

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.132 of 2011**

- Teju, aged about 48 years, S/o Deme, Caste Uraon, Occupation Agriculturist, R/o Gamhariya, Tah. Jashpur Nagar, Distt. Jashpur (C.G.)

----- Appellant**Versus**

- 1.Mandur, aged about 58 years, S/o Bhauva, Occupation Agriculturist, R/o Purnanagar, Tahsil and Distt. Jashpur (C.G.)
- 2.Sukhram, S/o Bhauva, aged about 43 years, R/o Gamhariya, Tahsil and Distt. Jashpur (C.G.)
- 3.State of Chhattisgarh, through the Collector, Distt. Jashpur (C.G.)

----- Respondents

For AppellantMr. A. N. Bhakta, Advocate

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****02/03/2021**

1. Heard on admission and formulation of substantial question of law in the second appeal preferred by the appellant /plaintiff.

2. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the appellant /plaintiff vide judgment and decree dated 29.01.2011 passed by the learned District Judge, Civil District Jashpur (C.G.) in Civil Appeal No.22A/2010 affirming the judgment and decree of the Trial Court dated 31.03.2005 passed by the learned Civil Judge Class-II, Jashpur, District Jashpur (C.G.) in Civil Suit No.25A/2002 dismissing the suit filed by the appellant/plaintiff.
3. Mr. Bhakta, learned counsel for the appellant/plaintiff, would submit that both the Courts below have grossly erred in concurrently holding that the plaintiff is not entitled for decree qua the suit property held by his uncle Marhu, thereby committed illegality. As such, the appeal be admitted for hearing by formulating substantial question of law.
4. I have heard learned counsel for the

appellant, considered his submissions made herein-above and also went through the records with utmost circumspection.

5. The suit property was originally held by Fakir. He had three sons namely Deme, Bhauva and Marhu. The plaintiff is the son of Deme. The defendant Nos.2 & 3 are the sons of Bhauva, whereas the defendant No.1 Gandori is the daughter of Marhu. She died during the pendency of the suit on 17.05.2003. The dispute relates to property left by Marhu.
6. The plaintiff filed a suit for declaration, possession and injunction claiming that the parties are Oraon by caste and as such, under the prevailing customs and traditions in the said Community, the daughters do not get share in the property of their father after marriage and therefore the defendant No.1 cannot succeed to the property of her father Marhu, which was dismissed by the Trial Court and affirmed by the First Appellate Court. The First Appellate Court

has also held that since Gandori, daughter of Marhu, died on 17.05.2003 and her legal representatives were not brought on record, therefore, the appeal has also abated.

7. Admittedly, in the first round of litigation, the suit property was held to be of Marhu and defendant No.1 Gandori was the sole surviving daughter of her father Marhu. The suit filed by the plaintiff alleging that in Oraon Caste, the daughters do not get share in the property held by their father after marriage was not found favour with by the Trial Court. The plaintiff ought to have pleaded and brought appropriate evidence regarding custom prevailing in the Oraon Caste, in which daughters do not get share in the property of their father after marriage, but no such custom was pleaded and proved by the plaintiff. As such, both the Courts below have concurrently and rightly recorded a finding that the plaintiff is not entitled to succeed to property of Marhu.

Even otherwise, the defendant No.1 Gondori has died, but no steps were taken for substituting the LRs of Gondori on record. As such, the First Appellate Court has dismissed the appeal on merit as well as abated by recording a finding that the plaintiff would not succeed to the property of Marhu and the defendant No.1 Gondori, being the daughter of Marhu, would succeed to the property of her father Marhu and as such, the appeal has abated are findings of fact based on the material available on record, which is neither perverse nor contrary to the record.

8. I do not find any substantial question of law involved in this second appeal. It deserves to be and is hereby dismissed in *limine* without notice to the other side. No order as to cost (s).

Sd/-

Sanjay K. Agrawal
Judge