



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.380 OF 2023

Sau. Barula w/o Namdeo Kodape, aged about
45 years, Occ. Household, r/o manora, Tahsil
Ballarpur, Dist. Chandrapur.

... APPELLANT

VERSUS

1. Smt. Suman Ramaji Tekam aged about 68
years, Occ. Household.
2. Shri Atul s/o Ramaji Tekam, aged about 45
years, Occ. Labour.
3. Shri Nikhil s/o Ramaji Tekam, aged about
40 years, occ. Labour.

Nos. 1 to 3 r/o Warura Road Tq. Rajura,
Dist. Chandrapur.

4. Sau. Shital w/o Ravindra Kodape, aged
about 35 years, Occ. Household, r/o
Panchgaon (Temburda), tq. Warora, Dist.
Chandrapur.

... RESPONDENTS

Shri Madhur A. Deo, Advocate for the appellant.
None appeared for Respondent.

CORAM : PRAVIN S. PATIL, J.

CLOSED ON : 20.09.2025.

PRONOUNCED ON : 10.10.2025.

JUDGMENT :

1. The present appellant being aggrieved by the judgment and order dated 18.07.2023 passed by the learned District Judge, Chandrapur in Regular Civil Appeal No.47/2016 preferred the present appeal.

2. This Court after hearing the appellant in the matter, by order dated 11.06.2024 framed the following substantial question of law :

Whether the Trial Court as well as the Appellate Court erred by not considering the fact that the burden was upon the respondents to show that the custom within the Gond Community which exclude right of inheritance of female members in the ancestral property of father?

3. In the light of question of law framed by this Court, some material facts of the suit are necessary to be discussed in the matter. For the sake of convenience the appellant is hereinafter referred to as 'Plaintiff' and respondents as 'Defendants'.

4. The appellant is the original plaintiff and the daughter from first wife of deceased Ramaji. Respondent no.1 is the second wife of deceased Ramaji and respondent nos.2 to 4 are the children of respondent no.1 born out of the second marriage of deceased Ramaji.

5. The plaintiff filed a suit for declaration, partition and separate possession against the House Property no.152 ad-measuring area 870 square feet situated at Mauza Rajura, Peth Ward No.3 and construction thereof.

6. Undisputedly, the Plaintiff and Defendants are 'Gond' by caste i.e. Scheduled Tribe. Deceased Ramaji and mother of the Plaintiff namely Sundarabai (1st wife) was residing in the suit property, which is an ancestral property.

7. After the death of Sunderabai, Ramaji has performed second marriage with present Defendant no.1 Suman. Ramaji was expired on 29.04.1993.

8. It is further stated by the Plaintiff that she has performed marriage with one Namdeorao Kodape and residing at Manora. It is her case that she was regularly paying the tax of the suit property though the property is in possession of the Defendants. She further stated that the partition was not effected between the Plaintiff and the Defendants and therefore, they jointly owned the property.

9. According to the Plaintiff, the provisions of Hindu Succession Act, 1956 are not applicable to the Scheduled Tribe/Gond as they are excluded as per Section 2(2) of the Hindu Succession Act. Therefore, it is her submission that as per the customs, the daughter is entitle to inherit the property of her father, if the same being the ancestral property. However, the Defendants are refused for the partition. She therefore issued notices to claim partition but the Defendants refused for the same. Hence, she has instituted the suit praying partition and separate possession of her 1/5th share in the

suit property.

10. The present Defendants contested the suit filed by the Plaintiff. They came with a submission that the Plaintiff is not the daughter of the deceased Ramaji. According to them, deceased Ramaji never performed marriage with the mother of the Plaintiff. The Plaintiff, by hand in gloves with the Revenue Officer, has recorded her name in the suit property, therefore, she has no share in the suit property. However, the Defendants admitted that they belong to Gond by caste, which is recognized as Scheduled Tribe. According to them, there is no custom in their society, that daughter used to get share in the ancestral property and hence prayed for dismissal of the suit.

11. Learned trial court considering the rival submission of the parties in the suit and framed the following issue along with other issues:

“Whether the Plaintiff proves that she has share in the suit property and entitle for partition and separate possession of the suit property.”

12. Before the Trial Court, the present Plaintiff entered into the witness box and reiterated her claim for partition. She has categorically stated that she is the daughter of Ramaji and his first wife namely Sundarabai.

13. The Plaintiff in support of her claim examined Smt. Gayabai Laxman Atram. She has categorically stated that the Plaintiff is her niece and

she belongs to the Gond caste. According to her, in their community the daughter is entitled for share in the ancestral property of their parents hence the Plaintiff is entitled for the share from the property of deceased Ramaji.

14. The Plaintiff also examined one Bhuru Soyam, who was the neighbourer when the parents of the Plaintiffs were residing at the suit property. He categorically stated that the Plaintiff belongs to Gond caste and were residing over the suit property.

15. On the other hand, the Defendants has examined the Defendant no.1 who has reiterated the same submission, as per her written statement.

16. The Trial Court was of the opinion that as the plaintiff is claiming partition in the suit property, the burden is on the plaintiff to prove that there are customs in the society, which provides the right to the daughter to get share in the ancestral property. However, plaintiff failed to discharge the burden that there were any custom in the Gond community to establish that she is entitled for share in the ancestral property. Hence, on this count, it is held that plaintiff being failed to establish the custom in the community of having a right of share in the ancestral property, by the Judgment and decree dated 14.03.2016 dismissed the suit.

17. Against Judgment of trial court appellant has preferred the appeal before the learned District Judge, Chandrapur. Learned Appellate

Court by framing the issue that it is for the plaintiff to establish on record that there were the customs in the Gond community, according to which she is entitled for share in the ancestral property/suit property. But as the appellant failed to discharge her burden to establish the said custom, dismissed the appeal.

18. Learned Appellate Court was of the opinion that the negative burden cannot be shifted on the defendants, and as the plaintiff herself had pleaded that there were a custom in the Gond community to give share to the daughter, therefore, burden was on the plaintiff to prove the same. Accordingly, confirmed the judgment and decree passed by the learned Trial Court.

19. In the above said factual position, the matter came before this Court and as stated above, this Court has framed the substantial question of law in the matter.

20. In the present matter, this Court after framing of substantial question of law, issued notices to the respondents, which was duly served however none appeared. Thereafter, this Court on 09.10.2024 considering the substantial question of law framed in the matter, admitted the present appeal. Then again, notices were issued to defendants however none present on behalf of them. As such, this matter is unattended at the instance of defendants.

21. The learned Counsel for the appellant in support of substantial question of law framed by this Court has relied upon the judgment of Co-ordinate Bench of this Court in the case of ***Babulal and anr. vs. Sau. Resmabai Narayanrao Kaurati and anr. 2019 SCC OnLine Bom 3***. In the said appeal, somewhat identical issue was involved between brother and sister, which belongs to Gond tribe and sister therein claimed that she is having an equal share in the suit of property along with the son. In the light of this issue, this Court has considered the Constitutional philosophy and reached to the conclusion that the female tribal to whom the provisions of the Succession Act, are not applicable, cannot be deprived from her legal claim. If it is so permitted, then it will amount to foul to Article 14 of the Constitution of India. Accordingly, the specific observations are made in paragraph 9, which reads thus :

“9. In view of the constitutional philosophy which seeks to minimize if not eliminate gender discrimination, I am persuaded to agree with Shri H.D. Dangre that if a female tribal who is a 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. In my opinion, it would be the burden of the person who asserts such exclusion from inheritance under the customary law to so plead and prove. Such view would further be inconsonance with the principles of justice, equity and good conscious.”

22. This Court made it clear that in such cases, the burden would be on the person, who asserts search exclusion from inheritance under the customary law. In view of this judgment, it is crystal clear that finding

recorded by both the Courts below that burden to prove custom was on plaintiff, are incorrect finding, and therefore, in the light of the law laid down by this Court, both the judgments delivered by both the Courts below are not sustainable in the eyes of law.

23. It will further be expedient to refer the observation of Hon'ble Supreme Court of India in the case of ***Ram Charan and ors. vs. Sukhram and ors.*** **2025 SCC OnLine SC 1465** particularly in paragraphs 19, 20, 27 and 28 as under :

“19. When applying the principle of justice, equity and good conscience, the Courts have to be mindful of the above and apply this otherwise open-ended principle contextually. In the present case, a woman or her successors, if the views of the lower Court are upheld, would be denied a right to property on the basis of the absence of a positive assertion to such inheritance in custom. However, customs too, like the law, cannot remain stuck in time and others cannot be allowed to take refuge in customs or hide behind them to deprive others of their right.

20. Apart from the application of this general principle, we also find this to be a question of violation of Article 14 of the Constitution of India. There appears to be no rational nexus or reasonable classification for only males to be granted succession over the property of their forebears and not women, more so in the case where no prohibition to such effect can be shown to be prevalent as per law. Article 15(1) states that the State shall not discriminate against any person on grounds of religion, race, caste, sex or place of birth. This, along with Articles 38 and 46, points to the collective ethos of the Constitution in ensuring that there is no discrimination against women.

27. Similarly, we are of the view that, unless otherwise prescribed in law, denying the female heir a right in the property only exacerbates gender division and discrimination,

which the law should ensure to weed out.

28. Granted that no such custom of female succession could be established by the appellant-plaintiffs, but nonetheless it is also equally true that a custom to the contrary also could not be shown in the slightest, much less proved. That being the case, denying Dhaiya her share in her father's property, when the custom is silent, would violate her right to equality vis-à-vis her brothers or those of her legal heirs vis-à-vis their cousin."

24. As such, Hon'ble Supreme Court has taken a firm view by keeping in mind the principles of natural justice, equity and good conscious and over reaching effect of Article 14 of the Constitution of India, the legal heirs of the deceased, particularly of tribal community, are entitled for equal share in the ancestral property.

25. In the light of the law laid down by this Court as well as Hon'ble Supreme Court, it is crystal clear that legal heirs of deceased Ramaji are entitle for equal share in the suit property.

26. The plaintiff before the Courts below, by leading evidence established on record that she belongs to Gond community. However on only ground that plaintiff failed to discharged the burden that there is a custom of inheritance in ancestral property, could not succeed in the matter. But in view of law laid down by this Court as well as Hon'ble Supreme Court, it is clear that burden shifts on the Defendants to prove that how the plaintiff is excluded from the share of the ancestral property. Both the Courts below failed to consider the correct legal provision and by shifting burden on the plaintiff proceedings are decided by both the Courts below.

27. It is also pertinent to note that in the present matter, there are concurrent finding in favor of the defendants. Therefore, while setting aside the concurrent findings, opportunity of hearing to the defendants is also necessary in the matter. Looking to this factual position, I am the view that the ends of justice will meet, if the matter is remanded back to the Trial Court to decide it afresh in the light of law laid down by this Court as well as the Hon'ble Supreme Court of India. The same will be benefited to the defendants and both the parties will get an opportunity of hearing and if necessary to lead evidence in the matter. Hence, for the aforestated reasons, I proceed to pass the following order :

- (a) The Second Appeal is allowed.
- (b) The judgment and decree passed by the learned Principal District Judge, Chandrapur in Regular Civil Appeal No.47/2016 and judgment and decree dated 14.03.2016 passed by the learned Civil Judge, Junior Division, Rajura, District Chandrapur in Regular Civil Suit No.101/2013 is hereby quash and set aside.
- (c) The matter is remanded back to the file of the learned Civil Judge Junior Division, district Chandrapur to decide it afresh in the light of law laid down by this Court as well as the Hon'ble Supreme Court, at the earliest.

28. The Second Appeal stands disposed of accordingly.

(PRAVIN S. PATIL, J.)

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