

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**SA No.237 of 2011**

- Kanwalsai, S/o Sorako, aged about 56 years, Caste Kanwar, R/o Village Nayabhandh, Post Batauli, Tahsil Sitapur, District Surguja (C.G.)

**----- Appellant**

**Versus**

1. Bhagamaniya, D/o Saudha, aged about 66 years, Caste Kanwar
2. Velas, S/o Sorako, aged about 61 years, Caste Kanwar
3. Dhuran, S/o Puran, aged about 40 years, Caste Kanwar
4. Ramkeshwar, S/o Puran, aged about 40 years, Caste Kanwar

All of R/o Village Nayabhandh, Post Batauli, Tahsil Sitapur, District Sarguja (C.G.)

5. State of Chhattisgarh, through Collector, Sarguja, District Ambikapur (C.G.)

**----- Respondents**

---

|                      |                            |
|----------------------|----------------------------|
| For Appellant        | Mr. S. B. Pandey, Advocate |
| For Respondent-State | Mr. R. K. Bhagat, Dy. GA   |

---

**Hon'ble Justice Shri Sanjay K. Agrawal**

**Order On Board**

**23/02/2021**

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 dated 03.07.2010, the First Appellate Court has partly allowed the appeal preferred by the defendant No.4 passed by the learned 3<sup>rd</sup> Additional District Judge (FTC), Sarguja, Ambikapur, District Sarguja (C.G.) in Civil Appeal No.20A/2009 partly reversing the judgment and decree of the Trial Court dated 24.10.2008 passed by the learned Civil Judge Class-II, Sitapur, District Sarguja (C.G.) in Civil Suit No.24A/2007 decreeing the suit of the appellant/plaintiff granting 1/3rd share in the property of Sorko and Saudha.
3. Learned counsel for the appellant/plaintiff would submit that the First Appellate Court is absolutely unjustified in partly

reversing the judgment and decree of the Trial Court by holding that Sorako's brother's (Saudha) daughter i.e. the defendant No.4 would also get share in the property held by her father Saudha by recording a finding perverse to the record. As such the appeal be admitted for hearing by formulating substantial question of law.

4. The suit property was originally held by Sorko and Saudha. Sorko had three sons Puran, Velas (defendant No.3) and Kanwalsai (plaintiff). Puran died before institution of the suit. He had two sons Dhuran (defendant No.1) and Ramkeshwar (defendant No.2), whereas the defendant No.4 Bhagmaniya is the daughter of Saudha. The plaintiff filed a suit for declaration, partition and mesne profit claiming that he be declared title holder of 1/3rd share in the joint property held by Sorko and Saudha both shown in Schedule-A and Schedule-A1 appended with plaint.

5. Trial Court decreed the suit holding that since Saudha had only daughter and daughters do not get share in the property of their father in Kanwar Caste, which is a Scheduled Tribe Community, they are not governed by the Hindu Succession Act, 1956, rather they are governed by the old customs and traditions prevailing in the said community, therefore, the plaintiff would get 1/3rd share in the property held by Sorko and Saudha both shown in Schedule-A and Schedule-A1 appended with plaint. The First Appellate Court has reversed the judgment and decree of the Trial Court by holding that in absence of any valid custom and tradition in Kanwar Caste, the daughters would also inherit the property of their father and as such, the defendant No.4 Bhagmaniya would get the  $\frac{1}{2}$  share in the suit property held by her father Saudha and the plaintiff and his two brothers would get  $\frac{1}{2}$  in their father Sorko' share

and in partition between the plaintiff and his brothers, the plaintiff would get 1/3rd share, which has been called in question in this second appeal.

6. The plaintiff was required to plead and establish that Kanwar Caste is governed by the old customs and traditions, in which daughters do not get share in the property of their father, which the plaintiff has failed to plead and establish. In absence of any such valid custom and tradition, the First Appellate Court has rightly held that in Kanwar Caste, the daughters would get share in the property of their father, therefore, the plaintiff and his brothers would only get  $\frac{1}{2}$  share in the suit property held by Sorko and Saudha and defendant No.4 would also be entitled for  $\frac{1}{2}$  share in the property of her father Saudha. As such, the decree so modified by the First Appellate Court is strictly in accordance with law and there is no illegality or perversity in

the judgment and decree passed by the First Appellate Court.

7. I do not find any substantial question of law involved in this second appeal so filed by the appellant/plaintiff. 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

Nirala