

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 39 of 2005

Dashru, s/o Sirdar, aged about 30 years, Caste- Gond, Occ.- Agriculture,
R/o. Village Laxmanpur, P.S. Prem Nagar, Tahsil Surajpur, Distt. Sarguja,
C.G.

---- Appellant/ Plaintiff

Versus

1. Phoolmat, d/o. Sirdar aged about 35 yrs, caste Gond, Occ.- Agriculture,
r/o. Vill. Laxmanpur, P.S. Premnagar, Tah. Surajpur, Distt. Sarguja, C.G.
2. State of Chhattisgarh through the Collector, Sarguja C.G. (defendant)
3. Ratuliya, Wd/o. Sirdar aged about 60 yrs. Caste- Gond r/o. Laxmanpur,
P.S. Prem Nagar, Tah. Surajpur, Distt. Sarguja C.G. (Plaintiff No. 2)

---- Respondents

For Appellant/ Plaintiff	:	Mr. Ratan Pusty, Advocate
For State/ Respondent No. 2	:	Mr. Akash Pandey, Panel Lawyer

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

05.07.2019

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

“Whether in the facts and circumstances of the case learned Courts below were justified in holding that the custom pleaded by the plaintiff was not proved”?

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court).
2. The suit property was originally held by one 'Sirdar'. The plaintiff No. 1 is his son, plaintiff No. 2 is his widow and defendant No. 1 is his daughter. The plaintiffs have filed a suit for declaration of title and permanent injunction stating *inter alia* that they belong to 'Scheduled Tribes' in which daughters do not get any share in the property held by her father.

Therefore, the suit property is inherited exclusively by plaintiff No. 1 and defendant has no right over the suit land.

3. The trial Court dismissed the suit on the ground that the custom excluding the daughter in getting share over her father's land in their community is not proved and which has been upheld by the first appellate Court, against which this second appeal under Section 100 of the CPC has been filed by the appellant/ plaintiff, in which substantial question of law has been framed by this Court, which has been set out in the opening paragraph of this judgment.
4. Mr. Ratan Pusty, learned counsel for the appellant/ plaintiff would submit that both the Courts below are absolutely unjustified in dismissing the suit as the custom has fully been established by the plaintiff, as such, the suit ought to have been decreed.
5. I have heard Mr. Pusty, learned counsel for the appellant/ plaintiff and learned counsel for the State, considered their rival submissions made hereinabove and went through the record with utmost circumspection.
6. Both the Courts have concurrently held that the plaintiff has failed to prove valid custom in their community by which daughters do not get any share in the property of her father.
7. It is well settled law that the persons setting up the plea of the custom have to prove the said custom. The Supreme Court in the matter of ***Laxmi Bai (dead) through LRs & Anr. vs. Bhagwantbuva (dead) through LRs & Ors. Reported in (2013) 4 SCC 97***¹, has held as under:-

“12. Custom is an established practice at variance with the general law. A custom varying general law may be a general, local, tribal or family custom. A general custom includes a custom common to any considerable class of persons. A custom which is applicable to a locality, tribe, sect or a family is called a special custom. Custom is a rule, which in a particular family, a particular class, community, or in a particular district, has owing to prolonged use, obtained the force of law. Custom

1. (2013) 4 SCC

has the effect of modifying general personal law, but it does not override statutory law, unless the custom is expressly saved by it. Such custom must be ancient, uniform, certain, continuous and compulsory. No custom is valid if it is illegal, immoral, unreasonable or opposed to public policy. He who relies upon custom varying general law, must plead and prove it. Custom must be established by clear and unambiguous evidence.

13. In [Surajmani Stella Kujur v. Durga Charan Hansdah](#) AIR 2001 SC 938, this Court held that custom, being in derogation of a general rule, is required to be construed strictly. A party relying upon a custom, is obliged to establish it by way of clear and unambiguous evidence.

14. A custom must be proved to be ancient, certain and reasonable. The evidence adduced on behalf of the party concerned must prove the alleged custom and the proof must not be unsatisfactory and conflicting. A custom cannot be extended by analogy or logical process and it also cannot be established by a priori method. Nothing that the Courts can take judicial notice of needs to be proved. When a custom has been judicially recognised by the Court, it passes into the law of the land and proof of it becomes unnecessary under Section 57(1) of the [Evidence Act](#), 1872. Material customs must be proved properly and satisfactorily, until the time that such custom has, by way of frequent proof in the Court become so notorious, that the Courts take judicial notice of it.”

8. In the instant case, both the Courts have concurrently held that the plaintiff has failed to prove valid custom in their community by which daughters do not get share in the property of her father. Such a finding of fact is based on the evidence available on record. I do not find any perversity or illegality in the said finding. The substantial question of law is answered in favour of the defendant and against the plaintiff.

9. Accordingly, the second appeal, being devoid of merit is liable to be, and is hereby dismissed. No cost(s). A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge