IN THE HIGH COURT OF JHARKHAND AT RANCHI

Second Appeal No. 102 of 2006

1(a). Sanatan Hembram, son of Rashik Hembrom,

1(b). Haradhan Hembram, son of Rashik Hembrom,

1(c). Galobi Hembram, son of Rashik Hembrom (All 1(a) to 1(c) are residents of Village-Turka, P.S. & P.O.-Kundahit, District-Jamtara.,

1(d). Kahamuni Hembram, Daughter of Late Rashik Hembrom, wife of Sri Bhim Hansda, resident of Village- Sahar Beria, P.O.- Hari Rakha, P.S.Nala,, District-Jamtara

1(e). Arti Hembram, Daughter of Late Rashik Hembrom, Wife of Sri Bibhishan Hansda, resident of Village- Badalpur, P.O.- Monihari, P.S.-Nala, District- Jamtara

2. Murli Hembrom, son of Late Gupin Hembrom,

3. Malind Hembrom,

4. Lu Hembrom @ Lobin Hembrom (3 and 4 are sons of Late Chhoto Hembram) (2 to 4 are residents of Village- Turka S.C. Dhasania, P.O. & P.S.- Kundahit, Sub Division & District-Jamtara

5(a). Anoti Murmu, wife of Late Bahadur Lal Hembrom,

5(b). Seman Hembrom son of Hopna Hembrom, both 5(a) and 5(b) are residents of Turka S.C. Dhasania, P.O. & P.S. Kundahit, District-Jamtara

5(c). Kalindi Hembrom, Daughter of Late Hopna Hembrom, wife of Munnu Soren, resident of Village - Mirja Pahari, P.O. Bandar Nache, P.S. Fatehpur, District- Jamtara.

5(d). Sitamuni Hembrom, Daughter of Late Hopna Hembrom, wife of Methu Tudu, resident of Village - Maldiha, P.O. Kherwani, P.S. Fatehpur, District-Jamtara.

5(e). Sabika Hembrom, Daughter of Late Hopna Hembrom, wife of Baidya Tudu, resident of Village - Damani, P.O. - Babanbadhi, P.S.-Fatehpur, District-Jamtara.

5(f). Lalita Hembrom, Daughter of Late Hopna Hembrom, wife of Arjun Beshra, resident of Village - Chakauriya, P.O.- Jhagri, P.S.-Palajori, District-Deoghar.

6. Marang Hembrom son of Late Mathan Hembrom resident of Village- Turka S.C. Dhasania, P.O. & P.S.- Kundahit, Sub Division & District-Jamtara.

...Defendants-Respondents-Appellants

- **Versus -**

1(a). Hite Lal Hembrom, son of Late Sarkar Hembrom @ Sarkal Hembrom,

1(b). Heera Lal Hembrom, son of Late Sarkar Hembrom @ Sarkal Hembrom, both residents of Turka S.C. Dhasania, P.O. and P.S. Kundahit, District – Jamtara.

1(c). Aloki Hembrom, Daughter of Late Sarkar Hembrom @ Sarkal Hembrom, wife of Sanatan Murmu, resident of Village – Manisapura, P.O. – Kherbani, P.S. Fatehpur, District – Jamtara.

1(d). Opali Hembrom, Daughter of Late Sarkar Hembrom @ Sarkal Hembrom, wife of Lokosan Soren, resident of Village – Chalepara, P.O., - Nala, P.S. – Nala, District – Jamtara.

2. Hem Lal Hembrom, son of Dheba Hembram

3. Shibdhan Hembrom, son of Dheba Hembram, both (2 and 3) are sons of Dheba Hembram.

4(a). Holodi Hembrom, son of Late Rupu Hembrom, resident of Village Turka S.C. Dhasania, P.O. and P.S. Kundahit, Sub. Division and District – Jamtara.

4(b). Dulari Hansda, W/o. Late Babujan Hembrom, resident of Village Turka S.C. Dhasania, P.O. and P.S. Kundahit, Sub. Division and District – Jamtara.

4(c). Sonabito Hembrom, Daughter of Late Babujan Hembrom and wife of Surendra Hembrom, residing at Village – Bhim Pahari, P.O. – Bawanbandi, P.S. – Fatehpur, District – Jamtara.

4(d). Lalita Hembrom, Daughter of Late Babujan Hembrom, resident of Village Turka, P.O. Ranidhawar, P.S. – Masalia, District – Dumka.

5. Srimati Murmu, widow of Late Sohan Hembrom,

6. Gobinda Hembrom, son of Late Sohan Hembrom (1 to 6 are resident of Village- Turka, S.C. Dhasamia, P.O. & P.S.- Kundahit, Sub Division & District-Jamtara.

7(a). Mahendra Hembram, son of Late Sahdeo Hembrom, resident of Village-Turka, P.O. Kundahit, P.S.- Kundahit, District-Jamtara

7(b). Merudi Hembram, daughter of Late Sahdeo Hembrom, wife of Binod Tudu, resident of Village-Digalgram (Basidih), P.O. Jamjori (Simla Dangal), P.S.-Fathepur, District-Jamtara.

7(c). Mahibala Hembram, daughter of Late Sahdeo Hembrom, wife of Shyam Lal Murmu, resident of Village-Jamugoriya, P.O.-Jesguriya, P.S. Nala, District-Jamtara.

8. The Deputy Commissioner of Dumka (Now Dist Jamtara)

…Defendants-2nd Party-Respondents 1st Party/Proforma Respondents

9(a). Kistu Ram Tudu, son of Late Kaliyan Hembram @ Kalyani Hembram and Pagan Tudu @ Pagu Tudu,

9(b). Bhim Tudu, son of Late Kaliyan Hembram @ Kalyani Hembram and Pagan Tudu @ Pagu Tudu,

9(c). Paku Tudu, daughter of Late Kaliyan Hembram @ Kalyani Hembram and Pagan Tudu @ Pagu Tudu,

(9(a) to 9(c) are residents of Village Turka, P.O.-Dhasania, P.S. Kundahit, District-Jamtara.

… … Plaintiff-Appellant-Respondent

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Appellants: Mr Jay Prakash Jha, Sr. Advocate
Mr Anant Kumar Sinha, Advocate
Mr Aishwerya Prakash, Advocate
Mr K.K. Mishra, Advocate

For the Respondents: Mr Atanu Banerjee, Advocate
Mr Durga Charan Mishra, Advocate

Amicus Curiae: Mr Sumeet Gadodia, Advocate
Ms Shilpi Sandil, Advocate
Mr Ranjeet Kushwaha, Advocate
Ms Nidhi Lal, Advocate

Reserved on: 19.11.2026 **Pronounced on: 23/11/2026**

***Per* M. S. Sonak, C.J.**

1. Heard Mr Jay Prakash Jha, learned Senior Advocate, appearing for the appellants, with Mr Kaushal Kishore Mishra; Mr Atanu Banerjee, appearing for the respondents, with Mr Durga Charan Mishra; and Mr Sumeet Gadodia, learned *Amicus Curiae*.

2. This Second Appeal under Section 100 of the CPC challenges learned Additional District Judge's judgment and order dated

04.03.2006 in Title Appeal No. 29 of 1996 (renumbered as 59 of 2002) by which the learned Additional District Judge (First Appellate Court) allowed the appeal, set aside the Trial Court's judgment and decree dated 05.10.1996 in Title Suit No. 45 of 1985, to the extent the same had not decreed Title Suit No. 45 of 1985 in its entirety, and decreed Title Suit No. 45 of 1985, in its entirety.

3. This appeal was admitted/directed to be heard on the substantial question of law formulated in the order dated 05.03.2009. The order dated 05.03.2009 is transcribed below for the convenience of reference: -

> *"This appeal will be heard on the following substantial question of law:*
>
> > *"Whether the finding recorded by the appellate Court needs further consideration in the light of the earlier decision rendered in the case of "Karan Murmu. Vs. The Commissioner, Santhal Pargana, Dumka" (2004)4 JLJR-41 and in the case of "Narayan Soren & Ors. Vs. Ranjan Murmu & Ors" (2009)1 JCR-263?"*
>
> *Since they are conflicting decisions, the matter needs to be heard by a Division Bench.*
>
> *Issue notice to the respondents for which requisites etc. by ordinary post must be filed within two weeks.*
>
> *Call for lower court records."*

4. In the above-referred order dated 05.03.2009, notices were served upon the respondents, and the matter was eventually placed before the Division Bench for disposal of the appeal, given the conflicting decisions of the two learned Single Judges referred to in the substantial question of law formulated in the order dated 05.03.2009.

5. At the hearing of this appeal on 19.11.2026, Mr Jay Prakash Jha, the learned Senior Advocate appearing on behalf of the appellants, invoked the provisions of Section 100(5) of the CPC and proposed the formulation of the following additional substantial question of law:

> *"Whether, the judgment and decree of the learned lower appellate court in particular is fit to be set-aside as being perverse and wrong for not discussing the evidence of plaintiffs herself, where she has categorically admitted about the custom of inheritance among Santhal Community in Village-Turka that only through marriage inheritance can be made in Ghar-Jamai form of a daughter, further she has also admitted the fact that she has no house of her own in Village-Turka, which is contrary to the pleadings in the plaint as such should not have been relied upon and whether in such circumstance the case of the plaintiffs fails and suit is fit to be dismissed?"*

6. Since this appeal was admitted/directed to be heard finally vide order dated 05.03.2009, the appellants were expected to file an

appropriate Interlocutory Application seeking formulation of any additional substantial question of law, if, in their opinion, such questions indeed arose in this appeal. Such IA should have been filed within a reasonable period from the date of admission of the appeal or the issue of the order dated 05.03.2009, and certainly not on 19.11.2026, when the matter was taken up for final hearing. The record indicates that, on several occasions in the past, dates were fixed for final hearing. Learned counsel for the parties were also directed to file a synopsis of their written arguments. Therefore, this matter was not suddenly taken up for final hearing on 19.11.2026.

7. Despite the aforesaid, we allowed the formulation of the above substantial question of law and heard the learned counsel for the parties on the same, in addition to the substantial question of law already formulated in the order dated 05.03.2009.

8. The appellants in the present appeal are the original defendant nos. 7 to 13 or their legal representatives in Title Suit No. 45 of 1985. The 10th respondent was the original plaintiff in Title Suit No. 45 of 1985. Upon her demise, her interests were represented by her legal representatives, who were duly brought on record in this appeal after seeking leave of the Court. Respondents 1 to 8 are the original defendants 1 to 6(a). The 9th respondent is the original 15th defendant in Title Suit No. 45 of 1985.

9. The main contesting parties in these proceedings were the 10th respondent (plaintiff) and the appellants (defendant nos. 7 to 13). For convenience, the appellants herein will be referred to as the

"defendants", and the substituted legal representatives of the 10th respondent will be referred to as the "plaintiff".

10. The present proceedings concern the suit properties described in Schedules "A" and "B" to the plaint. The plaintiff, by filing Title Suit No. 45 of 1985, prayed, *inter alia,* for declaration of right, title, and interest, confirmation of possession, and delivery of possession of the suit property in her favour.

11. The Trial Court, by its judgment and decree dated 05.10.1996, partly decreed the plaintiff's Title Suit No. 45 of 1985 and declared the plaintiff as owner of 1/3rd of the suit property.

12. The defendants did not challenge the Trial Court's judgment and decree dated 05.10.1996, which declared the plaintiff to be a 1/3rd owner of the suit property. However, the plaintiff challenged the decree to the extent that it denied her a declaration that she was the owner of the entire suit property described in Schedules "A" and "B" to the plaint, by filing Title Appeal No. 29 of 1996, later renumbered as Title Appeal No. 59 of 2002 before the First Appellate Court.

13. By the impugned judgment and decree dated 04.03.2006, the First Appellate Court allowed the plaintiff's Title Appeal No. 29 of 1996 (renumbered as 59 of 2002), set aside the Trial Court's decree dated 05.10.1996 to the extent that it had denied the plaintiff the relief she had claimed in its entirety, and decreed Title Suit No. 45 of 1985 in its entirety.

14. Aggrieved by the impugned judgment and decree dated 04.03.2006 passed by the First Appellate Court, the defendants have preferred this second appeal under Section 100 of the CPC.

15. Mr Jay Prakash Jha, learned Senior Advocate for the appellants, first submitted that the defendants/appellants had denied the averments of the plaintiff's alleged residence and, consequently, possession in or over the suit property in Turka village. He then referred to the plaintiff's evidence and pointed out that she had nowhere deposed to her residence or possession in or over the suit property at Turka village. Rather, she had deposed to her residence in some other village. He pointed out the contradictory nature of the reliefs sought in the plaint. Based on this, Mr Jay Prakash Jha submitted that the findings about the plaintiff's residence or possession in or over the suit property are entirely perverse and warrant interference.

16. Mr Jay Prakash Jha submitted that unless and until the factum of residence/possession was proved by the plaintiff, there was no question of decreeing the plaintiff's suit. He submitted that since this aspect has not been addressed by the First Appellate Court, the impugned judgment and decree dated 04.03.2006 deserves to be set aside by answering the additional substantial question of law now proposed, in favour of the appellants/defendants.

17. Mr Jay Prakash Jha secondly submitted that the First Appellate Court completely failed to address the plaintiff's admission about the custom of inheritance amongst the Santhal Tribals in the village

of Turka. Referring to the plaintiff's deposition, he submitted that the plaintiff admitted that daughters of only *Gharjamais* were, under exceptional circumstances, entitled to inherit property. This is because *Gharjamais* were regarded as adopted sons of the family and, consequently, as male legal heirs. He submitted that since this significant admission/evidence was ignored by the First Appellate Court, the impugned judgment and decree dated 04.03.2006 deserves to be set aside.

18. Mr Jay Prakash Jha submitted that under the customary rights applicable to Santhal Tribals from Turka village, women/daughters were generally not entitled to inherit ancestral properties. However, one exception was where the marriage was entered into through the *Gharjamai* route, after fulfilling all prescribed religious and social formalities. He submitted that this was because a *Gharjamai* was regarded as the family's adopted son.

19. Mr Jay Prakash Jha submitted that the existence of such a custom was in fact admitted by the plaintiff and since there was no evidence whatsoever of the *Gharjamai* route being adopted in the present matter, the general custom disentitling the daughter or the sonless Santhal to inherit the property of her father, should have been held as proved. Based upon the same Title Suit No. 45 of 1985 warranted dismissal in its entirety.

20. However, Mr Jay Prakash Jha conceded that the Trial Court’s decree declaring the plaintiff to be 1/3rd owner of the suit property was never challenged by the appellants/defendants and therefore, to

that extent, the Trial Court's decree could be maintained. However, he submitted that the First Appellate Court's judgment and decree dated 04.03.2006 decreeing the suit in its entirety ought to be set aside.

21. Mr Jay Prakash Jha relied on the Division Bench decision of the Patna High Court in **Ashok Kumar Hembrom v. Rani Hembrom,** AIR 1988 Pat 129, to submit that *Gharjamai* form of marriage is one of the recognised forms amongst the Santhal Tribals. This is because the Gharjamai son-in-law becomes the adopted son of the father-in-law after he cuts off all connections with his natural father's family and becomes, for all intents and purposes, the son of his father-in-law. Only in such circumstances could a daughter of a sonless Santhal Tribal claim rights of inheritance but not otherwise. He submitted that the First Appellate Court was not justified in disregarding this judgment of the Division Bench of Patna High Court.

22. Mr Jay Prakash Jha also relied upon **Karan Murmu. v. The Commissioner, Santhal Pargana, Dumka**, 2005 AIR Jhar R 288, in which the learned Single Judge of this Court has held that a female does not inherit the property and a widow cannot create a *Gharjamai* to attract the exception to the general rule prohibiting daughters and other females from inheriting ancestral property. He submitted that the First Appellate Court erred in disregarding this decision, which was binding on it.

23. Based upon the above submissions, Mr Jay Prakash Jha submitted that both the substantial questions of law ought to be answered in favour of the appellants, and this appeal deserves to be allowed.

24. Mr Atanu Banerjee, the learned counsel for the plaintiff, submitted that the First Appellate Court is the final court for determining questions of fact. He submitted that there was no perversity whatsoever in the findings of fact recorded by the First Appellate Court. He submitted that the plaintiff had sued based on title derived from inheritance and not merely some possessory title. He submitted that the Second Appellate Court ought not to re-appreciate or re-evaluate the evidence on record. In any event, the evidence on record must be evaluated in the context of the pleadings and the declarations sought by the plaintiff based on hereditary title and not mere possessory title. Therefore, he maintained that the findings recorded by the First Appellate Court contained no perversity whatsoever that would give rise to any substantial question of law.

25. Mr Atanu Banerjee submitted that almost 13 witnesses were examined on behalf of the plaintiff to show that no custom amongst the Santhal Tribals of Turka village disentitled a daughter or a sonless Santhal to inherit her father's properties. He also referred to documentary evidence on record, which *inter alia* included revenue records showing how ancestral properties inherited by daughters were recorded. He also relied upon some decisions to show how there was no such custom disentitling the daughter or a sonless

Santhal to inherit properties from her father. He submitted that all such evidence was more than sufficient to defeat the defendants' assertion about existence of any custom amongst the Santhal Tribals barring the daughters or sonless Santhals from inheriting the properties of their father. Accordingly, he submitted that there was no perversity whatsoever in the findings recorded in the First Appellate Court in the impugned judgment and decree.

26. Mr Atanu Banerjee, without prejudice, submitted that the evidence produced on behalf of the plaintiffs was more than sufficient for the onus to shift to the appellants/defendants, who had made a positive assertion about an alleged custom debarring a daughter or a sonless Santhal from inheriting their father's properties. He submitted that the appellants/defendants had by no means discharged this onus. He referred to the provisions of Sections 102 and 103 of the Indian Evidence Act and submitted that the onus was on the appellants/defendants to positively establish the existence of the custom alleged in their pleadings to deny the plaintiff's claim. For this reason too, Mr Atanu Banerjee submitted that there was no perversity in the findings recorded by the First Appellate Court.

27. Mr Atanu Banerjee further submitted that, in the absence of any law or custom debarring a daughter or a sonless Santhal from inheriting their father's property, the principles of justice, equity and good conscience ought to prevail. He submitted that, in the absence of any law or established custom, there was no question of discriminating against the daughters of the family, and such

discrimination would be plainly contrary to public policy and constitutional morality. He distinguished **Karan Murmu (supra)** and relied upon **Narayan Soren v. Ranjan Murmu**, 2008 SCC OnLine Jhar 413, in support of his contentions.

28. Based upon the above submissions and by referring to the limited scope of interference in a Second Appeal, Mr Atanu Banerjee submitted that this appeal be dismissed.

29. Mr Sumeet Gadodia, learned *Amicus Curiae,* who appeared via video conferencing, submitted, with reference to several reports and reported decisions, that the Santhal tribal law prohibiting females from inheriting had undergone a sea change. He submitted that overwhelming oral and documentary evidence militated against the continuance of any such custom. He further submitted that the evidence produced by the appellant/defendants was inadequate to establish the existence or continuance of any such custom. Accordingly, he submitted that there was no good reason to interfere with the impugned judgment and decree passed by the First Appellate Court in this matter.

30. Mr Gadodia referred to **Laxmibai v. Bhagwantbuva**, (2013) 4 SCC 97, to submit that a plea of custom had to be proved to the hilt. Besides, for a custom to displace the general law, it had to be proved to be ancient, certain and reasonable. He submitted that, since none of these requirements had been established, there was no warrant to interfere with the well-reasoned decision of the First Appellate Court.

31. Mr Gadodia submitted that in **Karan Murmu (supra),** the learned Single Judge of this Court had recorded a finding that there was no proof of the adoption of one Easter Tuddu as the daughter of Bhavi Murmu. In the absence of any proof of this foundational fact, the observation that, under Santhal Pargana inheritance law, a female does not inherit property could not be regarded as a universal statement of law or as proof of the existence of any such custom. Besides, Mr Gadodia submitted that **Karan Murmu (supra)** did not consider the fact that there was no statutory law barring inheritance by female Santhal Tribals, or the celebrated decision of the Hon'ble Supreme Court in the case of **Madhu Kishwar v. State of Bihar**, (1996) 5 SCC 125.

32. Mr Gadodia pointed out that the extremely well-reasoned decision in **Narayan Soren (supra)** clarifies the position regarding a Santhal daughter's right to inherit her father's property and the role of customs in that regard. Mr Gadodia submitted that, in the absence of any statutory provision and clear proof of the existence of any custom alleged by the appellants/defendants to exist or continue, such a custom would be contrary to public policy and constitutional morality. He submitted that, even assuming two interpretations were possible, the interpretation that, according to him, was not in tune with the constitutional ethos must be preferred.

33. Mr Gadodia referred to the written submissions filed by him and the decisions enclosed with them, submitting that the substantial

questions of law as framed ought to be decided against the appellants/defendants.

34. The rival contentions now fall for our determination.

35. As noted earlier, this appeal was admitted or, in any event, directed to be finally heard by an order dated 05.03.2009 on the substantial question of law as to whether the finding recorded by the Appellate Court requires further consideration in the light of the earlier decision rendered in the case of **Karan Murmu (supra)** and the later decision in the case of **Narayan Soren (supra)**. No question regarding any alleged perversity in the findings of fact recorded by the First Appellate Court appears to have been pressed or, in any event, formulated when the order dated 05.03.2009 was made.

36. Only belatedly, that is, when the matter was taken up for final hearing on 19.11.2026, Mr Jay Prakash Jha raised the question about the alleged perversity in the findings of fact recorded by the First Appellate Court in the impugned judgment and decree and urged its formulation as a substantial question of law by invoking the provision of Section 100(5) of CPC.

37. Although the above course of action was quite improper, we heard the learned counsel for the parties on the issue of alleged perversity in the findings of fact recorded by the First Appellate Court in the impugned judgment and decree, but upon due consideration, we are satisfied that there was no perversity whatsoever in the record of such findings of fact by the Fist Appellate Court so as to give rise to any substantial question of law or in any event, to reverse the

impugned judgment and decree made by the First Appellate Court on the ground of any alleged perversity in the record of findings of fact. The reasons for this conclusion are discussed hereafter.

38. Mr Jay Prakash Jha first alleged that the appellants/defendants had squarely denied, in their written statements, the pleadings concerning the plaintiff's alleged residence and possession in and over the suit properties in the village of Turka. He then referred to the plaintiff's evidence, submitting that she had admitted to not residing at Turka. He submitted that, since this admission had been ignored, the foundational finding of fact was vitiated by perversity, warranting interference by the Second Appellate Court.

39. In this case, the plaintiff sought a declaration of title, not based on possessory title or mere possession. The plaintiff had pleaded that she had inherited the suit property by virtue of her hereditary title. Therefore, the plaintiff was quite guarded even in seeking relief in the plaint. Therefore, the plaintiff's evidence had to be evaluated in the context of her pleadings in the plaint, which she had set out. Some of her statements during her deposition cannot be read or construed out of the context or the setting in which they were made. Besides, the evidence must be read and evaluated in its entirety, not based on stray statements torn out of the context or setting in which they may have been made. Therefore, based on the ground urged, we are unable to detect any perversity in the finding recorded by the First Appellate Court.

40. Besides, the Second Appellate Court very rarely, if at all, reappreciates or reevaluates the evidence on record unless a case of clear perversity is made out. Sufficiency or adequacy of evidence to support a finding of fact is a matter for the decision of the trial and first appellate Courts and cannot be normally agitated in a second appeal. Perversity does not mean insufficient evidence; it usually refers to a case of no evidence, in the sense that the overwhelming evidence on record points in one direction but the finding is quite the opposite or where the evidence, evaluated in its entirety, is not reasonably capable of sustaining the finding. Perversity could also mean an absurd conclusion that no Court or tribunal well versed in law could or should ever have reached [See **Madamanchi Ramappa v. Muthaluru Bojappa (1964) 2 SCR 673**]. The appellants/defendants have made out no such case warranting any interference with the findings recorded by the First Appellate Court.

41. Similarly, the so-called admission by the plaintiff that a female can inherit only where her father establishes the marriage through the *Gharjamai* route cannot be read or construed as an admission of any custom among the Santhal tribals of Turka village debarring females from inheriting their father's property. The plaintiff has substantially discharged the onus of establishing that no such custom warranted a deviation from the general rule regarding female inheritance among the Santhal tribals.

42. Since the appellants/defendants asserted the existence and continuance of such a custom and set it up as a defence to a

deviation from the general law, the onus was on them to establish its existence or continuance. For this purpose, the appellants/defendants cannot rely upon a so-called admission, which is, again, torn out of context and its proper setting. The appellants/defendants adduced no cogent evidence to establish the existence or continuance of such a custom to discharge the onus that shifted upon them.

43. In **Laxmibai v. Bhagwantbuva (supra),** the Hon'ble Supreme Court has explained that a custom must be proved to be ancient, certain and reasonable. The evidence adduced on behalf of the party concerned must prove the alleged custom, and the proof must not be unsatisfactory or conflicting. A custom cannot be extended by analogy or logical process, and it also cannot be established by a *priori* method. Material customs must be proved properly and satisfactorily, until the time that such custom has, by way of frequent proof in the Court, becomes so notorious that the Court takes judicial notice of it.

44. Applying the legal position explained by the Hon'ble Supreme Court, we are quite satisfied that the findings recorded by the First Appellate Court are not vitiated by any perversity on the grounds alleged in the question proposed for formulation by Mr Jay Prakash Jha, the learned Senior Advocate appearing on behalf of the appellants/defendants or even otherwise.

45. As discussed earlier, no perversity is established. The plaintiff's evidence, both oral and documentary, is more than sufficient to

militate against the existence and continuance of the custom alleged by the defendant concerning female inheritance amongst the Santhal tribals in Turka Village. In any event, the plaintiff's evidence more than discharged the onus placed upon her. The defendants, having made a positive assertion about the existence and continuance of the custom, failed to discharge the onus.

46. Accordingly, even if we proceed on the premise that the question proposed by Mr Jha at the final hearing stage was indeed a substantial question of law arising in this appeal, it must be answered against the appellants. On the ground of alleged perversity, therefore, no case is made out to interfere with the impugned judgment and decree of the First Appellate Court in this matter.

47. The next question concerns the conflicting decisions in **Karan Murmu (supra)** and **Narayan Soren (supra)** and whether the finding recorded by the Appellate Court in the impugned judgment and decree needs further consideration in the light of such conflicting decisions.

48. At the very outset, we note that the decision in **Karan Murmu (supra)** was delivered in a Civil Writ Jurisdiction Case No. 4253 of 1991 by the learned Single Judge of this Court. The issues involved in the said writ petition were - (i) whether sister's son can inherit a joint landed property of maternal uncle, (ii) whether a widow Santhal lady can create *Gharjamai* even without the consent of the next heir of her deceased husband, (iii) whether a daughter can

succeed the property under the Santhal custom, (iv) whether the story of gharjamai can be accepted even without any valid and legal document, and (v) whether decision under Section 145 Cr.P.C. with regard to the possession is binding on Civil Court in determining the question Title?

49. First, in **Karan Murmu (supra),** the learned Single Judge recorded, or at least took cognisance of, the fact that there was no proof of adoption of Easter Tuddu as the daughter of Bhavi Murmu to sustain any claim for inheritance. Thus, the foundational fact for claiming inheritance was factually not proved in **Karan Murmu (supra)**. The further observation that, under the Santhal Pargana Law of Inheritance, a female does not inherit the property was thus not necessary for disposal of the writ petition.

50. Second, **Karan Murmu (supra)** does not refer to any statutory provisions or, for that matter, any binding precedents, including the Hon'ble Supreme Court's decision in **Madhu Kishwar (supra)**. The decision does not address whether any statutory provision bars inheritance by Santhali Tribal daughters of their father's property.

51. Third, as noted earlier, **Karan Murmu (supra)** was a decision rendered in a writ petition, where the Writ Court ordinarily does not conclusively decide disputed questions of fact, much less issues about existence or continuance of some custom. The writ petition was against the orders made by the Assistant Settlement Officer where again, the recording of findings of fact, particularly regarding the existence or non-existence of a custom, can never be elevated to

the level of a record of findings of fact by a civil court after the parties have led oral and documentary evidence.

52. Fourth, **Karan Murmu (supra)** does not address the burden or onus of proof in such matters. It does not refer to the law in **Laxmibai v. Bhagwantbuva (supra)** regarding the mode of proving the existence or continuance of a custom**.** To that extent, at least, there is no conflict between the two decisions, assuming that there is some conflict on the other aspect.

53. Accordingly, but with due respect, we do not agree that **Karan Murmu (supra)** is an authoritative pronouncement on whether a custom under which a female does not inherit her father's property exists or continues in the Santhal Pargana Law of Inheritance. In any event, based on the reasoning or the conclusion in **Karan Murmu (Supra),** we are satisfied that no case is made out to interfere with the impugned judgment and decree.

54. In contrast, **Narayan Soren (supra)** is a much more detailed decision delivered in a Second Appeal directed against the judgment and decree dismissing the plaintiff/appellant’s title suit. In that matter, at the time of admission of the appeal, the substantial question of law framed was whether the courts below had erred in law in placing the onus on the plaintiff to prove that there was no custom of adoption by the females amongst the Santhals. After appreciating the evidence on record, the two courts held that the Santhal widow was competent to adopt a child in the absence of her sonless husband.

55. The learned Single Judge of this Court (M.Y. Eqbal, J., as His Lordship then was) observed at paragraph 8 that he would like to discuss the customary law of the Santhals and the rights of females under their customary law with regard to adoption, although the finding had been conclusively recorded by two Courts and the counsel for the appellants had confined his argument to the question of law formulated at the time of admission of the appeal.

56. **Narayan Soren (supra)** refers to historical and anthropological literature, including the writings and reports of **W. G. Archer, Mr Ramesh Chandra, J. F. Gantzer, H. McPherson, Mr Bompas** and **P.C. Roy Choudhary** and concludes that custom prevailing in the Santhal communities about female inheritance has undergone a great change owing to the force of public opinion. The change is in the direction of uplifting the condition of women and giving them rights in the family as well as in the family properties. The learned Single Judge observed that the books of great scholars, including the books in survey and settlement quoted hereinbefore, make it manifestly clear that there are instances where a sonless male or female has adopted a grandson or any of the agnates of the family to facilitate inheritance.

57. **Narayan Soren (supra),** unlike **Karan Murmu (Supra),** extensively refers to **Madhu Kishwar (supra),** in which the provisions of the Chota Nagpur Tenancy Act, 1908, restricting succession to property solely to the male line, were challenged as discriminatory and unfair to women and therefore *ultra vires* the

equality clause in the Constitution. This decision also refers to statutory provisions under the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, to support its finding/conclusion.

58. The learned Single Judge held in paragraph 21 that where the plaintiff asserts that the adoption of a child by a female is not customary among the Santhals, and the defendant discharges the onus by adducing evidence to show that the adoption of a child by a female Santhal is customary, a heavy onus lies on the plaintiff to prove that such adoption is not customary among the Santhals.

59. The learned Single Judge relied on the decision of the Lahore High Court in **Mt. Barkar Bibi v. Mohd. Amin**, AIR 1934 Lahore 325, and the decision of the Privy Council reported in AIR 1917 PC 181, holding that when a person asserts that he is governed by a custom, it is incumbent upon him to prove that he is so governed and further to prove what that custom is.

60. Further, by reference to the authorities and legal literature, the learned single judge holds that no uniform custom applies to the whole of the State since it has not yet been codified. It is well known that a custom differs from place to place and from tribe to tribe, and it is also recognised by authority that it may differ from family to family.

61. The learned Single Judge refers to the words of **Robertson, J.,** which have been quoted with approval in the Privy Council decision reported in **AIR 1917 PC 181**: it is not the spirit of

customary law, nor any theory of custom or deductions from other customs, that is to be the rule of decision, but only a custom applicable to the parties concerned.

62. The learned Single Judge noted that the defendants/respondents had specifically pleaded that, according to Santhal custom, a widow is also competent to adopt a child. In support of this assertion, oral and documentary evidence was produced to establish the existence of such a custom. Accordingly, it was held that the concurrent finding on the existence of such a custom, based on oral evidence coupled with a registered adoption document, could not be held perverse in law so as to warrant interference in a Second Appeal.

63. The decision in **Narayan Soren (supra)** not only considers the Hon'ble Supreme Court's decision in **Madhu Kishwar (supra)** but also substantially aligns with the observations made therein, particularly in relation to discrimination against females in matters of inheritance.

64. Although **Narayan Soren (supra)** does not take cognisance of the earlier decision in **Karan Murmu (supra)**, we are more than satisfied that the later decision in **Narayan Soren (supra)**, which relies upon the decision of the Hon'ble Supreme Court in **Madhu Kishwar (supra)**, correctly lays down the legal position regarding the customs of the Santhal Tribals in relation to the inheritance of property by female Santhali Tribals. In any event, the reasoning in **Narayan Soren (supra)** is to be preferred over that in **Karan Murmu (supra).**

65. Further, we are satisfied that the finding recorded by the Appellate Court in the present case is not only supported by the evidence on record but is also in line with the decision in **Narayan Soren (supra)** and the decisions of the Hon'ble Supreme Court in **Madhu Kishwar (supra)** and **Laxmibai v. Bhagwantbuva (supra)**. Therefore, the findings and conclusion recorded by the First Appellate Court in this matter warrant no reconsideration, assuming that, to some extent, conflicting views are indeed expressed in **Karan Murmu (supra)** and **Narayan Soren (supra)**.

66. The learned *Amicus Curiae* referred to the decision of the learned Single Judge of this Court in **Ismail Hansda v. Mathias Murmu**, 2025 SCC OnLine Jhar 2952, in which it is held that a party relying on a Santhal custom that excludes daughters from inheritance must prove every element of a binding custom. Since the Court found that the plaintiffs did not do so, the daughter's line kept the land. The ratio of this decision is that an ancient custom is not enough to exclude a sole daughter of a sonless Santhal. The party relying on such a custom must prove it is currently followed uniformly, with certainty, continuously and compulsorily in that specified area.

67. The decision of the learned Single Judge in **Ismail Hansda (supra)** was challenged in Special Leave Petition (C) No. 30712 of 2025. However, the SLP was dismissed by order dated 08.12.2025, with the Hon'ble Supreme Court observing as follows:

"…. We find absolutely no ground to interfere with the well-considered judgment/order of the High Court. This Special Leave Petition is dismissed."

68. Therefore, even if we were to proceed on the premise of some conflict between the ratios in **Karan Murmu (supra)** and **Narayan Soren (supra),** still, for all the above reasons, we are satisfied that the finding recorded by the appellate Court is well supported by the evidence on record and needs no further consideration, given the alleged conflict.

69. The second substantial question of law formulated at the time of admission of the appeal must therefore also be answered against the appellants/defendants, and it is answered accordingly.

70. The learned Amicus has referred to several other decisions that would support the plaintiff's case in this matter. However, since we are satisfied that the substantial questions of law raised in this appeal have to be decided against the appellants/defendants, we do not deem it necessary to discuss all those decisions referred to by the learned *Amicus Curiae,* though, we wholeheartedly appreciate the efforts put in by Mr Sumeet Gadodia, the learned *Amicus Curiae* and his juniors, Ms Shilpi Sandil Gadodia and Mr Ranjeet Kushwaha.

71. For all the above reasons, we dismiss this appeal and confirm the impugned judgment and decree dated 04.03.2006 passed by the First Appellate Court in Title Appeal No. 29 of 1996 (renumbered

as 59 of 2002), without any order for costs. IAs, if any, pending in this appeal will not survive and are disposed of.

72. Before we part, we acknowledge the able assistance rendered by **Mr Jay Prakash Jha,** the learned Senior Advocate for the appellants, **Mr Atanu Banerjee**, the learned counsel for the original plaintiff and above all, **Mr Sumeet Gadodia**, the learned *Amicus Curiae* appointed by this Court and his juniors, **Ms Shilpi Sandil Gadodia** and **Mr Ranjeet Kushwaha.**

(M. S. Sonak, C.J.)

(Rajesh Shankar, J.)

November 23, 2026

A.F.R.

Manoj/Sharda/Cp.2

Uploaded on 23.11.2026