

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.234 of 2010****1. Mst. Jhuli (Died) Through LRs**

1.A. Admon Ram, S/o Late Chungru Ram and Jhuli, aged about 48 years,

1.B. Inderlal Ram, S/o Late Chungru and Jhuli, aged about 45 years,

1.C. Fulpati, W/o Harish Bhagat, aged about 55 years,

All are R/o Village Bhanwar, P.S. Sanna, Tahsil Bagicha, District Jashpur (C.G.)

1.D. Jagmani, W/o Baijnath Bhagat, aged about 42 years, Village Kapa, Bagicha, P.S. Sanna, District Jashpur (C.G.)

**2. Chimlo (Died) Through LRs.**

2.A. Israil, S/o Chimlo, aged about 40 years, R/o Village Girholtoli, Ranpur, Tahsil Bagicha, District Jashpur (C.G.)

2.B. Kisthoki, D/o Chimlo, aged about 32 years, R/o Village Girholtoli, Ranpur, Tahsil Bagicha, District Jashpur (C.G.)

**3. Sabi, D/o Chilbilo, aged about 52 years, Caste Uraon, R/o Village Lotadand, Tahsil Bagicha, District Jashpur (C.G.)****4. Muli (Died) Through LRs.**

4.A. Tartiyus, S/o Muli, aged about 40 years, R/o Village Girholtoli, Ranpur, Tahsil Bagicha, District Jashpur (C.G.)

4.B. Bhiharu, S/o Muli, aged about 35 years, R/o Village Girholtoli, Ranpur, Tahsil Bagicha, District Jashpur (C.G.)

Through power of attorney Inderlal, S/o Chungru, aged about 32 years, Caste Uraon, R/o Village Kalia, Tahsil Bagicha, District Jashpur (C.G.)

(Plaintiffs)  
---- Appellants

**Versus****1. Patru, S/o Fagua, aged about 33 years,****2. Birsit (Died) Through LRs.**

2.A. Nikita Lakra, D/o Birsit @ Birjit, aged about 22 years,

2.B. Nitesh Lakra, S/o Late Birsit @ Birjit, aged about 20 years,

2.C. Ankita Lakra, D/o Birsit @ Birjit, aged about 18 years,

2.D. Akansha Lakra, D/o Late Birsit @ Birjit, aged about 16 years, minor through her father and natural guardian 2.E. namely Balasious.

2.E. Balasious, H/o Birsit @ Birjit, aged about 50 years,

All are R/o Village Kalia, Tahsil Bagicha, District Jashpur (C.G.)

3. Ghuda, S/o Chotto, aged about 67 years,

4. Kuldeep, S/o Philip, aged about 29 years,

5. Elexius, S/o Ignes, age 29 yrs.,

6. Alexius, S/o Chenga, aged about 29 years,

7. Jesphor, S/o Chenga, aged about 27 years,

All are Caste Uraon, R/o Village Kalia, Tahsil Bagicha, District Jashpur (C.G.)

8. The State of Chhattisgarh, through Collector, District Jashpur (C.G.)

(Defendants)

---- Respondents

---

For Appellants / Plaintiffs: -

Mr. Rishi Mahobia, Advocate.

For Respondents No.1 to 7 / Defendants: -

Mr. J.K. Saxena, Advocate.

For Respondent No.8 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

---

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

03/02/2021

1. This second appeal preferred under Section 100 of the CPC by the appellants herein / plaintiffs was admitted for hearing by formulating the following three substantial questions of law on 3-1-2014: -

“1. Whether the two Courts below have committed an error of law in holding that Jhuli, the plaintiff no.1 is not Gharjiha Daughter of Chilbio?

2. Whether the two Courts below were justified in

holding that there was no custom in the caste of the plaintiff of married daughter inheriting property of the deceased father?

3. Whether the two Courts below were justified in not appreciating the fact that as per the evidence D/1 and D/3, the partition between the four sons of Pandu had taken place?”

[For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.]

2. The suit property situated at Village Kaliya, Tahsil Bagicha, District Jashpur shown in Schedule A of the plaint was originally held by Pandu. Pandu had four sons namely, Padra, Lallu, Chotto and Chilbilo. The original plaintiffs are daughters of Chilbilo. Chilbilo had no son, whereas the defendants are sons of Padra, Lallu and Chotto. Chilbilo died in the year 1989 and the plaintiffs are his legal heirs being daughters as he was not having son. Jhuli was daughter of Chilbilo. It is the case of the plaintiffs that Jhuli was kept as Gharjiya daughter and her husband was kept as Ghar Daamaad by her father Chilbilo. It is the further case of the plaintiffs that after death of their father Chilbilo, the suit property has been recorded in their name, but the defendants who are their father's brother's sons in connivance with the revenue officer got their names recorded in the revenue record and forcefully taken possession of the suit property, as such, they are entitled for declaration of title and permanent injunction.
3. Defendants No.1 to 7 filed written statement denying the allegations made in the plaint and it was pleaded that the property was held by forefathers of the plaintiffs and the

defendants – Pandu and parties belong to Uraon Caste and they are governed by their own custom and according to their custom, married daughters do not get right and title in the property of father and property has never been partitioned between the four brothers and thus, the plaintiffs being married daughters, do not get any right in the suit property.

4. The trial Court after appreciating oral and documentary evidence available on record, held that the suit property was the property acquired by Pandu – grandfather of the plaintiffs and the defendants and they belong to aboriginal tribe and in Uraon caste, married daughters do not get share in the property of their father and it has not been proved that Jhuli was the gharjamai daughter of Chilbilo, therefore dismissed the suit and in turn it has been affirmed by the first appellate Court in appeal against which this second appeal has been preferred in which substantial questions of law have been formulated which have been set out in the opening paragraph of this judgment.
5. Mr. Rishi Mahobia, learned counsel appearing for the appellants herein / plaintiffs, would submit that both the Courts below have legally erred in holding that married daughters do not get share in the property of their father in Uraon caste, but valid custom continuing for lifetime and valid continuance of the said legal custom prevalent among them has not been proved satisfactorily. Merely on the basis of alleged admission made by Inderlal (PW-1), the suit has been dismissed which is wholly unsustainable. Valid continuance of the said ancient custom has not been proved by the defendants that in Uraon caste, married daughters do not get share in the property of their

father and the finding recorded in that respect is perverse and contrary to the evidence available on record. Mr. Mahobia would further submit that the fact of custom has to be established and even otherwise, on the alleged admission, he would also submit that there can be no admission on the question of custom as it has to be pleaded and established by taking the plea of that custom, as such, both the Courts below have committed legal error in holding that the plaintiffs being married daughters are not entitled to succeed the property of their father and therefore the said finding deserves to be set aside by allowing the appeal.

6. Mr. J.K. Saxena, learned counsel appearing for the defendants / respondents No.1 to 7 herein, would submit that none of the plaintiffs has entered into the witness box and Inderlal (PW-1) – power of attorney holder cannot depose facts on behalf of the plaintiff and he would rely upon the decision of the Supreme Court in the matter of Janki Vashdeo Bhojwani and another v. Indusind Bank Ltd. and others<sup>1</sup>. Therefore, in absence of valid legal evidence on behalf of the plaintiffs, the suit has rightly been dismissed. Even otherwise, Inderlal (PW-1) himself has admitted the fact that in Uraon caste to which the parties belong, daughters do not get share in the property of their father. As such, both the Courts below have rightly held that the plaintiffs being married daughters are not entitled to inherit the property of their father.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went

<sup>1</sup> 2005 SAR (Civil) 103

through the record with utmost circumspection.

8. It is not in dispute that parties are aboriginal tribe, they belong to Uraon caste and they are governed by their custom and it has been held so by the Courts below.
9. The plaintiffs' father Chilbilo and the defendants' fathers – Padra, Lallu & Chotto are brothers and after death of the plaintiffs' father, the plaintiffs have inherited the property of their father Chilbilo, though they are married daughters of Chilbilo as Chilbilo had no son. The defendants set up the plea that married daughters do not get share in the property of their father.
10. The question for consideration would be, whether both the Courts below are justified in holding that in Uraon caste, married daughters are not entitled to inherit the property of their father and therefore they are not entitled for decree?
11. Section 2(2) of the Hindu Succession Act, 1956 (for short 'the Act of 1956') provides as under: -
 

**“2. Application of Act.—(1) xxx    xxx    xxx**

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.”
12. List of Scheduled Tribes is contained in the Constitution (Scheduled Tribes) Order, 1950 amended with effect from 1.11.2000 by virtue of Section 20 of the Madhya Pradesh Reorganisation Act, 2000, which provides that on and from the appointed day, the Constitution (Scheduled Tribes) Order, 1950,

shall stand amended as directed in the Fourth Schedule. Uraon to which the parties herein belong is in Entry 33 in relation to Chhattisgarh in the above order. As such, Uraon is a Scheduled Tribe within the meaning of the Constitution of India notified by the Constitution (Scheduled Tribes) Order, 1950 by the President of India and it is a Scheduled Tribe within the meaning of Article 366(25) of the Constitution. Thus, the provisions of the Act of 1956 do not pro-tanto apply to the members of Scheduled Tribe as per Section 2(2) of the Act of 1956, because of *non obstante* clause in Section 2(2) of the Act of 1956, as the customary law of the Scheduled Tribe has been preserved by the legislature.

13. The Supreme Court in the matter of **Madhu Kishwar and others v. State of Bihar and others**<sup>2</sup>, after noticing sub-section (2) of Section 2 of the Act of 1956, held as under:-

“4. ... Thus neither the Hindu Succession Act, nor the Indian Succession Act, nor even the Shariat law is applicable to the custom-governed tribals. And custom, as is well recognized, varies from people to people and region to region.”

14. Thus, it is held that the provisions of the Hindu Succession Act, 1956 will not apply to the parties, as they are Uraon scheduled tribes, which is Scheduled Tribe within the meaning of Article 366(25) of the Constitution of India and the Central Government has not issued any notification directing otherwise and applying the provisions of the Hindu Succession Act to them.

15. It is admitted position on record that the parties are Uraon by caste and the provisions of the Hindu Succession Act are not applicable to them by virtue of Section 2(2) of the Act of 1956.

<sup>2</sup> (1996) 5 SCC 125

16. Further, the question for consideration would be, whether the plaintiffs who claimed on the basis that they have inherited the property of their father and the defendants pleaded that they belong to Uraon community in which daughters do not get share in the property of their father. In the light of above-mentioned fact, the burden to prove the custom would lie on the defendants as they have pleaded that in their community daughters do not get share in their father's property?

17. In this regard, decision of the Supreme Court in the matter of **Saraswathi Ammal v. Jagadambal and Another**<sup>3</sup> may be noticed herein profitably in which their Lordships have clearly held that it is incumbent on a party setting up a custom to allege and prove the custom on which he relies and custom cannot be extended by analogy and it must be established inductively, not deductively. It was observed as under:-

“11. The correct approach to a case where a party seeks to prove a custom is the one pointed out by their Lordships of the Privy Council in *Abdul Hussein Khan v. Soma Dero*, (I.L.R. 45 Cal. 450: PC). It was there said that it is incumbent on a party setting up a custom to allege and prove the custom on which he relies and it is not any theory of custom or deductions from other customs which can be made a rule of decision but only any custom applicable to the parties concerned that can be the rule of decision in a particular case. It is well settled that custom cannot be extended by analogy. It must be established inductively, not deductively and it cannot be established by a priori methods. Theory and custom are antitheses, custom cannot be a matter of mere theory but must always be a matter of fact and one custom cannot be deduced from another. A community living in one particular district may have evolved a particular custom but from that it does not follow that the community living in another district is necessarily following the same-custom.”

3 AIR 1953 SC 201

18. Again, in the matter of Salekh Chand (Dead) by LRs. v. Satya Gupta and Ors.<sup>4</sup>, it was held by their Lordships of the Supreme Court that where custom is set up to prove that it is at variance with the ordinary law, it has to be proved that it is not opposed to public policy and that it is ancient, invariable, continuous, notorious, not expressly forbidden by the legislature and not opposed to morality or public policy. It was observed as under:-

“21. In *Mookka Kone v. Ammakutti Ammal* [AIR 1928 Mad 299 (FB)], it was held that where custom is set up to prove that it is at variance with the ordinary law, it has to be proved that it is not opposed to public policy and that it is ancient, invariable, continuous, notorious, not expressly forbidden by the legislature and not opposed to morality or public policy.

22. It is incumbent on party setting up a custom to allege and prove the custom on which he relies. Custom cannot be extended by analogy. It must be established inductively and not by a priori methods. Custom cannot be a matter of theory but must always be a matter of fact and one custom cannot be deduced from another. It is a well established law that custom cannot be enlarged by parity of reasoning.”

19. The Supreme Court in the matter of Bhimashya and Ors. v. Smt. Janabi @ Janawwa<sup>5</sup> has held as under:-

“12. "Custom defined : - Custom is an established practice at variance with the general law.

Nature of custom - A custom varying the general law may be a general, local, tribal or family custom.

Explanation 1. - A general custom includes a custom common to any considerable class of persons.

Explanation 2. - A custom which is applicable to a locality, tribe, sect or a family called a special custom.

Custom cannot override express law. (1) Custom has the effect of modifying the general personal law, but it

4 (2008) 13 SCC 119

5 (2006) 13 SCC 627

does not override the statute law, unless it is expressly saved by it.

(2) Such custom must be ancient, uniform, certain, peaceable, continuous and compulsory.

Invalid custom - No custom is valid if it is illegal, immoral, unreasonable or opposed to public policy.

Pleading and proof of custom (1) He who relies upon custom varying the general law must plead and prove it.

(2) Custom must be established by clear and unambiguous evidence."

(See Sir HS. Gour's Hindu Code, Volume I.Fifth Edition.)

13. Custom must be ancient, certain and reasonable as is generally said. It will be noticed that in the definition in Cl. (a) of Section 3 of the Act, the expression 'ancient' is not used, but what is intended is observance of custom or usage for a long time. The English rule that a 'custom, in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary' has not been strictly applied to Indian conditions. All that is necessary to prove is that the custom or usage has been acted upon in practice for such a long period and with such invariability and continuity as to show that it has by common consent been submitted to as the established governing rule in any local area, tribe, community, group of family. Certainty and reasonableness are indispensable elements of the rule. For determination of the question whether there is a valid custom or not, it has been emphasized that it must not be opposed to public policy."

20. In the matter of Ratanlal @ Babulal Chunilal Samuska v. Sunderabai Govardhandas Samsuka<sup>6</sup>, their Lordships of the Supreme Court have explained the ingredients for establishing a valid custom and held as under:-

"13. As per the settled law under Section 2(a) the Act, the following ingredients are necessary for

establishing a valid custom a. Continuity. b. Certainty. c. Long usage. d. And reasonability. As customs, when pleaded are mostly at variance with the general law, they should be strictly proved. Generally, there is a presumption that law prevails and when the claim of custom is against such general presumption, then, whoever sets up the plea of existence of any custom has to discharge the onus of proving it, with all its requisites to the satisfaction of the Court in a most clear and unambiguous manner. It should be noted that, there are many types of customs to name a few-general customs, local customs and tribal customs etc. and the burden of proof for establishing a type of custom depend on the type and the extent of usage. It must be shown that the alleged custom has the characteristics of a genuine custom viz., that it is accepted willfully as having force of law, and is not a mere practice more or less common. The acts required for the establishment of customary law ought to be plural, uniform and constant.

14. Custom evolves by conduct, and it is therefore a mistake to measure its validity solely by the element of express sanction accorded by courts of law. The characteristic of the great majority of customs is that they are essentially non-litigious in origin. They arise not from any conflict of rights adjusted, but from practices prompted by the convenience of society. A judicial decision recognizing a custom may be relevant, but these are not indispensable for its establishment. When a custom is to be proved by judicial notice, the relevant test would be to see if the custom has been acted upon by a court of superior or coordinate jurisdiction in the same jurisdiction to the extent that justifies the court, which is asked to apply it, in assuming that the persons or the class of persons concerned in that area look upon the same as binding in relation to circumstances similar to those under consideration. In this case at hand there was no pleading or proof which could justify that the above standards were met.”

21. In the matter of **Madhu Kishwar and others v. State of Bihar and**

**others**<sup>7</sup>, their Lordships of the Supreme Court have considered

the constitutional validity of Sections 7, 8 and 76 of the Chhota

Nagpur Tenancy Act. The contention was that the customary

<sup>7</sup> AIR 1996 SC 1864

law excluding tribal women from inheritance of land or property is discriminatory and ultra-vires Articles 14, 15 and 21 of the Constitution of India. The Supreme Court, by majority judgment, refrained from striking down the provisions of the said Enactment on the touchstone of Article 14 of the Constitution of India although the exclusive right of male succession conceived of in Sections 7 and 8 was directed to remain in suspended animation so long as the right of livelihood of the female descendant of the last male holder remains valid and in vogue. The majority judgment in Madhu Kishwar (supra) articulates the reason for refraining from judicially intervening thus:-

“48. In face of these divisions and visible barricades put up by the sensitive tribal people valuing their own customs, traditions and usages, judicially enforcing on them the principles of personal laws applicable to others, on an elitist approach or on equality principle, by judicial activism, is a difficult and mind-boggling effort. Brother K. Ramaswamy, J. seems to have taken the view that Indian legislatures (and governments too) would not prompt themselves to activate in this direction because of political reasons and in this situation, an activist Court, apolitical as it avowedly is, could get into action and legislate broadly on the lines as suggested by the petitioners in their written submissions. However, laudable, desirable and attractive the result may seem, it has happily been viewed by our learned brother that an activist court is not fully equipped to cope with the details and intricacies of the legislative subject and can at best advise and focus attention on the State polity on the problem and shake it from its slumber, goading it to awaken, march and reach the goal for in whatever measure be the concern of the court, it compulsively needs to apply, somewhere and at sometime, brakes to its self-motion, described in judicial parlance as self restraint. We agree therefore with brother K. Ramaswamy, J., as summed up by him in the paragraph ending on page 36 of his judgment that under the circumstances it is not desirable to declare the customs of tribal inhabitants as offending

Articles 14, 15 and 21 of the Constitution and each case must be examined when full facts are placed before the Court.”

22. The Supreme Court in the matter of Indian Young Lawyers Association and others v. The State of Kerala and others<sup>8</sup> (Sabarimala Temple Case) has held as under:-

“276(99). Custom, usages and personal law have a significant impact on the civil status of individuals. Those activities that are inherently connected with the civil status of individuals cannot be granted constitutional immunity merely because they may have some associational features which have a religious nature. To immunize them from constitutional scrutiny, is to deny the primacy of the Constitution.

Our Constitution marks a vision of social transformation. It marks a break from the past – one characterized by a deeply divided society resting on social prejudices, stereotypes, subordination and discrimination destructive of the dignity of the individual. It speaks to the future of a vision which is truly emancipatory in nature. In the context of the transformative vision of the South African Constitution, it has been observed that such a vision would:

“require a complete reconstruction of the state and society, including a redistribution of power and resources along egalitarian lines. The challenge of achieving equality within this transformation project involves the eradication of systemic forms of domination and material disadvantage based on race, gender, class and other grounds of inequality. It also entails the development of opportunities which allow people to realise their full human potential within positive social relationships.” “

23. Recently, the Bombay High Court in the matter of Babulal Bapurao Kodape and another v. Sau. Resmabai Narayanrao Kaurati and another<sup>9</sup> has held that if a female tribal who is a

8 AIR 2018 SC (Supp) 1650

9 AIR 2019 Bombay 94

natural legal heir seeks equal share in the property of her father or mother, it would be impermissible for the Court to start with the assumption that the customary law governing the tribe excludes the females from inheritance and to then insist that the female tribal must plead and prove a custom that she is not so excluded. It would be burden of the person who asserts such exclusion from inheritance under the customary law to so plead and prove. Such view would further be in consonance with the principles of justice, equity and good conscience. It was further held that even on the touchstone of the provisions of Sections 101 to 103 of the Evidence Act, the plaintiffs were not required to plead and prove that they are not excluded from inheritance. The burden that customary law excludes females from inheritance was that of the defendants. It was also held that the plaintiffs were under no burden to plead and prove that under the customary law applicable to the Uraon community, females are not excluded from inheritance and that the burden to prove the exclusion was that of the defendants who set up such defence.

24. The Supreme Court in the matter of **Mohammad Baqar and others v. Naimun Nisha Bibi and others**<sup>10</sup> has held that the burden of proving a custom in derogation of the general law being heavily on the party who sets it up, it was incumbent on the appellants to prove by clear and cogent evidence that there was such a custom as was pleaded by them.

25. Reverting to the facts of the present case in the light of the principles of law laid down by the Supreme Court, it is quite

vivid that the suit property was originally held by Pandu, who had four sons namely, Padra, Lallu, Chotto and Chilbilo and since the plaintiffs are daughters of Chilbilo as he had no son and the defendants are sons of other three brothers of Chilbilo. The two Courts below have clearly held that the suit property belongs to Pandu and it will be succeeded by his sons, but declined to grant decree in favour of the plaintiffs on the ground that the plaintiffs though are daughters of Chilbilo, but they are married and in the custom prevalent among Uraon caste, married daughters do not get share in the property of their father. In order to establish the said fact, the defendants were required to plead and prove that in Uraon caste, married daughters are excluded from inheriting the property of their father or would not get any share from their father. Even on the touchstone of the provisions of Sections 101 to 103 of the Evidence Act, the defendants taking the plea are required to plead and prove that married daughters are excluded from inheritance. Once the plaintiffs prove that the property belongs to their father also, they being the natural heirs though being married daughters, would be entitled to inherit the suit property, if the defendants fail to plead and establish the customary law governing amongst them which excludes females / married daughters from inheritance.

26. The question would be, whether, in the instant case, evidence has been brought by the defendants who have set up the defence that married daughters do not get their share in the property?

27. The trial Court has relied upon the evidence of Inderlal (PW-1)

who has been examined on behalf of the plaintiffs. In paragraph 5, he has stated that daughters in their family do not get share in the property of their father. But the trial Court omitted the next line of the statement of said witness as in same breath he has stated that if father has no son, then daughter will get share in the property. Even otherwise, apart from this, the defendants taking the plea were required to bring evidence on record to establish that in Uraon caste, married daughters do not get share in the property of their father. There cannot be any presumption that customary law governing the tribe excludes females from inheritance of their father's property. Merely on the basis of admission of Inderlal (PW-1), custom cannot be held to be proved.

28. In the matter of **Dahyabhai Motiram Bhat and others v. Chunilal Kishoredas Pandya and others**<sup>11</sup>, the Bombay High Court held that custom cannot be proved by admission and held as under: -

“A custom must be proved by evidence in the first instance and once it is proved, the Courts are entitled to recognize its existence. A custom cannot be proved by the admission of the parties or their counsel before the Court.”

29. Similarly, the High Court of Allahabad in the matter of **Mahadeo and others v. Baleshwar Prasad and others**<sup>12</sup> held that cumulative effect of entire evidence has to be considered while dealing with the finding on custom. It has been further held that the evidence on a question of custom should be considered as a whole and the findings should depend upon the cumulative effect of the entire evidence.

11 AIR 1914 Bombay 120

12 AIR 1939 All 626

30. In the matter of Hassan Bhat v. Gh. Ahmad Khanday and others<sup>13</sup>, the Jammu and Kashmir High Court while dealing with the issue of custom in the matter of inheritance held that the custom is a matter of proof. The custom cannot be established by presumptions or inference. It is to be proved by cogent evidence by establishing that the custom is reasonable, ancient and continuous.

31. In view of the above-stated analysis, in the considered opinion of this Court, both the Courts below are absolutely unjustified in holding that though the plaintiffs are legal heirs of Chilbilo, who has succeeded the property along with other sons of Pandu, but they will not get share in the property merely on the ground that they are married but also as the custom excludes married daughters from inheritance, consequently, judgment & decree of both the Courts below with regard to this finding being perverse, deserves to be set aside and is set aside.

32. Mr. Saxena, learned counsel appearing for the defendants, has cited a decision with regard to power of attorney holder Janki Vashdeo Bhojwani (supra) in which it has been stated that power of attorney holder cannot depose on behalf of the original plaintiff, is well settled. But here, in the present case, both the Courts below have concurrently held that the property belongs to Pandu and his four sons have succeeded the property, however, both the Courts below have dismissed the suit of the plaintiffs holding that in Uraon caste, married daughters do not get share in the property of their father which has not been established on evidence. As such, non-examination of the

original plaintiffs would not make any difference in the present case, as it is admitted position on record and finding has duly been recorded that the property was inherited by Pandu and succeeded by father of the plaintiffs. In that view of the matter, it is held that the plaintiffs are entitled for declaration of title to the extent of their father's share in the suit property i.e.  $\frac{1}{4}$  share in the total property of 29.53 acres situated at Village Kaliya, Tahsil Bagicha, District Jashpur. Since the fact of partition has not been proved, the plaintiffs would be entitled for declaration of title that in the suit property left by Pandu, the plaintiffs will have  $\frac{1}{4}$  share in the property which has been inherited by Chilbilo.

33. The appeal is allowed to the extent indicated herein-above.

Parties shall bear their own cost(s).

34. Appellate decree be drawn-up accordingly.

Sd/-  
(Sanjay K. Agrawal)  
Judge

Soma