

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 147 of 2010**

1. Sangat S/o Lohar, Aged about 10 years, through his natural guardian mother Somari, Wd/o Lohar.
2. Smt. Somari, Wd/o Lohar, Aged about 45 years.

Both are R/o Village Riri, Tahsil Lundra, District Surguja, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Guruwari Bai D/o Kana, Aged about 60 years, R/o Village Riri, Tahsil Lundra, District Surguja, Chhattisgarh.
2. State of Chhattisgarh, through Collector, Surguja (Ambikapur), District Surguja, Chhattisgarh.

--- Respondents/Defendants

For Appellants	: - Mr. Manoj Paranjpe, Advocate
For Respondent No. 1	: - Mr. R.R. Soni, Advocate
For State	: - Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/01/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/plaintiffs

under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which the trial Court dismissed the suit of the plaintiffs finding no merit.

2. Mr. Manoj Paranjpe, learned counsel appearing for the appellants/plaintiffs, would submit that both the Courts below have legally erred in holding that in Nageshiya Caste (Ab-original Tribe), to which the parties belong to, daughters get share in the property of their fathers and the provisions of the Hindu Succession Act, 1956 are not applicable to the parties by virtue of Section 2(2) of the Act of 1956, as such, the appeal deserves to be admitted by formulating substantial question of law in this regard.

3. The suit property, as shown in Schedule 'A' annexed with the plaint, was originally held by Kana, who had one son namely Lohar and one daughter namely Guruwari Bai i.e. defendant No. 1. Plaintiff No. 1 is the son of Lohar and plaintiff No. 2 is the widow of Lohar.

4. Plaintiffs brought a suit for declaration of title and permanent injunction after the death of Kana stating *inter alia* that they belong to Nageshiya Caste (Ab-original Tribe) and the provisions of the Hindu Succession Act, 1956 are not applicable to them by virtue of Section 2(2) of the Act of 1956, as such, they are governed by their own customs in which the daughters are not entitled to get a share in the property of their father, therefore, Lohar being the only son of Kana is entitled to inherit the entire suit property left by his father Kana and after the death of Lohar, plaintiffs are entitled to get the entire suit property.

5. Learned trial Court, after evaluation of oral and documentary evidence on record, dismissed the suit holding that plaintiffs have failed to prove the validness of the custom governing them by which a daughter is not entitled to get share in the property of their father, which was affirmed by the first appellate Court in the appeal preferred by the plaintiffs.

6. This Court has already dealt with this issue in Smt. Bhagwati v. Cheduram (died and deleted) &

Ors.¹ as well as in Daduram v. Bhuri Bai (died and deleted) & Ors.² and after a complete legal analysis has held that daughters are not required to plead and prove that they are not excluded from inheriting the property of their father rather it is upon the sons to plead and establish the customary law governing their tribe which excludes the daughters from inheritance.

7. As such, the concurrent finding recorded by both the Courts below that plaintiffs, being the successors-in-interest of Kana's son Lohar, have failed to prove the valid custom governing their tribe in which daughters do not get a share in the property of their fathers and therefore, they are not entitled for decree for declaration of title and permanent injunction over the entire suit property left by Kana is a finding of fact based on evidence available on record which is neither perverse nor contrary to record and as such, does not involve any substantial question of law.

1 Second Appeal No. 311/2005 decided on 09/12/2019

2 Second Appeal No. 270/2003 decided on 06/02/2019

8. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine*. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet