who were born out of wedlock of Kehri. Defendant's case was that the property in dispute was not the ancestral property but Kehri was absolute owner. Defendants denied that Kehri was occupancy tenant. According to the defendants, by application of Personal Law of Succession applicable to Hindus prior to coming into force of Succession Act, after death of Kehri, his widow – the defendant also succeeded to the property in equal share along with Adhinram. According to the defendants, Kehri died after 1948. It was also pleaded that after death of Kehri, the defendants also succeeded to the property and that was duly recorded in that capacity but the plaintiff did not raise any objection to the same nor took any remedy for long 50 years. Therefore, the suit itself is barred by limitation.

4. Learned Trial Court framed eight issues which included an issue for determination as to whether the plaintiff succeeded to the property in dispute after

death of his father and also whether the plaintiff is the sole successor after death of his father in respect of the disputed property described in Schedule C admeasuring 17.58 acres.

5. Learned Trial Court, after allowing parties to lead oral and documentary evidence, held that the plaintiff's suit was not only barred by limitation, otherwise also, his mother / the defendant – Leela Bai became absolute owner of the property after coming into force of Hindu Succession Act, 1956 (for short 'the Act of 1956').

6. Aggrieved by the said judgment and decree, the plaintiff preferred an appeal. Learned lower Appellate Court, however, reversed the finding of the learned Trial Court with regard to succession and held that the appellant could not have succeeded to the properties of the deceased – Kehri because the provisions of Hindu Women's Rights to Property Act, 1937 (for short 'the Act of 1937') became applicable in Khairagarh State only after 1948 as held by the High Court of Madhya Pradesh in the case of *Sugandhi Bai vs. Daya* (S.A.No.152/62) decided on 25/02/1969. Learned lower Appellate Court further held that the evidence on record proves that the deceased – Kehri was holding the agricultural land as an absolute occupancy tenant and therefore, as per Section 11 of the Central Provinces Tenancy Act, 1920 (for short 'the Act of 1920'), interest of an occupancy tenant in his holding, shall, on his death, pass by inheritance or survivorship, in accordance with his personal law. On such consideration, learned lower Appellate Court reached to the conclusion that the widow did not get any share as successor of her husband, deceased – Kehri, after his death. On this consideration, the judgment and decree passed by the Trial Court was reversed and the plaintiff's suit was decreed.

7. This appeal was admitted on following sole substantial question of law -
 “Whether the lower appellate Court has erred in not declaring the

appellant as the successor of deceased Kehri and Leela Bai ?

8. Learned counsel for the appellant argued that the learned lower Appellate Court has committed patent illegality in holding that the appellant is not having any interest in the property in dispute. He argued that as per the evidence of the parties, Kehri died prior to coming into force of the Act of 1956. Even if the finding of the learned lower Appellate Court that till 1948, provision of the Act of 1937 were not applicable and therefore, at the time of death of Kehri, the said Act had no application in the princely State of Khairagarh, according to customary law of Hindu, the widow - Leela Bai did not have limited interest in the property. Limited interest would perfect into ownership because there is abundance of evidence led before the Trial Court that after the death of Kehri, the appellants / defendants remained in possession of the property and on the date of coming into force of the Act of 1956 also, she was cultivating and in possession of the property. Therefore, by virtue of provisions contained in Section 14 of the Act of 1956, her limited estate and interest in the property would convert into absolute ownership, though, to the extent of her share along with Adhinram, the plaintiff. It is argued that the learned lower Appellate Court, only on the basis that at the time of death of Kehri, the Act of 1937 was not applicable, without considering the provisions relating to customary law of succession which were prevalent amongst Hindus remaining in joint possession with her son and the legal consequences flowing after coming into force of Hindu Succession Act, has wrongly held that the appellant is not entitled to any interest in the property.

9. Per contra, learned counsel for the respondent / plaintiff would argue that at the time of death of Kehri, as held by the learned lower Appellate Court, provisions of the Act of 1937 were not applicable. Widow of Kehri, the defendant – Leela Bai was only entitled to maintenance out of the said property but it cannot be said that

she was having any limited estate or interest in the property. Learned lower Appellate Court, on this consideration, found that the enactment of the Act of 1956 would not have the effect of conferring any proprietary right on the defendant – Leela Bai because on that day, she had no preexisting right which could be made at large and absolute by operation of provisions contained in Section 15 of the Act of 1956.

10. Before advertng to the legal position with regard to law of succession applicable to the parties as on the date Kehri died and thereafter, coming into force of the Act of 1956, the admitted factual position and proved facts needs to be noticed. It is an admitted position that the plaintiff – Adhinram is the son of Late Kehri and the defendant – Leela Bai (since deceased) was his step mother. The pleadings of the parties are that Kehri had performed *Choori* marriage with the defendant – Leela Bai and out of this marriage, two daughters were also born, namely, Bela Bai and Ghasnin Bai, who have been substituted as LRs of Leela Bai after her death during these proceedings. While the plaintiff has averred in the plaint that the deceased – Kehri was an occupancy tenant, cultivating agricultural land in dispute, the defendants have come out with the pleadings that it was an ancestral property and Kehri was an absolute owner. Infact, the plaintiff himself has pleaded that Kehri received the property in dispute from his own father. The finding recorded by the learned lower Appellate Court in para 11 that Kehri was an occupancy tenant, has not been disputed before this Court and therefore, this Court will proceed to decide the matter on the finding of the learned lower Appellate Court that the deceased – Kehri was an occupancy tenant.

11. The provisions of Section 5 and Section 11 of the Act of 1920 provided as below -

“Section 5 – The interest of an absolute occupancy tenant in his holding shall on his death pass by inheritance or survivorship in

accordance with his personal law.”

Section 11 - The interest of an occupancy tenant in his holding shall on his death pass by inheritance or survivorship in accordance with his personal law.”

A conjoint reading of the said provision makes it clear that upon death of the occupancy tenant, interest in the holding, shall on his death, pass by inheritance or survivorship in accordance with his personal law applicable to the deceased occupancy tenant.

The other finding of the learned lower Appellate Court based primarily on the judgment of the Madhya Pradesh High Court in the case of **Sugandhi** (supra) has also not been called in question in the Second Appeal. The finding to this effect has been recorded by the learned lower Appellate Court in para 16 of its judgment that the Act of 1937 became applicable to Khairagarh State only w.e.f. 01/01/1948.

According to the plaintiff, his father died prior to 1940. The defendants in the written statement has denied this factual averment of the plaintiff and have stated that he died 35 to 40 years before that date i.e. before filing of the written statement. Written statement was filed by the defendant on 06/09/1988. Therefore, according to the defendant also, Kehri died between 1943 and 1948. The plaintiff and his witness have not stated in their evidence as to the date or year on which, Kehri died.

Even the defendant witnesses have not stated anything in their evidence as to the date or year on which Kehri died. However, if the pleadings of the parties are looked into, it is clear that Kehri died prior to 1948. In view of above consideration, it has to be held that on the date of death of Kehri, the Act of 1937 had not become applicable in Khairagarh State, where parties resided and the property was situated.

12. As to what was the customary law of succession where Hindu male dies

intestate has been dealt with by the Supreme Court in the case of **Jaisri Sahu v. Rajdewan Dubey and ors., AIR 1962 SC 83**. Relying upon various decisions rendered by the Courts, even prior to coming into force of the Act of 1937, it was held -

“4. xxxxxxxxxxxxxxxx When a widow succeeds as heir to her husband, the ownership in the properties, both legal and beneficial, vests in her. She fully represents the estate, the interest of the reversioners therein being only *spes successionis*. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to any one. It is true that she cannot alienate the properties unless it be for necessity or for benefit to the estate, but this restriction on her powers is not one imposed for the benefit of reversioners but is an incident of the estate as known to Hindu law.”

13. Later on, in a subsequent decision in the case of **Gogula Gurumurthy and ors. v. Kurimeti Ayyappa, 1975 (4) SCC 458**, the legal position with regard to the nature of interest held by widow under the customary law of succession upon death of her husband, was explained as below, quoting observations made by Madras High Court in *Akkanna v. Venkayya, ILR (1902) 25 Madras 351*.

“10. xxxxxxxxxxxxxxxx As observed by the Madras High Court in *Akkanna v. Venkayya, I.L.R. (1902) 25 Mad. 351*) “the acquirer of property intends to retain dominion over it and in the case of a Hindu widow the presumption is none the less so when the fund with which the property is acquired is one which, though derived from her husband's property, was at her absolute disposal. In the case of property inherited from the husband, it is not by reason of her intention but by reason of the limited nature of a widow's estate under the Hindu Law, that she has only a limited power of disposition.”

14. Therefore, it cannot be said that at the time when Kehri died, his widow Leela Bai had no interest. She had a right of maintenance. Her interest was not

absolute in the property in the sense as an absolute ownership but she had a limited estate and was entitled to maintenance out of the property. If this was the limited estate which she enjoyed at the time of death of her husband, in the absence of there being any evidence of she having been deprived of the possession of the property, in course of time, there being no such evidence on record, it has to be presumed that before coming into force of the Act of 1956, she was possessed of the property which she was enjoying, though, having limited estate and interest i.e. only right of maintenance.

15. If that be so, Section 14 of the Act of 1956 would step in to protect interest in the property, though, jointly along with her son – Adhinram because after death of Kehri, Adhinram also succeeded to the property. Relevant provisions contained in Section 14 of the Act of 1956 reads thus -

“14. Property of a female Hindu to be her absolute property –

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.”

The widow was actually in cultivating possession of the property, cannot be disputed in view of abundance of evidence on record that at the time of death of Kehri, the plaintiff himself was minor aged 10 years and two other daughters were also minor and the property, since then, remained recorded in the name of Adhinram and his mother – Leela Bai through out, till date of filing of the suit. On the basis of such entries and in assertion of her right over the property, respondent / Leela Bai applied for partition before the revenue officer which led to filing of the suit in the present case.

16. The effect of provisions of Section 14 of the Act of 1956 was that the limited estate or ownership which the widow was enjoying prior to coming into force of the

Act of 1956, became absolute.

17. Therefore, the learned lower Appellate Court was not correct in law in holding that the appellant / defendant – Leela Bai would not get any interest in the property and only the plaintiff would be entitled to succeed to the property earlier held by his father.

18. Accordingly, the appeal is allowed by answering substantial question of law in favour of the appellant and against the respondent that the defendants are also having interest in equal share along with Adhinram in the disputed property described in Schedule C of the plaint and therefore, plaintiff's suit was rightly dismissed by the learned Trial Court as the plaintiff is not entitled to declaration that the entire property is held by him to the exclusion of his mother - Leela Bai.

19. In the result, the appeal is allowed. The impugned judgment and decree is set aside. Plaintiff's suit is dismissed. Parties to bear their respective costs. Decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge