

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 329 of 2011**

1. Madan Singh Aged about 34 years, S/o. Samundra Singh, R/o. Village Auorai, Tahsil Kartala, Distt. Kobra (CG)
2. Nandkumar aged about 29 years, S.o. Kundan Singh, R/o. Village Auorai, Tahsil Kartala, Distt. Kobra (CG)

---- Appellants/Plaintiffs**Versus**

1. Smt. Neerabai aged about 57 years, W/o. Dinbandhu Kanwar, R/o. Village Judhga (Navadih Para) Tahsil Sakti, Distt. Janjgir Champa (CG) (**Defendant**)
2. State of Chhattisgarh Through the Collector District Korba (CG)

---Respondents

For Appellants	: Shri K. Kalamkar, Advocate
For Respondent 1	: Not noticed
For Respondent No.3/State	: Shri Ankur Kashyap, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****23.02.2021.**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants herein/plaintiffs against the impugned judgment and decree dated 11.3.2011 passed by Second Additional District Judge (FTC) Korba in Civil Appeal No.7A/2009 affirming the judgment and decree dated 09.5.2008 passed by Civil Judge Class-II, Korba in Civil Suit No.90A/2006 by which the trial Court dismissed the suit of the plaintiffs.

2. Learned counsel for the appellants herein/plaintiffs submits that both the courts below have concurrently erred in holding that the plaintiffs have failed to prove that according to the custom in Kanwar

Caste which is notified as Scheduled Tribe, daughters do not get share in the property of their father, by recording a finding which is perverse to the record, therefore, the appeal involves substantial question of law for determination and the appeal may be admitted for hearing by formulating substantial question of law.

3. I have heard learned counsel for the appellants and went through the record with utmost circumspection.

4. The suit property was originally held by Chamar Singh, on partition between his sons Anjor Singh, Bodhi Ram and Ganga Ram, the suit property fell in the share of Mahesh Ram who was the son of Ganga Ram. Mahesh Ram had two daughters namely Neera Bai (defendant No.1) and Amrita Bai and one son namely Santram. Santram and Amrita Bai are already dead. Santram had one daughter namely Phoolshwar who also died. As such, only Neera Bai/defendant No.1 is the legal heir of Mahesh Ram.

5. Now the plaintiffs who are grand-sons of Ganga Ram have filed a suit that the parties belong to Kanwar Caste, which is notified as Scheduled Tribes, and according to their custom daughters do not get the share in the property of their father, therefore, defendant Neera Bai is not entitled to have share of her father's property, as such, the plaintiffs are entitled to get the declaration of title over the suit property.

6. The trial Court after appreciating oral and documentary evidence, held that the plaintiffs failed to prove the custom prevailed in their caste Kunwar, an aboriginal tribe, that the daughters do not get the share in the property of their father and accordingly dismissed the suit. The said finding of the trial Court has been affirmed by the first appellate Court

against which the plaintiffs have preferred the second appeal.

7. Concurrent finding recorded by both the courts below holding that the plaintiffs have failed to prove that according to the customs of aboriginal tribe, daughters do not get the share in the property of their father, is finding of fact based on material available on record, which is neither perverse nor contrary to the record and the appeal does not involve substantial questions of law.

8. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE