

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.516 of 2019

Order reserved on: 11-11-2019

Order delivered on: 15-11-2019

Shivnandan, Aged about 56 years, S/o Late Shree Rathram
(Wrongly mentioned as Rathbai), by Caste Gond, R/o Kalmidih,
Tahsil Jayjaypur, District Janjgir-Champa (C.G.)

(Defendant)
---- Appellant

Versus

1. Ghinsal Singh, aged about 43 years, Father Shree Rameshwar Singh, Mother Late Smt Rathbai
2. Mohitram, aged about 55 years, Father Shree Rameshwar Singh, Mother Late Smt Rathbai
3. Smt Lahrabai, aged about 50 years, Father Shree Rameshwar Singh, Mother Late Smt Rathbai
4. Kisan Singh, aged about 40 years, Father Shree Rameshwar Singh, Mother Late Smt Rathbai
5. Smt Narmadabai, aged about 35 years, Father Shree Rameshwar Singh, Mother Late Smt Rathbai
6. Smt Dehribai, aged about 33 years, Father Shree Rameshwar Singh, Mother Late Smt Rathbai
7. Smt. Premlata, aged about 30 years, Father Shree Rameshwar Singh, Mother Late Smt Rathbai
8. Ghasninbai, D/o Late Mohan, R/o Kamlidih, Tahsil Jaijaipur, Present Address Village Gadgodi, Tahsil Sakti, Distt. Janjgir-Champa (C.G.)
(Plaintiffs)
9. Jankibai, D/o Birichbai, aged about 58 years, R/o Village Gadgodi, Tahsil Sakti, District Janjgir-Champa (C.G.)
10. State of Chhattisgarh, Through Collector, Janjgir, District Janjgir-Champa (C.G.)

(Defendants)
---- Respondents

For Appellant: Mr. Parag Kotecha, Advocate.
For Respondent No.10 / State: -
Miss Shivali Dubey, Panel Lawyer, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by defendant No.1 questioning the judgment & decree of the first appellate Court by which the first appellate Court has affirmed the decree of the trial Court allowing the suit for partition and possession.
2. Mr. Parag Kotecha, learned counsel appearing for the appellant / defendant No.1, would submit that both the Courts below are absolutely unjustified in holding that the plaintiffs are entitled for $\frac{1}{3}$ share in the suit property on partition and also entitled for possession by recording a finding which is perverse to the record, as the plaintiffs have admitted the fact of partition between their father Mohan and the predecessor-in-title of defendants No.1 & 2, as such, the appeal deserves to be admitted by formulating substantial question of law.
3. I have considered the submission of learned counsel for the appellant / defendant No.1 and went through the record with utmost circumspection.
4. The suit property was originally held by deceased Chaandu. He had three sons namely, Bodhram, Sunau and Mohan. The plaintiffs are daughters of Mohan, whereas, defendant No.1 is the grand-son of Sunau and defendant No.2 is the grand-daughter of Bodhram.

After death of Mohan, his two daughters filed a suit for partition and possession stating inter alia that the suit property was jointly held by Bodhram, Sunau and their father Mohan and after death of Bodhram, Sunau and Mohan, they are entitled for $\frac{1}{3}$ share in the suit property. It was also pleaded that parties are Gond by caste and they are governed by the Mitakshara School of Hindu Law, as such, they are entitled for $\frac{1}{3}$ share, which the defendants refuted and setup a plea of earlier partition between Bodhram, Sunau and Mohan.

5. The trial Court after appreciating oral and documentary evidence on record though held that parties are aboriginal tribe by caste and by virtue of Section 2(2) of the Hindu Succession Act, 1956 (for short, 'the Act of 1956'), the provisions of the Act of 1956 would not be applicable, but held that as per Section 8 of the Act of 1956, the plaintiffs would be entitled for $\frac{1}{3}$ share being the daughters of Mohan which was challenged by the defendants in first appeal. The first appellate Court set-aside the finding of the trial Court holding that the Act of 1956 would not apply as held by the trial Court, but by virtue of Section 6 of the Central Provinces Laws Act, 1875, the plaintiffs would be entitled for $\frac{1}{3}$ share in the suit property and confirmed the decree of the trial Court against which this appeal has been preferred.
6. It has already been held by the trial Court that the Act of 1956 would not be applicable which the first appellate Court rightly concurred with and partly set-aside the finding with regard to applicability of Section 8 of the Act of 1956 and relying upon

Section 6 of the Central Provinces Laws Act, 1875, affirmed the decree of the trial Court. It is apparent on the face of record that both the parties have failed to prove any custom governing succession in their caste.

7. The Central Provinces Laws Act, 1875 has been enacted to regulate the inheritance, special property of females, betrothal, marriage, dower, adoption and other system and customs.

Sections 5 and 6 of the said Act reads as follows: -

“5. Rule of decision in cases of certain classes.- In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions or any religious usage or institution, the rule of decision shall be the Muhammadan Law in cases where the parties are Muhammadans, and the

Hindu Law in cases where the parties are Hindus, except in so far as such law has been by the legislative enactment altered or abolished, or is opposed to the provisions of this Act:

Provided that when among any class or body of persons or among the members of any family any custom prevails which is inconsistent with the law applicable between such persons under this section, and which if not inconsistent with such law, would have been given effect to as legally binding, such custom shall, notwithstanding anything herein contained, be given effect to.

6. Rules in cases not expressly provided for.- In cases not provided for by section 5, or by any law for the time being in force, the Courts shall act according to justice, equity and good conscience.”

8. Their Lordships of the Supreme Court have also in the matter of M.V. Elisabeth and others v. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama,

Goa¹ held that where statute is silent and judicial intervention is

¹ 1993 Supp (2) SCC 433

required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience. It was observed as under: -

“86. The judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience.”

9. Now, the question is what is meaning and significance of the expression “justice, equity and good conscience”. The Formula “Justice, Equity and Good Conscience”—The origin of the formula lie in the Romeo canonical sources, way back in the 16th Century. Late the formula was applied in Italy, Germany and France. It appealed the English legal system which modified and incorporated it in their own system. The preamble to the Act of Succession enacted in 1536 used the expressions “Equity, reason and good conscience”. The East India Company carried the principle to India. In 1688, the Judges appointed in Bombay under the Company's Law were “to behave themselves according to good conscience”. The Royal Charters of 1683, 1687, 1726 and 1753 also used the expressions “Equity and Good Conscience” and “Justice and Right”. The Regulation of 1781 enjoined that in all cases for which no directions were given the respective Judge “do act according to justice, equity and good conscience”. The principles were to be applied where positive law or custom did not assist the Court to

dispense judicial Justice. Indeed, the term "Justice" eludes a precise definition. It means the constant and perpetual disposition to render to every man his due. The Courts are to administer "commutative justice" and "distributive justice" as well. The expression "commutative justice" means that virtue whose object is to render to every one what belongs to him, as nearly as may be, or that which governs contracts. To render commutative justice, the judge must make an equality between the parties, so that no one may be gainer by another's loss. The expressions "distributive justice" means that virtue whose object is to distribute rewards and punishments to each one according to his merits, observing a just proportion by comparing one person or fact with another, so that neither equal persons have unequal things nor unequal persons things equal. "Equity" is a system of law or rules more consonant than the ordinary law which opinions current for the time being as to a just regulation of the mutual rights and duties of men living in a civilized society, vide Halsbury's Laws of England, 3rd Edn., Vol. 14, p. 464. "Equity" according to Blackstone means "that portion of remedial justice which was formerly exclusively administered by a court of Equity as contra-distinguished from that portion which was formerly exclusively administered by a court of common law" - vide Blackstone's Commentaries, 429-437. The meaning of the expressions "Justice, equity and good conscience" was summed up by Lord Hobhouse in *Waghela Rajsanji v. Shekh Masludin* (1887) 13 Ind. Appl. 89(96). "Justice, equity and good conscience" could be interpreted to mean the rules of English Law and found

applicable to Indian society and circumstances". (See U. Bransly Nongaiang v. U. Drolishon Syiemiong and others².)

10. In the matter of Chuiyya s/o Jhadi and another v. Mangari Bai and another³, the M.P. High Court while dealing with the issue of inheritance of property of father by daughter belonging to "Oraon tribe" held as under: -

"It is true that the provisions of Hindu Succession Act, 1956 do not apply to the members of the Scheduled Tribe as per section 2(2) of this Act. It is also true that parties are Scheduled Tribes. In the absence of son the daughter was entitled to inheritance and she used to get "limited Estate" and on her death it used to pass on to the reversioners of her father. That rule has been abrogated. Section 14 of the Hindu Succession Act, 1956 confers full heritable capacity on a female heir. There is no definite evidence that amongst the Oraons a daughter is excluded from inheriting the property of her father. There should be no disparity in the rights of man and woman in matters of succession and inheritance. This is recognized in all the systems. It is for the person setting up the plea of exclusion of daughter from inheritance to prove and establish that there is such a caste custom. A custom is a rule which has by long usage obtained the force of law. It must be ancient, certain and reasonable. The daughter is entitled to the share in the lands in dispute."

11. Similarly, in the matter of Sukhmani and others v. Jagarnath⁴, the M.P. High Court applying the principles of equity, justice and good conscience, finding no provision of law governing right to succession among Gond-caste held as under: -

"10. The trial Court had rightly held that the daughters are entitled to a share in the property of father in the Gond community and they along with Sonamati and the respondent succeeded to the property of Jatu. After the death of Sonamati half share of Sonamati was also transmitted to the appellants as there was no prohibition in law to succeed the property of their step-mother. In

2 (1986) 2 Gauhati Law Reports 487

3 2000(2) M.P.L.J. 441

4 2000 RN 301

fact, sections 5 and 6 of the Central Provinces Law read together would show that in absence of any law governing the right to succession, the principles of equity, justice and good conscience shall apply.

11. For all these reasons, this Court comes to the conclusion that the appellants and the respondent are entitled to 1/6th share each in the suit property.”

12. This Court also in the matter of **Mst. Sarwango and others v. Mst. Urchamahin and others**⁵, applying Section 6 of the Central Provinces Laws Act, 1875, held that in absence of any law of inheritance or custom prevailing in Gond-caste, Courts are required to decide right according to justice, equity and good conscience and allotted ½ share to daughters on the property left by their father. It was observed as under: -

“10. In the present case, both the parties have failed to prove any law of inheritance or custom prevailing in their Gond caste i.e. member of Scheduled Caste whom Hindu Law or other law governing inheritance is not applicable. In absence of any law of inheritance or custom prevailing in their caste governing the inheritance the Courts are required to decide the rights according to justice, equity and good conscience in term of Section 6 of the Act. Plaintiffs Sawango and Jaituniya are daughters of Jhangal, nearest relative rather the respondents, who were daughter-in-law of brother of Jhangal and legitimate or illegitimate son of Balam Singh, son of Dakhal.

11. In these circumstances, plaintiffs Sawango and Jaituniya would be the persons' best entitlement to inherit the property left by their father. The Courts below ought to have decreed the suit for partition to the extent of share of Jhangal, but the Court below i.e. the lower appellate Court has allowed the appeal and dismissed the suit in absence of any law or custom for inheritance for a member of Schedule Tribe. The Courts below are required to decide their rights of inheritance in accordance with the provisions of Section 6 of the Act applicable to the State of Chhattisgarh and undivided State of Madhya Pradesh.”

13. Reverting to the facts of the present case, I am of the considered

5 AIR 2013 Chhattisgarh 98

opinion that the first appellate Court has not committed any error in granting $\frac{1}{3}$ share in the property to the plaintiffs applying Section 6 of the Central Provinces Laws Act, 1875. Both the parties, in the instant case, have failed to establish that they being the members of Gond caste have given up their customary succession and have become “Hindus out-and-out” or “sufficiently Hinduised” and in the matter of succession they are governed by any particular School of Hindu Law. Consequently, the legislative bar contained in Section 2(2) of the Act of 1956 would apply in full force and hence, the provisions of the Act of 1956 would not apply to the parties to suit being the aboriginal tribe in absence of notification by the Central Government applying the provisions of the Act of 1956 to them and in absence of any law of inheritance or custom prevailing in Gond caste, the provisions of Section 6 of the Central Provinces Laws Act, 1875 would apply as held above and the courts are required to decide right according to justice, equity and good conscience applying the said principles and following the principles of law laid down in this behalf in the above-stated judgments – Sukhmani (supra) and Mst. Sarwango (supra). Thus, it is held that daughters of Mohan would also be entitled for share in the total property, as the suit property has not been partitioned. Though the plea of partition has been admitted, but in fact, the defendants are in possession of the suit land and as such, both the Courts below have rightly negated the plea of partition taken by the defendants.

14. As such, the first appellate Court is absolutely justified in affirming the judgment & decree of the trial Court, though partly set-aside the

finding with regard to applicability of Section 8 of the Act of 1956. I do not find any substantial question of law for determination in this appeal. The second appeal deserves to be and is accordingly dismissed *in limine*, without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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