

IN THE HIGH COURT OF ORISSA, CUTTACK

R.S.A. NO. 590 OF 2005

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned 2nd Adhoc Addl. District Judge, Sundargarh in RFA No.74 of 2004 set aside the judgment and decree passed by the learned Civil (Senior Division), Sundargarh in Title Suit No. 61 of 2001.

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Rameswar Lal Agarwal (Dead)-now through
Subash Kumar Agarwal as per order
Dated 14.03.2022.

:::: **Appellant**

-:: VERSUS ::-

Banwarilal Sahu & Others

:::: **Respondents**

Appeared in this case by Hybrid Arrangement (Virtual/Physical Mode)

For Appellant :::: M/s. Ramakanta Mohanty,
S.N.Biswal, A.P.Bose,
P.K.Samantaray, S.K.Mohanty,
D.R.Mohanty, Advocates.

For Respondents :::: M/s. S.J.Pradhan, B.Sahoo, P.K.Patnaik,
P.K.Patel, A.Tripathy, Advocates

**CORAM:
MR. JUSTICE D.DASH**

DATE OF HEARING::14.03.2022::DATE OF JUDGMENT::14.03.2022

D.Dash, J. The Appellant by filing this Appeal under Section-100 of the Code of Civil Procedure (hereinafter called as 'the Code') has assailed the judgment and decree passed by the learned 2nd Adhoc Addl. District Judge, Sundargarh in RFA No.74 of 2004.

By the said judgment and decree, the First Appellate Court having allowed the Appeal filed by the Respondents (Plaintiffs) under Section-96 of the Code has set aside the judgment and decree passed by the learned Civil (Senior Division), Sundargarh in Title Suit No. 61 of 2001. The Trial Court having dismissed the suit filed by the Respondents as the Plaintiffs has decreed the suit in part; declaring his right, title and interest over the undivided half share which is his vendor had over the land in Schedule-A of the Plaint and directing that he cannot be dispossessed by the Respondents (Plaintiffs) from the suit schedule property or any part thereof without taking recourse to law; further keeping it open for the Appellant (Defendant) to get his half share and separate possession over the suit property worked out seeking partition.

It is pertinent to mention here that upon hearing learned Counsels for the parties, this Appeal had been disposed of by judgment dated 10.01.2022. However, an application being filed by one Subash Kumar Agarwal, one of the sons of the original Appellant (Defendant) intimating the death of the sole Appellant on 28.10.2020, that judgment has been recalled. Said Subash Kumar Agarwal having prayed for his substitution one of the legal representatives of the deceased Appellant (Defendant) and also claiming as the legatee under a Will said to have been executed by the

sole Appellant (Plaintiff) on 22.06.2020, he has been brought on record in place of the deceased Appellant for this Appeal keeping the matter as to due execution and attestation of the Will open for adjudication as and when so questioned in appropriate proceeding. This exercise being carried out, the Appeal has been heard afresh.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to as they have been assigned with the position in the Trial Court. The deceased Appellant is hereinafter referred to as the 'Defendant'.

3. Case of the Plaintiffs:-

The land described in Schedule-A of the plaint had been purchased by one Surju Sahoo and he was residing in the house standing over there which he had constructed. He had two wives namely, Ramdulari and Surji @ Surya. Basumati being the daughter of Surji born through her first husband was also residing there. It is said that Surju Sahoo married to Surji when she was leading the life of a widow having a daughter and that was when no issue was born out of his wedlock with his first wife i.e., Ramdulari. It is further stated that Surju had also brought Basumati, the daughter of Surji through her deceased-husband and she was given in

marriage by him with one Rameswar Sahoo. That Basumati and Rameswar then also stayed with them in that house.

Plaintiffs are the sons of Basumati and Rameswar. They were born and brought up in the house of Surju and have been in possession of the said house as its owner, since Surji had no other heir.

Surju died in the year, 1972 and his interest in the suit property devolved upon his two widows. Five years thereafter, Ramdulari went to her father's house in the State of Bihar and thereafter she never turned back. Surji, the grandmother of the Plaintiffs had executed a Will in respect of her half interest in the suit property in favour of their daughter - Basumati (mother of the Plaintiffs). However, Basumati having predeceased Surji, the Will lost all its significance being of any assistance. Being the heirs of Surji as the sons of her predeceased daughter upon the death of Surji, the Plaintiffs claimed to have succeeded to her interest over the suit property. It is further stated that Ramdulari having been ousted from the suit property, Surji had acquired absolute right, title and interest over the suit property which has devolved upon the Plaintiffs on the death of Surji by virtue of her possession although by way of adverse possession.

Surji instituted a suit impleading Ramdulari and Basumati as the Defendants, when the suit land was recorded jointly in their name in the Hal Settlement Record of Right along with one Hiralal Sahoo who then claimed to have purchased the suit land along with Surju. The finding in the Appeal arising out of the said suit was to the effect that the Hiralal was not the co-purchaser. It was held therein that Surji being the wife of Surju Sahoo was competent to maintain the suit. Those, findings have been confirmed by this Court in Second Appeal. The status of Surji as the wife of Surju is said to have been conclusively established in that suit.

On 04.05.2001, the Plaintiffs received notice in Mutation Case No.242 of 2001, filed by the Defendant on the strength of a Registered sale-deed dated 23.02.1994 purportedly executed by the Ramdulari in favour of the Defendant in respect of the entire suit property. Thereafter, when the order was passed in his favour, he threatened to dispossesses the Plaintiffs from the suit property. So the suit has come to be filed. It is stated that Ramdulari had no subsisting right, title and interest over the suit property; she has not executed the sale-deed and even if it is so, the same has been by way of perpetration of fraud. It is also stated that there has been impersonation of someone else as Ramdulari in creating the said sale-

deed. The Plaintiffs also in the alternative have claimed to have acquired title over the entire suit property by adverse possession.

4. The Defendant in his written statement has asserted that the marriage between Surju with Surji during the subsistence of Surju's marriage with Ramdulari, who was then living is void. Thus, it is stated that Surji did not acquire any right, title and interest over the suit property and as such, the Plaintiffs being the heirs i.e. the grandsons of Surji being the sons of Basumati who was born through her first husband have not acquired any interest over the suit property. It is further stated that Ramdulari being the sole heir of Surju, was the absolute owner having the right, title and interest over the suit land and thus she has rightly sold the same in favour of the Defendant by executing the sale-deed which has been registered which is valid and operative. The Defendant claims to have been purchased the suit land from Ramdulari for valuable consideration accompanied by due delivery of possession. The allegation as regards fraud, impersonation etc. have been denied.

The claim of the Plaintiffs that they have acquired title over the suit by adverse possession has also been denied. It is stated that the possession of the Plaintiffs over the suit land, if any, was permissive all through and there being no ouster, the claim of the Plaintiffs on that score of acquisition

of title over the suit land by the party by adverse possession has no foundation. It is also stated that the sale-deed being not challenged within the period of limitation as prescribed under Article-58 of the Limitation Act, the suit as framed for the reliefs claimed being wholly barred by limitation is not entertainable.

5. On the face of the rival pleadings, the Trial Court had framed in all eight (8) issues.

Answering issue nos.6 & 8 which are important as to the claim of title of the Defendant by virtue of the registered sale-deed dated 23.02.1994 and that of the Plaintiffs by way of adverse possession; the answer has been recorded against the Plaintiffs. It is held that the Plaintiffs being the children of Basumati, the daughter born to Surji through her first husband when marriage of Surji with Surju is void, they stand as strangers to the property of Surju and Surji had never succeeded to the same, whereafter they have no right to challenge the sale-deed. It is held that the Defendant has the right, title and interest over the suit land, because Ramadulari being the sole heir of Surju has rightly sold the same to the Defendant by executing the registered sale-deed clothing the Defendant with the right, title and interest in so far as suit land is concerned.

The suit has been also held to be barred by limitation, while answering issue no.3. Answers to the other issues have followed the same path.

6. The lower Appellate Court being moved by the unsuccessful Plaintiffs has gone for independent appreciation of evidence on record in the backdrop of the rival case as projected by the parties.

It has held that:-

- i) That the marriage of Surji with Surju is not void but valid as it had then place prior to the coming into force of the HS Act;
- ii) that the suit is not barred by limitation. When the Defendant took steps for mutation of the land on the strength of the said registered sale-deed in the year, 2001 and then the cause of action having arisen, the suit has been filed in the same year;
- iii) the Plaintiffs being the children of the predeceased daughter of that Surji through her first husband are not excluded from having any the share in the property inherited by Surji from her husband Surju as upon death of Surju; Ramdulari and Surji succeeded to his property as tenants-in-common and upon death of Surji, the Plaintiff's being the children of her predeceased daughter Basumanti succeeded to Surji's interest that she succeeded over the property of Surju which was absolute in the hands of Surji; and
- iv) the Plaintiffs claim in respect of entire suit property cannot be sustained for the reason that Surji from whom they claim to

have inherited the property had only half interest over their whereas Ramdulari had her half interest which she had transferred to the Defendant.

7. The present Appeal has been admitted on the following substantial question of law:-

- (i) Whether on the death of the second wife of Surju namely, Surji, the property of Surju inherited by her from that Surju would devolved upon his surviving heir namely, Ramdulary, the first wife, not on Basumati; the daughter of Surji in consonance with the provisions of section-15(2)(b) of the Hindu Succession Act, 1956?

8. Mr. R.K. Mohanty, learned Senior Counsel for the substituted Appellant inviting the attention of this Court to the provision of sub-section-(1) and (2) of section-15 of the Hindu Succession Act, 1956 (hereinafter, called as 'the HS Act') submitted that the source of claim of inheritance of the suit property by the Plaintiffs is through Surju and after Surju's death in the year, 1972, his widows Ramdulari and Surji inherited the suit property as tenants in common. He further submitted that on the death of Surji in the year, 1988, Ramdulari succeeded to the interest that Surji had inherited over her husband Sarju's property in consonance with the provision of section-15 (2)(b) of the HS Act as the children of predeceased daughter of Surji born through her first husband cannot be

taken to be falling within the expression of ‘children of predeceased daughter’ as finds mention in clause (a) of sub-section-(1) of section-15 of the HS Act. He submitted that the law has been well settled in case of *Bhagat Ram (D) Vrs. Teja Singh (D)*; AIR 2002 SC 1, that the source from which she inherited the property is always important and that would thus govern the situation. He, therefore, submitted that the Plaintiffs cannot claim, to be the children to predeceased daughter of Surji through Surju who originally held the property. Placing much reliance on the decision of Gauhati High Court in case of *Smt. Dhanistha Kalita Vrs. Ramakanta Kalita and others*; AIR 2003 Gauhati 92, he submitted that the expression son or daughter “including the children of any also predeceased son or daughter” of such Hindu female; here, it is Surji would mean son and daughter begotten by Surji from her husband Surju, interest in whose property she had inherited and not the son or daughter whom she had begotten from her erstwhile husband who has no in connection at all with the suit property. He thus, submitted that the Plaintiffs have no such right, title and interest over the suit land and they are complete strangers to the same and thus have no locus to maintain the suit in questioning the sale made on 23.02.1994 by the Ramdulari in favour of the Defendant.

9. Mr. B. Sahoo, learned Counsel for the Respondents submitted that upon the death of Surju, his properties were inherited by Surji and Ramdulari as tenants-in-common and they become the absolute owner in possession of the same in half and half, since Surju died without any issue from both of his wives. He submitted that therefore, the share / interest of Surji, one of the wives of Surju would devolve upon the present Plaintiffs who admittedly are the children of Basumati, the daughter of Surji who had predeceased Surji. He submitted that Basumati, the mother of the Plaintiffs being the daughter born to Surji through her first husband for all purpose is her daughter falling within the expression “daughter” appearing in section-15(1)(a) of the HS Act and therefore the provision of section-15(2)(b) of HS act would not yet attracted to govern the field of succession of the interest that Surji had over the properties of Surju.

In support of his submission, he placed reliance on the decision of the Hon’ble Apex Court in case of *Lachman Singh Vrs. Kripa Singh and others*; AIR 1987 SC 1616 and a decision of this Court in case of *Sashidhar Barik & Others Vrs. Ratnamani Barik & Another*; AIR 2014 Ori 202. In view of the above, he contended that the answer to the substantial question of law must receive the answer in favour of the view taken by the

lower Appellate Court and as such, according to him, the judgment and decree passed by the said Court are not liable to be interfered with.

10. In order to address the above rival contentions, first it would be apt to place section-15 of the HS Act, The same runs as under:-

General rules of succession in the case of female Hindus.- (1)
The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

- (a) firstly, *upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;*
 - (b) secondly, *upon the heirs of the husband;*
 - (c) thirdly, *upon the mother and father;*
 - (d) fourthly, *upon the heirs of the father;* and
 - (e) lastly, *upon the heirs of the mother.*
- (2) Notwithstanding anything contained in sub-section (1),-
- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter), not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
 - (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, *in the absence of any son or daughter of the deceased* - (including the children of any predeceased son or

daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

What has been stated about the expression ‘sons’ in Clause (a) of Section 15(1) of the Act can equally be stated about the expression ‘daughters’ appearing in Section 15(1)(a) of the Act. Therefore, the inevitable conclusion is that being a daughter born out of the womb of Lata by her first husband the plaintiff-respondent No.1 comes within the expression ‘daughters’ appearing in Section 15(1)(a) of the Act and with the application of Rule-1 of Section 16 of the Act, the Appellants, who are coming within the expression ‘heirs of the husband’, are to be kept away/ behind from succeeding to the properties left behind by Lata even though she inherited the same from her second husband-Kalakar and he is not the father of plaintiff-respondent No.1.

When once a property becomes the absolute property of a female Hindu, it shall devolve first on her children (including children of the predeceased son and daughter) as provided in section-15(1)(a) of the HS Act and then on other heirs subject only to the limited change introduced in section-15(2) of the HS Act.

11. The question now stands to be determined is whether the expression that “son and daughter”; used clause-(a) of sub-section-(1) of section-15 of

the HS Act would include the son and daughter of the female Hindu whom she had begotten from a husband other than the husband; interest in whose property she had inherited and is now the subject matter of the suit.

12. The factual settings of the case before Apex Court in *Bhagat Ram Vrs. Teja Singh* (supra) were the followings:-

In lieu of property of one Kehar Singh in Pakistan, his widow Kirpo was allotted some land in India. Kirpo died leaving behind two daughters namely, Santi and Indro who inherited said property equally. Santi died in 1960. So, the property left by her was mutated in the name of Indro who had entered into an agreement for sale with Bhagat Ram for sale and that Bhagat Ram having filed a suit for specific performance was decreed. One Teja Singh (brother of Santi's predeceased husband) filed the suit alleging that on the death of Santi in 1960, the property in question devolved on him by virtue of section-15(1)(b) of the HS Act. The Trial Court decreed the suit filed by Teja. The First Appeal and Second Appeals were also dismissed. The Apex Court held as under:-

“8. We do not find any merit in the contention raised by the counsel for the respondents. Admittedly, Smt Santi inherited the property in question from her mother. If the property held by a female was inherited from her father or mother, in the absence of any son or daughter of the deceased including the children of any predeceased son or daughter, it would only

devolve upon the heirs of the father and, in this case, her sister Smt. Indro was the only legal heir of her father. The deceased Smt. Santi admittedly inherited the property in question from her mother. It is not necessary that such inheritance should have been after the commencement of the Act. The intent of the legislature is clear that the property, if originally belonged to the parents of the deceased female, should go to the legal heirs of the father. So also under clause (b) of sub-section (2) of Section 15, the property inherited by a female Hindu from her husband or her father-in-law, shall also under similar circumstances, devolve upon the heirs of the husband. It is the source from which the property was inherited by the female, which is more important for the purpose of devolution of her property. We do not think that the fact that a female Hindu originally had a limited right and later, acquired the full right, in any way, would alter the rules of succession given in sub-section (2) of Section 15.

9. A question of similar nature was considered by this Court in *Bajaya v. Gopikabai*; AIR 1978 SC 793. In that case, the suit land originally belonged to G, son of D. G died before the settlement of 1918 and thereafter, his land was held by his son, P who died in the year 1936. On P's death, the holding devolved on P's widow, S. S died on 6-11-1956, and thereupon dispute about the inheritance to the land left behind by S arose between the parties. The plaintiff claimed that she being the daughter of T, a sister of the last male holder, P was an heir under Section 15 read with the Schedule referred to in

Section 8 of the Hindu Succession Act, 1956, whereas the defendants claimed as ‘sapindas’ of the last male holder under Mitakshara law. Speaking for the Bench, Hon‘ble R.S. Sarkaria, J. held that the case would fall under clause (b) of sub-section (2) of Section 15 because S died issueless and intestate and the interest in the suit property was inherited by her from her husband and the property would go to the heirs of the husband.

10. In *State of Punjab v. Balwant Singh*; AIR 1991 SC 2301, also, a question of similar nature was considered. In that case, the female Hindu inherited the property from her husband prior to the Hindu Succession Act and she died after the Act. On being informed that there was no heir entitled to succeed to her property, the Revenue Authorities effected mutation in favour of the State. There was no heir from her husband’s side entitled to succeed to the property. The plaintiff, who was the grandson of the brother of the female Hindu claimed right over the property of the deceased. The High Court held that the property inherited by the female Hindu from her husband became her absolute property in view of Section 14 and the property would devolve upon the heirs specified under Section 15(1). The above view was held to be faulty and this Court did not accept that. It was held that it is important to remember that female Hindu being the full owner of the property becomes a fresh stock of descent. If she leaves behind any heir either under sub-section (1) or under sub-section (2) of Section 15, her property cannot be escheated.

11. In *Amar Kaur v. Raman Kumari*; AIR 1985 P & H 86, a contra view was taken by the High Court of Punjab and Haryana. In this case, a widow inherited property from her husband in 1956. She had two daughters and the widow gifted the entire property in favour of her two daughters. One of the daughters named Shankari died without leaving husband or descendant in 1972. Her property was mutated in favour of her other sister. At the time of death of Shankari, her husband had already died leaving behind another wife and a son. They claimed right over the property left by the deceased female Hindu. In para 4 of the said judgment, it was held as under:

“Smt. Shankari succeeded to life estate, which stood enlarged in her full ownership under Section 14(1) of the Act. Since smaller estate merged into larger one, the lesser estate ceases to exist and a new estate of full ownership by fiction of law came to be held for the first time by Smt. Shankari. The estate, which she held under Section 14(1) of the Act, cannot be considered to be by virtue of inheritance from her mother or father. In law it would be deemed that she became full owner of this property by virtue of the Act. On these facts it is to be seen whether Section 15(1) of the Act will apply or Section 15(2) of the Act will apply. Section 15(2) of the Act will apply only when inheritance is to the estate left by father or mother, in the absence of which, Section 15(1) of the Act would apply”.

12. We do not think that the law laid down by the learned Single Judge in the above said decision is correct. Even if the female Hindu who is having a limited ownership becomes full owner by virtue of Section 14(1) of the Act, the rules of

succession given under sub-section (2) of Section 15 can be applied. In fact, the Hindu Succession Bill, 1954 as originally introduced in the Rajya Sabha did not contain any clause corresponding to sub-section (2) of Section 15. It came to be incorporated on the recommendations of the Joint Committee of the two Houses of Parliament. The reason given by the Joint Committee is found in clause 17 of the Bill, which reads as follows:

“While revising the order of succession among the heirs to a Hindu female, the Joint Committee have provided that, properties inherited by her from her father reverts to the family of the father in the absence of issue and similarly property inherited from her husband or father-in-law reverts to the heirs of the husband in the absence of issue. In the opinion of the Joint Committee such a provision would prevent properties passing into the hands of persons to whom justice would demand they should not pass”.

13. The source from which she inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit that property. That would defeat the intent and purpose of sub-section (2) of Section 15, which gives a special pattern of succession.”

Having held as above, the Hon’ble Apex Court finally refused to take a different view as held earlier in that case on 31.03.1999 and said in that case that the property held by Santi was the property inherited by her

from her mother and therefore clause (a) of sub-section-2 of section-15 of the HS Act is the appropriate rule to be applied for succession of the property left by the deceased-Santi and Teja Singh had no right in the property left by Santi and that would devolve on her sister Indro. In the given case, Santi died intestate leaving behind no issue born from her womb.

13. In the case before Gauhati High Court in Smt. *Dhanistha Kalita* (supra), which has been very much relied upon by the learned Counsel for the Appellant, one Shyamrai had two wives. The first wife predeceased him, leaving a daughter Taveli and Shyamrai married Maheswari who was then a widow and she had a son namely, Jagat Kalita begotten from her predeceased husband Shyamrai died in the year 1946 when Teveli was having any share in the property left by her father Shyamrai by virtue of the provisions of Hindu women's Right to Property Act, 1937 under which no right of inheritance was given to the married daughter over the property of her deceased father. After death of the second wife of Shyamrai, that son of second wife through her first husband occupied the suit properties and he sold some to various persons. So, the question arose as to whether upon the death of Shyamrai, the suit lands which had devolved upon his second wife, after her death would be inherited by the heirs of the daughter

of Shyamrai on the heirs of the daughter of Shyamrai on the heirs of the second wife of Shyamrai i.e. Teveli born through her first wife, or the heirs of the second wife of Shyamrai through her first husband. The Court answered that it would devolve upon the heirs of Shyamrai i.e. the children of his daughter born through the first wife and not on the son of the second wife Maheswari born through her first husband.

14. It appears that the conclusion of Gauhati High Court in case of *Smt. Dhanistha Kalita* (supra) that son or daughter of a female would mean the son and daughter begotten by her from the husband whose property she has inherited, is based on the observation made by the Hon'ble Apex Court in case of *Bhagat Singh* (supra). The facts of the said case of *Bhagat Singh* (supra) when gone through would reveal that the observation of the Hon'ble Apex Court have been made in the given situation, where the female Hindu died intestate leaving behind no issue born from her womb.

In our case, upon the death of Surju, his two wives namely, Ramdulari and Surji, inherited the properties of Surju absolutely and they become the absolute owners taking half and half interest therein. So that, interest of the wife(s) shall devolve first upon her children (including the children of predeceased son and daughter) as provided in section-15(1)(a) of the HS Act then on other heirs subject only to the limited change

introduced in section-15(2) of the HS Act. So, only in the absence of any son or daughter of Surji who inherited property from her husband-Surju, the said inherited interest would have been succeeded to by that Ramdulari by virtue of section-15(2) of the HS Act.

In case of *Lachman Singh* (supra), the Hon'ble Apex Court have decided that once property become absolute property of female Hindu, it shall devolve first upon the children (including children of predeceased son and daughter) as provided in section-15(1)(a) of the HS Act and then on other heirs except only to the limited change introduced in section-15(2) of the HS Act. It has also been decided that the stepson and stepdaughter of the female Hindu would come as heir only under clause-(b) of section-15(2) of the HS Act. It has next been observed that the rule of devolution under section-15 of the HS Act applies to all kinds of properties left behind by a female Hindu except those dealt by clause-(a) and (b) of section-15 of the HS Act which makes a distinction as regards property inherited from her parents and the property inherited from her husband or father-in-law *and that too when she leaves no son and daughter including children of predeceased sons and daughters.*

15. In case of *Roshan Lal and another Vrs. Dalipa*; AIR 1985 HP 8, the Respondent was the son of one Pari born during her wedlock with her first

husband Kithu. Subsequently, after the death of Kithu, Pari contacted a second marriage with Punnu, who died intestate in 1959 leaving behind Pari. No issue was born during the second marriage of Pari. The Respondent filed a suit claiming the share of Punnu. The defendants, who are the collaterals of Punnu, resisted the suit on the ground, inter alia, that the Respondent being the son of Kithu could not claim to succeed to the estate of Pari. The High Court of Himanchal Pradesh held that since the Respondent is found to be the son of Pari, *sub-section (2) of Section 15 of the Act is not attracted in as much as the said section operates 'in the absence of any son or daughter of the deceased'*. It is further observed that for the purposes of succession to Pari's estate under Section 15(1)(a) of the Act it is immaterial whether the Respondent was the offspring of the marriage of Pari with Kithu or of her illicit relationship with Punnu.

16. In *Keshri Parmai Lodhi and another -Vrs.- Harprasad and others*; AIR 1971 MP 129, the question to be answered was whether the word 'son' should be restricted to the son of the husband from whom the Hindu female inherited the property or it should include sons of the Hindu female irrespective of whether they are born of the husband whose property is in dispute. While answering this question, it was observed that from the language used in sub-section (1) and (2) of Section 15 of the Act it is clear

that the intention of the Legislature is to allow succession of the property to the sons and daughters of the Hindu female and only in the absence of any such heirs the property would go to the husband's heirs. In Mulla Hindu Law by Sir D.F. Mulla (24th Edn.), it is commented on Section 15(1)(a) of the Act that in case of a female intestate who had remarried after the death of her husband or after divorce her sons by different husbands would *also be her natural sons and entitled to inherit the property left by the female Hindu regardless of the source of the property.*

17. The Gauhati High Court's conclusion that son or daughter of a female will mean the son or daughter begotten by her from the husband whose property she has inherited, is based on the observations made by the Hon'ble Apex Court in *Bhagat Ram's* case (supra). This Supreme Court judgment has been cited by both the parties. Learned counsel for the Appellants puts much stress on the Hon'ble Apex Court's observation that the source from which the Hindu female inherits the property is always important, otherwise, persons who are not even remotely related to the person who originally held the property would acquire rights to inherit the property and that would defeat the intent and purpose of sub-section (2) of Section 15. In my considered view, the said observation of the Hon'ble

Apex Court applies to a situation where the female Hindu has died *intestate leaving behind no issue born from her womb*.

18. In the given case, Basumati being the daughter born to Surji through her first husband is certainly her daughter coming within expression “daughter” appearing in section-15 of the HS Act, so also her children, the Plaintiffs as “the children of predeceased daughter” and thus the provision of sub-section-(1) of section-15 of the HS Act would govern the situation. In the very case of *Lachman Singh* (supra), it has been observed that the word “sons” in clause-(a) of section-15(1) of the Act includes; (i) sons born out of womb of female by the same husband or different husband including illegitimate sons too in view of section-3(j) of the HS Act and adopted sons who are deemed to be sons for the purpose of inheritance and children of any predeceased son or adopted son also fall within the meaning of the expression.

Thus, what has been stated as regards expression “sons” and ‘children of predeceased sons’ in clause-(a) of section-15(1) of the HS Act would also so hold and said in respect of the expression “daughters” and children of predeceased daughters’ appearing in section-15(1)(a) of the HS Act. Therefore, in my considered view, the conclusion has to be that Basumati being the daughter born out of womb of Surji by her first

husband, her children would fall within the expression “children of predeceased daughter” appearing in section-15(1)(a) of the HS Act so as to succeed to the interest of Surji which she had inherited from her husband Surju. For Basumati, the mother; children begotten through her first husband and the children begotten through her second husband are all her children for all purpose whatsoever when she stands under same relationship with moral duty / obligation and bindings towards all those children; the children from the side of both the husbands also stands equally. Thus, when there arises the question of succession to the property of the mother, all the children have to pay without any discrimination amongst them looking at the sources from where mother inherited the same. The view taken in the negative as suggested by the learned Counsel for the Appellant would in my view be wholly unfair, unjust and unacceptable; this having been clearly realized the Parliament in its wisdom while bringing the limited change. The Provision of sub-section-1 of section-15 by placing clauses such as (a) and (b) in sub-section-2 even with the non-obstante clause as placed “in the absence of any son or daughter (including the children of any pre-deceased son or daughter). In view of all these above, I find myself with the agreement taken by the learned Brother Judge in case of *Sashidhar Barik & others* (supra).

In view of the aforesaid discussion and reasons, the answer in clear terms is recorded that on the death of Surji, her interest over the property of her husband namely, Surju inherited by her devolved upon the children of her predeceased daughter Basumati who are the Plaintiffs.

19. Coming to address the submission of the learned Counsel for the Appellant as to formulation of one more substantial question of law; here the sale deed in view of the above answer when is held to be valid as to the extent of the share that Ramdulari, the vendor of the Defendant had over the suit property when she had no such authority for sale of entire property being a co-sharer, taking in moiety; this Court is of the view that there arises no need also to formulate the substantial question of law as urged by the learned Counsel for the substituted Appellant as to if the sale deed in question dated 23.02.1994 being not questioned within the period prescribed in Article-58 of the Limitation Act, the suit for said relief is barred.

20. Resultantly, the Appeal stands dismissed. There shall however be no order as to cost.

***D. Dash,
(Judge).***