IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 94 of 2026

1. Budhan Devi, aged about 62 years, W/o Late Gahnu Munda
2. Radha Munda, aged about 35 years, S/o Late Gahnu Munda,
3. Savitri Kumari, aged about 22 years, D/o Late Gahnu Munda,
4. Sunni Munda, aged about 19 years, S/o Late Gahnu Munda,
5. Munni Devi, aged about 35 years, W/o Late Chhotan Munda
6. Sitaram Munda, aged about 39 years, S/o Late Sanicharwa Munda
7. Etwa Munda, aged about 42 years S/o Late Sanicharwa Munda

All R/o Sukurhuttu, P.O + P.S.- Sukurhuttu, District-Ranchi

… … Claimants/Appellants

Versus

1. Daho Devi, D/o Late Bhuduwa Munda, R/o Sukurhuttu, P.O. + P.S.- Sukurhuttu, District- Ranchi
2. The State of Jharkhand through District Land Acquisition Officer, P.O.- GPO Ranchi, P.S. – Kotwali, Distt.- Ranchi

… … Opposite parties/Respondents

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellants : Mr. Rahul Gupta, Advocate
: Mr. Shubham Kumar, Advocate
For the Resp. No. 1 : Mr. Pradeep Kumar Deomani, Advocate
: Mr. Nilesh Kumar Gupta, Advocate
For Resp. No. 2 – State : Mr. Pankaj Kumar Choudhary,
AC to SC (L&C)-II

C.A.V. on 08.06.2026 **Pronounced on 05.10.2026**

1. This appeal has been filed against the judgment dated 31.10.2025 and award dated 06.11.2025 passed by learned Judicial Commissioner cum Land Acquisition Rehabilitation and Resettlement Authority, Ranchi in Land Acquisition Case No. 2 of 2021 whereby the case of the Claimants/appellants have been dismissed.

2. The lands of late Sauna Munda, late Bhadwa Munda and late Induwa Munda, all sons of late Soma Munda were acquired vide notification no. 3966 dated 30.10.2015 wherein compensation was fixed. Dispute arose when daughter in the lineage of late Induwa Munda, namely Daho Devi and son of the daughter in the lineage of late Langda Munda son of late Sauna Munda, namely, Mohan Munda claimed share/ entitlement in payment of compensation. The claimants, all in the lineage of late Bandhan Munda son of late Sauna Munda, claimed exclusion of

entitlement of daughters through inheritance by referring to tribal customary law of Munda, Schedule tribe.

3. The genealogy is not in dispute and has been mentioned in the latter part of this judgement.

4. The lands were acquired under the provisions of ***Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013')*** and the award was prepared in the name of three awardees, late Sauna Munda, late Bhadwa Munda and late Induwa Munda, all sons of late Soma Munda.

5. On account of aforesaid dispute regarding entitlement of daughters in the family, the matter was referred to the learned court in terms of section 64 of the aforesaid Act of 2013. The appellants herein claimed that the females in the family are not entitled to inherit the property as per the customary law governing the parties and the private respondent claimed that they have been sufficiently hinduised and they are to be governed by Hindu Succession Act in the matter of inheritance and succession.

6. The learned court has rejected the claim of the claimants and has allocated share in the compensation amount to the daughters/their descendant. The case was dismissed. The claimants are in appeal before this court.

7. Both the parties have submitted their written notes of arguments. The arguments made in open court and the submissions made through written arguments have been duly recorded in the last order by which the judgement was reserved. During the course of arguments, neither the details of property, nor the genealogy has been disputed by either party.

8. ***Gist of the Arguments of claimants/Appellants***

A. Both the parties belong to the Munda Scheduled Tribe community and are governed by customary tribal law in matters of succession and inheritance. According to the customary law prevailing amongst the Mundas, in the event a male dies leaving no male issue, his widow and unmarried daughters are only entitled to maintenance from the usufruct of the property during their lifetime

or until remarriage, and after their death or remarriage the property devolves upon the nearest male agnates of the deceased.

B. Appellants' case is that the lands in question were ancestral raiyati properties recorded in the Revisional Survey Record of Rights in the names of Sauna Munda, Bhadwa Munda and Induwa Munda, all sons of late Soma Munda, who were in possession thereof; Bhadwa Munda died issueless, his share devolved upon his brothers Sauna Munda and Induwa Munda in accordance with Munda customary law. Thereafter, through successive inheritance in the male line, the properties devolved upon the appellants and their predecessors. It is further pleaded that Budhuwa Munda, the only son of Induwa Munda, died without any male issue and consequently, under the prevailing Munda custom, his interest devolved upon his nearest male agnates, namely the surviving legal heirs of Sauna Munda including the present appellants. Accordingly, the appellants claim that they are in peaceful possession of the acquired lands and possess absolute right, title, interest and share therein, and therefore they alone are entitled to receive the compensation amount awarded in respect of the acquired lands.

C. Submissions: -

a. The learned trial court, while solely relying on the decision of the Hon'ble Supreme Court of India in ***"Ram Charan & Ors. vs. Sukhram & Ors." passed in Civil Appeal No. 9537/25 arising out of SLP (C) No. 5559 of 2023*** held that even in absence of proof of any specific tribal custom excluding women from inheritance, tribal women and their legal heirs are entitled to equal rights of inheritance in ancestral property. The Court further observed that it was an admitted fact that the parties belonged to the tribal community and that the acquired lands stood recorded in the names of the common ancestors/awardees, namely Late Sauna Munda, Late Bhadwa Munda and Late Induwa Munda, all descendants of common ancestor Soma Munda.

Accordingly, the Trial Court concluded that Daho Devi and Mohan Munda (now dead), being successors-in-interest of the awardees through the female line, were entitled to equal shares in the acquired property. On that basis, the claim of the appellants was rejected.

b. The impugned judgment passed by the learned Trial Court is completely erroneous on the ground that the learned court has mentioned the case of respective parties and has summarised the evidence of both the parties, but has not discussed the evidence nor have any findings been recorded as to whether the parties were sufficiently Hinduised so as to attract Hindu Succession Act, 1956.

c. The judgment which has been followed by the learned court to hold that the parties would be governed by Hindu Succession Act does not apply to the facts and circumstances of this case, inasmuch as, it applied under those circumstances where the parties have failed to prove the religion/custom which they are following and the principle of equity and good conscience would be attracted only under such circumstances. The learned trial court has not at all discussed the evidences on record, both oral and documentary, and has taken a wrong approach while deciding the case.

d. From the evidences, it would appear that the claim of the Objectors/respondents is based on the fact that they have been sufficiently Hinduised. The Objectors/respondents have not denied that according to the custom they are following, widow and daughters do not have inheritance right over the ancestral property, rather, their specific case is that they are following Hindu custom and they are sufficiently Hinduised and therefore they are entitled to inherit as per the Hindu Succession Act over the ancestral property.

e. OPW-1, Manoj Munda, who is the own son of the Respondent no.1 in para 16 of his cross-examination, has admitted that under Munda Customary law, widow and daughters do not have right over the property (clearly referring to ancestral property). In para 21, he has stated that they follow Sarna religion as well as Hindu Religion.

Daho Devi, who was the OPW-2, in para 10 of her cross-examination, has stated that her husband was buried after his demise. In para 16, she has further stated that her father was buried, however she again stated that he was cremated in funeral pyre. However, again in para 17, she has stated that her own sister was buried and not cremated in funeral pyre. Again, even with regard to Gahnu Munda i.e., the original claimant and husband of Appellant No. 1, it has also been stated that his last rite were performed in Sukurhtu Masna.

f. It is submitted that from the evidences adduced on behalf of the Respondent themselves, it shall transpire with regard to the mode of final rites that after the death of family members, the deceased have been buried and not cremated. In para 19 of evidence of OPW-2, i.e., the Respondent no.1, she has stated that she is following Sarna Dharam.

g. For the purpose of claiming the benefit of Hindu Succession Act, a person has to prove that they have been sufficiently Hinduised. The word "sufficiently Hinduised" means that by following Hindu

religion, such parties are no longer following their original religion and have thus been sufficiently Hinduised. Partially adopting certain portions of Hindu religion would not mean that the parties have been sufficiently Hinduised. This is more so in view of the bar imposed in Section 2(2) of the Hindu Succession Act, which specifically prohibits that the law of Hindu Succession Act would not be applicable to Tribal people.

h. Further, from evidence of parties particularly Opposite Party witnesses who have claimed their right over the property in dispute on the ground that they have been sufficiently Hinduised, it would be relevant to place the evidence of O.P.W-2 and O.P.W-1, who are the Respondent no.1 and her son respectively, it would appear from their evidence that the family of the parties originally belonged to Sarna Dharm, i.e., Sarna religion. Sarna and Hinduism are two different religions. And therefore, from their evidence it would appear that for taking benefit of the properties of the Hindu Succession Act, the Opposite Party/Respondent are trying to prove that although they belong to Sarna religion originally but they have now adopted Hinduism. The persons following Sarna religion, celebrate Sarhul and Karma which is an important festival for them, i.e., the persons following Sarna religion. Hindus may participate in Sarhul and Karma only out of joy, but it is not their festival. In para 15 of evidence of O.P.W.-1 it has been stated that they celebrate Sarhul and Karma and in para 21 he has stated that he and his family were following both Sarna as well as Hindu religion. On the other hand, O.P.W.-2, who is the opposite party herself, has very categorically admitted that her father and sister were both buried in Masna. Again, Masna is a place in which the persons following Sarna religion are buried. Again, in para 19 of her cross examination, O.P.W.-2 has stated that she is following Sarna religion and she also celebrates Sarhul and Karma festivals.

i. A reference has been made to the evidence of O.P.W-3, namely Mohan Munda who stated in para 17 of his cross examination that they also celebrate Karma and Sarhul. He has further stated that they also worship Karma and Sarhul. Worshiping Karma and Sarhul is an important aspect of following Sarna religion. Again O.P.W.-4, namely Babu Lal Munda in para 23 of his cross examination has stated that Shiv Dayal Munda's (who was the husband of Opposite Party Daho Devi) last rites have been done in Masna. In para 24, again he has stated that the family of Shiv Dayal Munda and Budhuwa Munda worship the festival of Karma and Sarhul. O.P.W.-5, namely Mahabir Munda, in para 18 of his evidence, has stated that after the death of Shiv Dayal Munda, his last rites were done in Masna. In last rites of person following Sarna, there is no

concept of cremation by funeral pyre rather they are buried. No cremation therefore takes place at Masna and last rites having done in Masna would mean burial in Masna.

j. It is submitted that a person cannot be allowed to get out of rigors of a particular religion only for getting the benefit of the property rights. In the instant case, unless the Objectors/respondents would have proved that they have been sufficiently Hinduised, that means that they have started following Hindu religion to such an extent that they were no longer following Sarna religion, they cannot be said to have been sufficiently Hinduised. A person who essentially continues to follow traditional Sarna religion in their ways of life particularly by burial in Masna and worshipping Karma and Sarhul, would continue to be a member of Sarna religion and merely because they have adopted certain ways of life from Hindus, that would not mean that they have been sufficiently Hinduised. A person cannot be allowed to get property rights under the Hindu Succession Act on the ground that they have been sufficiently Hinduised as they follow some of the ways of life of Hindus whereas facts would go to show that they continue to follow the essentials of Sarna religion.

k. Learned counsel for the appellants has referred to their pleading before the learned court found at running page no. 307 of the Records received from the court and submits that in paragraphs 3 and 4, it has been specifically pleaded that the parties are governed by their customary law in the matter of succession and inheritance and according to customary law prevalent amongst Munda community, the females are excluded from inheriting the property and they are entitled to maintenance under certain circumstances. It has also been pleaded that the property of sonless Munda devolves upon his nearest male agnates. Paragraphs 3 and 4 of the pleadings are quoted as under:

> *"3. That the petitioner and opposite parties are by caste Munda being members of Scheduled Tribe and are governed by their customary law in the matter of succession and inheritance.*
>
> *4. That according to the customary law prevalent amongst Munda community, if a male Munda dies leaving behind no male issue, his widow and unmarried daughters entitled to be maintained out of the usufructs of the immoveable properties left by the last sonless male munda so long the widow does not remarry and she does not married so long she is alive and so long the unmarried daughters are not married and if they are not married so long they are alive and after the remarriage of the widow*

or after her death as the case may be and after the marriage of the unmarried daughters and if they die unmarried, the property of the last male sonless munda devolve upon his nearest male agnates."

l. Learned counsel for the appellants submits that the fact that the parties are governed by customary law and that such customary law was prevalent, was enough pleading on record to cover each of the elements of customary law to be applied in the present case to exclude the females from inheritance.

m. Learned counsel for the appellants has then referred to the petition filed by the respondent at page no. 267 of the records received from the concerned court. He has referred to paragraphs 20, 26 and 28 of the aforesaid written statement, which are quoted as under:

"20. That the petitioner/claimant hereby states and submits that she is performing Hindu Religions in all kinds of festivals Deepawali, Holi festival just like Hindu woman of Hindu Religion.

26. That the Petitioner/Claimant state and submit that she is performing Hindu Religion in all kinds of festival just like a Hindu Women in support of that filling submitting affidavit.

27…

28. That in view of the facts and law points stated above it is well proved that a Tribal woman has got right and inherit the paternal and ancestral properties just as Hindu women."

n. However, from the perusal of the petition filed by the respondents, it appears that no para-wise comment was filed.

o. Learned counsel for the appellants has also submitted that non-filing of para-wise comments by either party with respect to the pleadings could be on account of the reason that each of them termed themselves as "petitioners/claimants", although the respondents in the present case had filed their petition after filing of the petition filed by the appellants.

p. It is submitted that the approach of the learned trial court is erroneous in law and the impugned judgement and award is fit to be set-aside.

q. The appellants have relied upon the judgment reported in ***(2000) 8 SCC 587 (Labishwar Manjhi vs. Pran Manjhi & Others)***, paragraph 5 and 6.

r. The learned counsel for the appellants has also referred to the judgment passed by the Hon'ble Supreme Court in ***Civil Appeal***

No. 9537 of 2025 (Ram Charan & Ors. Vs. Sukhram & Ors.) and submitted that this judgment has been relied upon by the learned court, but the reliance is completely misplaced and therefore, the said judgment does not apply to the facts and circumstances of this case.

9. <u>Gist of Arguments of the respondent no.1</u>

A. It is admitted by both the parties that the recorded tenant, Bhadwa Munda had died issueless, and that the appellants are the descendants of the recorded tenant, Sauna Munda, and the sole private respondent is the descendant of the recorded tenant, Induwa Munda. However, a dispute arose between the parties in respect of the apportionment of the amount of compensation in lieu of the said acquisition.

B. The appellants raised their objection before the District Land Acquisition Officer, Ranchi, to the effect that the appellants and the respondent are the members of the Scheduled Tribes, as they belong to the Munda community, and that they are governed by the customs in the matter of inheritance and succession. The appellants further claim that they still follow Sarna religion and customs prevalent in their Munda community and according to the custom prevalent in their Munda community, if a male Munda dies, leaving no male issue behind him, his widow does not inherit the landed property left by him, but is entitled to be maintained out of the usufruct of such immovable property till she remarries or till her life, as the case may be, and likewise, his unmarried daughter also does not inherit the landed property left by him, but is entitled to be maintained out of the usufruct of such immovable property till she marries or till her life, as the case may be. And after remarriage or death of his widow and/or after marriage or death of his unmarried daughter, as the case may be, the landed property left by him devolves upon his nearest male agnates.

C. The appellants led oral as well as documentary evidences in support of their case. It was the appellants who claimed existence of certain custom relating to inheritance and succession in their Munda community, and, therefore, the onus was upon them only to properly plead and prove such custom as being ***ancient, certain, continuous and acted upon in their community***. However, the appellants totally failed even to plead the basic necessary facts about such custom as being ancient, certain, continuous and acted upon in their community. And in absence of proper pleadings, the evidences led by them are also lacking and shaky, which do not prove such custom as being ancient, certain, continuous and acted upon in their community.

D. The case of the sole private respondent, Daho Devi, is that she inherited the landed property left by her deceased father, which was the only source of her income for her livelihood. The respondent asserted that they have sufficiently been hinduized, as they celebrate all Hindu festivals, follow all Hindu customs and rituals and keep Hindu names amongst themselves; and, therefore, the Hindu Succession Act, 1956 will be applicable.

E. The respondent no.1 also led oral evidence in support of her case and the witnesses examined on her behalf have successfully established that the appellants and the respondent have sufficiently been hinduized, which can easily lead to the application of the Hindu Succession Act, 1956 in their case.

It is relevant to mention here that though the witness no. 1 of the respondent no.1, Manoj Munda, admits in the para no. 16 of his cross examination that a widow or a daughter does not inherit and succeed to the property left by her deceased husband or father, but the same will not help the appellants for two reasons:

1) The appellants have to stand on their own legs and they have totally failed in their duty of proving the custom they claim to be in existence in their community.

2) The respondent has been able to prove that the appellants and the respondent have sufficiently been hinduized.

F. Though the learned trial court has not discussed the evidences of the parties on the record at length and discussed the same in a cursory manner and has also not returned any clear finding based on the same, but it is amply evident from the materials on the record that:

1) It was the appellants who claimed existence of certain custom relating to inheritance and succession in their Munda community, and, therefore, the onus was upon them only to properly plead and prove such custom as being ancient, certain, continuous and acted upon in their community. However, the appellants totally failed even to plead the basic necessary facts about such custom as being ancient, certain, continuous and acted upon in their community. And in absence of proper pleadings, the evidences led by them are also lacking and shaky, which do not prove such custom as being ancient, certain, continuous and acted upon in their community.

2) The witnesses examined on behalf of the respondent have successfully established that the appellants and the respondent have sufficiently been hinduized, which can easily lead to the application of the Hindu Succession Act 1956 in their case.

In the above facts and circumstances, the learned court has very aptly and rightly applied the ratio of ***Ram Charan*** case to the case in hand.

G. With the aforesaid submissions, following points have been argued:-

i) That the appellants who claimed existence of certain custom relating to inheritance and succession in their Munda community, had the onus to properly plead and prove the custom as being ancient, certain, continuous and acted upon in their community. However, the appellants totally failed even to plead the basic necessary facts about such custom as being ancient, certain, continuous and acted upon in their community.

ii) That in the given facts and circumstances, the case in hand is squarely covered by Ram Charan case as reported in ***2025 SCC Online SC 1465.***

iii) That in absence of proper pleadings, the evidences led by the appellants are also lacking and shaky, which do not prove such custom as being ancient, certain, continuous and acted upon in their community in view of ***Ratanlal @ Babulal Chunilal Samsuka*** case as reported in ***2017 (11) SCR 28 as well as judgment in Baga Tirkey case of this Hon'ble Court.***

iv) That the witnesses examined on behalf of the respondent no.1 have successfully established that the appellants and the respondent have sufficiently been hinduized, which can easily lead to the application of the Hindu Succession Act, 1956 in their case in view of judgment in ***Labishwar Manjhi*** case as reported in ***2000 (8) SCC 587.***

H. Evidences referred during the course of arguments by the learned counsel for the respondents in particular are as under: -

<u>From the Evidence of OPW-1 – Manoj Munda (para 4)</u>

4. यह कि उक्त वाद के वादीगण गहनु मुण्डा वगैरह के घर के सामने सटा हुआ मेरा घर है इसलिए हर वर्ष रामनवमी के दिन बजरंग बली का झंडा मंडप में लगाकर गहनु मुण्डा एंव एतवा मुण्डा को रामनवमी की पूजा करते मैंने देखा है।

From the Evidence of C.W.- 3 – Etwa Munda (para 13 of examination in chief and para 23 of cross-examination)

13. यह कि हम आवेदकगण एवं आपतिकर्त्ता मुण्डा समाज के परम्परा के अनुसार सभी तरह के धार्मिक अनुष्ठान, विवाह, मुण्डन, दाह संस्कार, नामकरण आदि सभी का निर्वहन सरना रीति रिवाज के अनुसार करते हैं।

23. आपत्तिकर्ता के विद्वान अधिवक्ता द्वारा साक्षी को एक फोटो दिखाया गया जिसे देखकर वह कहता है कि यह मेरे घर का फोटो है। परन्तु उसमें लगा झण्डा मेरे घर में लगे झण्डे से अलग है। साक्षी फोटो में लगे झण्डा को देखकर कहता है कि यह रामनवमी का झण्डा है। मेरे घर में सरना का झण्डा लगता है। राम नवमी का झण्डा मेरे घर में नहीं लगता है।

I. Learned counsel for the respondent no.1 has also submitted that the pleadings filed by both the parties appear to be independent of each other, inasmuch as, none of them have filed para-wise comments to show that one or the other pleading of the party concerned stood admitted by the other party. He submits that this is also apparent from the fact that at the very first page of the respective pleadings, both the parties have claimed themselves to be "petitioners/claimants" and the pleading has not been filed in terms of the plaint/written statement, rather each of them filed their respective petition. The learned counsel has submitted that under such circumstances, it cannot be said that it stood admitted on the part of the respondents that there is a custom which is consistently followed to exclude the female from inheritance.

J. The aforesaid judgment reported in ***(2000) 8 SCC 587(supra),*** has also been relied upon by the learned counsel for the respondent no.1, paragraphs 5 and 6.

K. Learned counsel for the respondent no.1 has relied upon the following judgments: -

(i) ***F.A. No. 124 of 2018 (Baga Tirkey vs. Pinki Linda) decided on 08.04.2021,*** paragraph 23 to 26**.**

(ii) ***1955 SCC OnLine Pat. 67 (Budhu Majhi vs. Dukhan Majhi),*** paragraph 38.

(iii) ***2017 11 SCR 28 (Ratanlal @ Babulal Chunilal Samsuka v. Sundarabai Govardhandas Samsuka (D) Thr. LRs & Ors.),*** paragraph 12 and 13**.**

Rejoinder

10. ***Learned counsel for the appellants, in response,*** has submitted that the specific case of the respondent no.1 was that they are sufficiently

Hinduized in order to claim that they are governed by Hindu Succession Act. Even during the evidences which were produced on behalf of the appellants, there is no cross-examination on this aspect of the matter.

11. During the course of arguments, the judgment passed by the Hon'ble Supreme Court reported in ***(2013) 4 SCC 97 [Laxmibai (dead) through LRs. and Another Vs. Bhagwanthbuva (dead) through LRs and others]*** has also been referred by the Court.

Findings of this court.

12. Background of the case.

The case was referred to the learned court under the relevant provisions of Act of 2013 for deciding the right, title, interest and claim of the parties with respect to the lands of revisional survey ***khata no. 447*** including plot no. 237 area 0.37 acres, plot no. 238 area 0.04 acres, plot no. 239 area 0.01 acres, plot no. 247 area 0.06 acres, plot no. 248 area 0.03 acres, plot no. 249 area 0.36 acres and plot no. 256 area 0.28 acres and the lands of ***khata no. 448*** plot no. 246 area 0.04 acres, plot no. 250 area 0.04 acres, plot no. 252 area 0.18 acres and plot no. 255 area 0.03 acres and the lands of R.S. ***khata no. 519*** including plot no. 190 area 0.01 acres, plot no. 194 area 0.28 acres, plot no. 195 area 0.28 acres, plot no. 196 area 0.6 acres situated at village Sukurhutu, Police Station Ranchi (now P.S. Sukurhutu), Thana no. 154, District Ranchi along with other lands which were sought to be acquired for construction of Transport Nagar vide ***Land Acquisition Case No. 132 of 2017-18.***

The property in dispute are as follows:

Khata No.	Plot No.	Area
519	190	01 decimal
	194	28 decimal
	195	28 decimal
	196	06 decimal
Total Area		**63 decimal**

Khata No.	Plot No.	Area
447	237	37 decimal
	238	04 decimal
	239	01 decimal
	247	06 decimal
	248	03 decimal
	249	36 decimal
	256	28 decimal
Total Area		**115 decimal**

Khata No.	Plot No.	Area
448	246	04 decimal
	250	04 decimal
	252	18 decimal
	255	03 decimal
Total Area		**29 decimal**

Award no. 4 for Rs. 3,89,70,089.00 with respect to acquisition of lands of R.S. khata no. 519 including plot no. 190 area 0.01 acres, plot no. 194 area 0.28 acres, plot no. 195 area 0.28 acres, plot no. 196 area 0.6 acres, ***award no. 08*** for Rs. 18,55,718.00 with respect to acquisition of land of R.S. khata no. 448 plot no. 255 area 0.03 acres and ***award no. 9*** for Rs. 1,73,20,035.00 with respect to acquisition of land of R.S. khata no. 447 plot no. 256 area 0.28 acres, ***award no. 26*** for Rs. 5,38,15,823.00 with respect to acquisition of land of R.S. khata no. 447 plot no. 237 area 0.37 acres, plot no. 238 area 0.04 acres, plot no. 239 area 0.01 acres, plot no. 247 area 0.06 acres, plot no. 248 area 0.03 acres and plot no. 249 area 0.36 acres and ***award no. 27*** for Rs. 1,60,82,890.00 with respect to acquisition of land of R.S. khata no. 448 plot no. 246 area 0.04 acres, plot no. 250 area 0.04 acres, plot no. 252 area 0.18 acres, situated at village Sukurhutu, Police Station Ranchi (now P.S. Sukurhutu), Thana no. 154, District Ranchi has been published in the name of Sauna Munda and others for which there is dispute between the parties regarding payment of compensation of the said acquired lands.

13. The award

The award was with respect to the properties of common ancestor of the parties, late Soma Munda, but the award was prepared in the name of his three sons, who were termed as the awardees. Further details are as follows-

a. Bhadwa Munda (one of the three awardees) died issueless.
b. The grand daughter in the branch of Induwa Munda (one of the three awardees), namely, Daho Devi, was allocated the share of property/compensation.
c. Sauna Munda (one of the three awardees) had two sons but one son had only one daughter and Mohan Munda was the son of the granddaughter of Sauna Munda. Mohan Munda was also allocated share/compensation.
d. The male descendants of Sauna Munda in male lineage through one of his sons objected to allocation of compensation to Daho Devi and Mohan Munda and claimed that the entire compensation ought to have been awarded to them being the male agnates in the family.
e. The male descendants of Sauna Munda claimed the entire compensation amount in the capacity of the nearest male agnates in the family by referring to customary law governing the parties and claimed that under the customary law females are completely excluded from inheritance and are entitled only to maintenance under certain circumstances.

14. Reference to the learned court.

Thus, Daho Devi and Mohan Munda were found entitled to the share of their respective ancestor being female descendant/ through female descendant of their respective branch. However, the appellants herein objected and asserted that they are governed by tribal laws with respect to inheritance and females in the family are not entitled to inherit and in absence of male heirs the property devolves upon male agnates in the family. Daho Devi and Mohan Munda claimed that they are sufficiently hinduised and are governed by Hindu Succession Act, 1956 in the matter of succession and inheritance. Upon such dispute, the matter was referred to the court under section 64 of the aforesaid Act of 2013 for deciding the dispute. Mohan Munda expired during the pendency of the case before the learned trial court and his name was deleted. It is important to note that

the appellants jointly contested against the allocation of any share to Daho Devi and Mohan Munda with respect to the compensation of the acquired land which was admittedly belonging to the common ancestor namely, Soma Munda.

15. ***The learned court held*** that Daho Devi as well as Mohan Munda (deceased and deleted during the pendency of the case) were entitled to their share in the compensation and dismissed the claim of the claimants/appellants that Daho Devi as well as Mohan Munda (deceased and deleted during the pendency of the case) are not entitled to any share of compensation.

16. ***Before proceeding further, it would be relevant to deal with the law regarding claim based on custom which has now been settled by various judicial pronouncements.*** The discussions are as follows: -

A. In the judgment passed by Hon'ble Patna High Court reported in ***AIR 1956 Pat. 123 (Budhu Majhi & Anr. Vs. Dukhan Majhi & others),*** the case was 2nd appeal with respect to parties who were Santhal (Scheduled Tribe). One of the parties denied to be governed by tribal laws on the ground that they have been sufficiently Hinduized and had adopted the Hindu law in the matter of inheritance and succession. The trial court accepted the contention of the defendants and held that the parties were Hinduized and had adopted the Hindu law for the purpose of succession. The 1st appellate court reversed the finding by holding that the parties were governed by Tribal laws and females were excluded from inheritance. The question whether the parties, who are of non-Hindu origin, have been sufficiently Hinduised so as to attract the provisions of Hindu law in the matter of inheritance and succession, was earlier held to be a mixed question of fact and law in the judgment reported in AIR 1946 Pat 218(A), therefore, the Hon'ble Patna High Court in the case of ***Budhu Majhi (Supra)*** examined the evidence to find out whether the parties were sufficiently hinduised.

In the aforesaid background, the Hon'ble Patna High Court referred to the judgment reported in AIR 1929 Cal 577(B), which was quoted with approval in the judgment reported in AIR 1946 Pat 218(A) wherein it has been held that adoption of Hindu names, employment of priests, performance of Pujas such as Durga Puja, Mansa Puja, Kali Puja, etc. offering of pindas, observance of mourning, performance of funeral ceremonies were sufficient proof of a family, aboriginal in origin, having adopted Hinduism in its entirety.

B. The paragraph 8 of the judgment is quoted as under:

> *"**8**. The tests to be applied for the determination of the question whether a non-Hindu tribe has been so Hinduised have been pointed out in the case of — 'Narendra Narain v. Nagendra Narain', AIR 1929 Cal 577 (B), and they have been quoted with approval by a Bench of this Court in the aforesaid case in. AIR 1946 Pat 218 (A). It has been held that adoption of Hindu names, employment of priests, performance of pujas, such as Durga Puja, Mansa Puja, Kaii Paja, etc. offering of pindas, observing of mourning, performance of funeral ceremonies were sufficient proof of a family, aboriginal in origin, having adopted Hinduism in its entirety."*

The Hon'ble Patna High Court also referred to a judgment reported in AIR 1937 Mad 172(C) wherein it was held that a formal conversion is not a pre-requisite to a person becoming Hindu.

The Hon'ble Patna High Court observed in paragraph 13 of the judgment that one of the tests is the adoption of Hindu names and in the said case, the parties, witnesses and their relations mostly had Hindu names.

The Hon'ble Patna High Court referred to the finding of the learned sub-ordinate Judge that if the Hindu names have to be adopted, each and every Santhal must be so named and observed that the same was not correct position.

The Court further observed that the Santhals must have Santhal name as a matter of course, but when it is found that they are subsequently attempting to adopt Hindu names, the intention on

their part may be safely inferred that they want to acknowledge themselves to be Hindus, or at least, they are attempting to do so. The Hon'ble Patna High Court dealt with another test and observed that another test is the performance of Hindu Pujas and observance of Hindu ceremonies. The Court also considered that the evidence of the witnesses in their cross-examination, which showed that they were still retaining some of their old relics, such as, Sarhul Puja, Jahira Puja, worship of ghosts and use of Handia at the Sradh ceremony, does not mitigate against their adoption of Hinduism.

The Hon'ble Court examined the evidence of the witnesses from the side of the plaintiffs also and observed that even from the plaintiffs' own witnesses, it appeared that females were not excluded from inheritance. The Court ultimately held in paragraph 38 as follows:

> ***"38.*** *All these grounds are no longer good for holding against the parties being governed by the Hindu Law in matters of inheritance and succession. It is not necessary that they must be completely Hinduised. Even if they had been sufficiently Hinduised so as to be governed by the Hindu Law of succession, it is enough."*

C. In the judgment passed by Hon'ble Supreme Court reported in ***(1996) 5 SCC 125 (Madhu Kishwar and Ors. Vs. State of Bihar and Ors.),*** writ petitions were filed before the Hon'ble Supreme Court challenging the provision of Chhota Nagpur Tenancy Act, 1908, which provides succession of property only in the male line. The judgment rendered by Hon'ble Mr. Justice K. Ramaswamy commenced from paragraph 15 of the reports who held in paragraph 46 that customs among the Scheduled Tribes, vary from tribe to tribe and region to region, based upon the established practice prevailing in the respective regions and among particular tribes. It has been held that it would be difficult to decide, without acceptable material among each tribe, whether customary succession is valid, certain, ancient and consistent and whether it has acquired the status of law. The Hon'ble Judge held that customs

became a part of the tribal laws as a guide to their attitude and practice in their social life and not a final definition of law. They are accepted as set of principles and are being applied when succession is open. They have accordingly nearly acquired the status of law. The Hon'ble Judge held that under aforesaid circumstances, it was not desirable to grant general declaration that the custom of inheritance offends Articles 14, 15 and 21 of the Constitution and each case must be examined and decided as and when full facts are placed before the Court. Paragraph 46 of the aforesaid judgment is quoted as under:-

> *"46. It would thus be seen that the customs among the Scheduled Tribes, vary from tribe to tribe and region to region, based upon the established practice prevailing in the respective regions and among particular tribes. Therefore, it would be difficult to decide, without acceptable material among each tribe, whether customary succession is valid, certain, ancient and consistent and whether it has acquired the status of law. However, as noticed above, customs are prevalent and are being followed among the tribes in matters of succession and inheritance apart from other customs like marriage, divorce etc. Customs became part of the tribal laws as a guide to their attitude and practice in their social life and not a final definition of law. They are accepted as a set of principles and are being applied when succession is open. They have accordingly nearly acquired the status of law. Except in Meghalaya, throughout the country patrilineal succession is being followed according to the unwritten code of customs. Like in Hindu law, they prefer son to the daughter and in his absence daughter succeeds to the estate as a limited owner. Widows also get only limited estate. More than 80 per cent of the population is still below poverty line and they did not come on a par with civilized sections of the non-tribals. Under these circumstances, it is not desirable to grant general declaration that the custom of inheritance offends Articles 14, 15 and 21 of the Constitution. Each case must be examined and decided as and when full facts are placed before the court."*

The majority view has been recorded in paragraph 1 to 14 of the aforesaid judgment and it has been observed by majority judgment

in paragraph 5 that they agreed with Hon'ble Justice K. Ramaswamy as mentioned in paragraph 46 of his judgment.

D. This Court finds that the judgment of the Hon'ble Supreme Court in the case of ***Madhu Kishwar (supra)*** has clearly taken note of the fact that the customary law varies from tribe to tribe and from region to region and each case is required to be examined when full facts are placed before the Court.

E. In the judgment passed by the Hon'ble Supreme Court reported in ***(2000) 8 SCC 587 (Labishwar Manjhi vs. Pran Manjhi & Others),*** the case was with respect to Santhal tribe. There was a concurrent finding by the learned trial court as well as the learned 1st appellate court that the parties were sufficiently Hinduised and the Hindu law of succession would be applicable. The 2nd appeal was allowed and the concurrent finding of both the courts was set-aside. Before the Hon'ble Supreme Court, it was argued that even if the parties were Hinduised, the parties being of Santhal tribe, they are following their customary law of Santhal, hence Hindu Succession Act would not be applied. The question which arose before the Hon'ble Supreme Court was, whether the parties who admittedly belonged to Santhal tribe, are still continuing with their customary tradition or have they, after being Hinduised, changed their customs to that which is followed by the Hindus. The Hon'ble Supreme Court took note of the fact that the trial court recorded that most of the names of the families of the parties were Hindu names. PW- 1 admitted that they perform *Pindas* at the time of death of anybody, females do not use vermillion on the forehead after the death of their husband, widows do not wear ornaments and P.W. 2 admitted that they perform Shradh ceremony for 10 days after the death and recorded that the parties were following the customs of Hindus and not the Santhal customs. Ultimately, the Hon'ble Court held that the parties originally belonged to Santhal (Scheduled Tribe) and they were Hinduised and they were following the Hindu tradition and

consequently, they would be governed by Hindu Succession Act. Paragraph 6 of the aforesaid judgment is quoted as under:

> *"**6.** The question which arises in the present case is, whether the parties who admittedly belong to the Santhal Tribe are still continuing with their customary tradition or have they after being Hinduised changed their customs to that which is followed by the Hindus. It is in this context when the matter came first before the High Court, the High Court remanded the case for decision in this regard. After remand the first appellate court recorded the finding that most of the names of the families of the parties are Hindu names. Even PW 1 admits in the cross-examination that they perform the pindas at the time of death of any body. Females do not use vermilion on the forehead after the death of their husbands, widows do not wear ornaments. Even PW 2 admits that they perform shradh ceremonies for 10 days after the death and after marriage females used vermilion on their foreheads. The finding of the words is that they are following the customs of the Hindus and not the Santhal customs. In view of such a clear finding it is not possible to hold that sub-section (2) of Section 2 of the Hindu Succession Act excludes the present parties from the application of the said Act. Sub-section (2) only excludes members of any Scheduled Tribe admittedly as per finding recorded in the present case though the parties originally belong to the Santhal Scheduled Tribes they are Hinduised and they are following the Hindu traditions. Hence we have no hesitation to hold that sub-section (2) will not apply to exclude the parties from application of the Hindu Succession Act. The High Court fell into error in recording a finding to the contrary. In view of this, the widow of Lakhiram would become the absolute owner by virtue of Section 14 of the said Act, consequently the gift given by her to Appellants 2 and 3 was a valid gift, hence the suit of Respondent 1 for setting aside the gift deed and inheritance stands dismissed."*

F. In the judgment passed by this Court reported in ***AIR 2004 Jhar. 121 (Lakshmi Narayan Tudu alias Lakshmi Narayan Manjhi and another Vs. Smt. Basi Majhian and others),*** the party claimed that they are governed by customary law applicable to Santhal tribe and one of the issues before the learned trial court was as follows:

> *"Have both the parties been sufficiently Hinduised and or they governed by Hindu Law in the matters of succession and inheritance?"*

The appeal was admitted on the following substantial question of law:

> *"Whether Hindu Succession Act or Hindu law is applicable in the matter of inheritance among the members of Scheduled Tribes, if they are sufficiently Hinduised and if so, where a daughter has any share in the property?"*

This Court, *inter alia*, referred to the judgment passed in the case of ***Labishwar Manjhi* v. *Pran Manjhi (Supra)*** and held that there was concurrent finding of both the courts that the parties to the suit were sufficiently hinduised and in this view of the matter, it could not be said that section 2(2) of Hindu Succession Act excludes the parties from application of the said act. It has also been held that section 2(2) of the Hindu Succession Act only excludes members of Schedule Tribe, but as per concurrent finding, the parties though originally belonged to Santhal Scheduled Tribes, but they were Hinduised and followed Hindu tradition and therefore, they will be governed by Hindu Succession Act.

G. In the judgment passed by this Court reported in ***2004 SCC OnLine Jhar 696 (Ram Nath Munda & Anr. Vs. Khaintu Munda and Anr.),*** there was concurrent findings that the plaintiff and her father were sufficiently Hinduised and the court was of the view that consistent findings of fact based on appreciation of evidence do not warrant any re-appreciation in 2nd appeal. However, in paragraph 10 of the judgment, the court observed that the only thing remained to be examined was whether Munda (undisputedly a S.T.) being sufficiently Hinduised will be governed by Hindu Succession Act, 1956 and the plaintiff-respondent will become class 1 heir of her father under the aforesaid Act? The High Court ultimately held that once they are sufficiently Hinduised, they will be governed by Hindu Succession Act.

H. 'Custom' has not been defined under the provisions of Hindu Succession Act, 1956, but the same has been defined under the provision of section 3(a) of Hindu Adoptions and Maintenance Act,

1956. In the judgment passed by the Hon'ble Supreme Court reported in ***(2005) 9 SCC 407 (Subramani Vs. Chandralekha)***, it has been held in paragraph 10 as follows:

> *"it is well established by long chain of authorities that prevalence of customary divorce in the community to which parties belong, contrary to general law of divorce must be specifically pleaded and established by the person propounding such custom…"*

I. In the judgment passed by the Hon'ble Supreme Court in the case reported in ***2017 11 SCR 28 [Ratanlal @ Babulal Chunilal Samsuka v. Sundarabai Govardhandas Samsuka (D) Thr. LRs & Ors.]***, the Hon'ble Supreme Court has held that custom, at variance with general law, should be strictly proved and the burden of proving such custom is heavy on the person who relies upon such custom. The Hon'ble Supreme Court interpreted the provision of section 3(a) of the Hindu Adoption and Maintenance Act, 1956 and held that the following ingredients are necessary for establishing a valid custom-

a. Continuity,
b. Certainty,
c. Long usage and
d. Reasonability.

It has also been held that generally there is a presumption that the law prevails and whosoever claims custom against such law, has to discharge the onus of proving it with all requisites to the satisfaction of the court in the most clear and unambiguous manner. There may be many types of customs – general custom, local custom, tribal custom, etc. and the burden of proof for establishing a type of custom depends on the type and the extent of usage. It must be shown that the alleged custom has the characteristics of genuine custom i.e., it is accepted willfully and having force of law and is not a mere practice more or less common. The acts required for establishment of customary law ought to be plural, uniform and

constant. The findings and observation of the Hon'ble Supreme Court with respect to aforesaid provision is quoted as under which is in paragraph 12 to 17 of the judgment:

> ***12.*** *India has a strong tradition of respect for difference and diversity which is reflected under the Hindu Family Laws as it is applicable to diverse communities living from the southern tip to northern mountains, from western plains to eastern hills. Diversity in our country brings along various customs which defines what India is. Law is not oblivious of this fact and sometimes allows society to be governed by customs within the foundation of law. It is well known that a custom commands legitimacy not by an authority of law formed by the State rather from the public acceptance and acknowledgment. This Court in Thakur Gokal Chand v. Parvin Kumari, AIR 1952 SC 231, has explained the ingredients of a valid custom in the following manner:*
>
> *"A custom, in order to be binding, must derive its force from the fact that by long usage it has obtained the force of law, but 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" should not be strictly applied to Indian conditions. All that is necessary to prove is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, been submitted to as the established governing rule of a particular locality."*
>
> *Black's Law Dictionary defines customary law as: "customs that are accepted as legal requirements or obligatory rules of conduct, practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they are laws".*
>
> *Privy Council in The Collector of Madura v. Moottoo Ramalinga Sathupathy, 12 MIA 397 (1868), has observed that:*
>
> *"under the Hindu system of law, clear proof of usage will outweigh the written text of law".*
>
> ***13.*** *As per the settled law under Section 3(a) of the Act, the following ingredients are necessary for establishing a valid custom:*
>
> *(a) Continuity*
>
> *(b) Certainty*

(c) Long usage

(d) 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 depends 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 wilfully 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 recognising 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.*

15. *It would not be out of context to observe certain judicial decisions which throw some light on the issue raised in this case instant. In Rup Chand v. Jambu Parshad, (1910) ILR 32 247, Privy Council held that:*

"The custom alleged in the pleading was this: "Among the Jains adoption is no religious ceremony, and under the law or custom there is no restriction of age or marriage among them." And that appears to be the custom found by the High

Court to exist. But upon the argument before their Lordships it was strenuously contended that the evidence in the present case, limited as it is to a comparatively small number of centres of Jain population, was insufficient to establish a custom so wide as this, and that no narrower custom was either alleged or proved.

In their Lordships' opinion there is great weight in these criticisms, enough to make the present case an unsatisfactory precedent if in any future instance fuller evidence regarding the alleged custom should be forthcoming."

16. *In Sheokuarbai v. Jeoraj, AIR 1921 PC 77, the Privy Council observed that, among the Sitambari Jains the widow of a sonless Jain can legally adopt to him a son without any express or implied authority from her deceased husband to make an adoption, and the adopted son may at the time of his adoption be a grown- up and married man. The only ceremony to the validity of such an adoption is the giving and taking of the adopted son.*

17. *It is very much evident that the appellant in this case has failed to produce any evidence to prove that such practice has attained the status of general custom prevalent among the community concerned. Custom, on which the appellant is relying, is a matter of proof and cannot be based on a priori reasoning or logical and analogical deductions, as sought to be canvassed by the appellant herein. Hence the issue is answered against the appellant."*

J. In the judgment passed by the Hon'ble Supreme Court in the case reported in ***(2013) 4 SCC 97 [Laxmibai (dead) through LRs. and Another Vs. Bhagwanthbuva (dead) through LRs and others],*** it has been held in paragraph 68 that in order to declare a custom applicable in a particular case, which is at variance with general law, the onus of its applicability is on the person who alleges a custom to be a valid custom and in order to prove a custom to be binding custom enforceable under law, it must be ancient, uniform, certain, continuous and compulsory.

K. In the judgment passed in ***F.A. No. 124 of 2018 (Baga Tirkey vs. Pinki Linda & Others) decided on 08.04.2021, (paragraph 22 to 26),*** reference has been made to the earlier judgement of the Hon'ble Supreme Court wherein it has been held that for custom to

have the colour of a rule or law, it is necessary for the party claiming it to plead and thereafter prove that such custom is ancient, certain and reasonable. Custom being in derogation of the general rule is required to be construed strictly. The party relying upon a custom is obliged to establish it by clear and unambiguous evidence. Vide paragraph 22 to 26 it has been held as under:-

> *"**22**... In such a case, where parties claimed to be governed by Customary Law, the learned Family Court ought to have framed an issue to that effect. Once it is found that the parties are governed by the Customary Law, the parties are required to plead and prove the customs, by which, they are governed in matters concerning, marriage and divorce. The judgment of the Apex Court in the case of Yamanaji H. Jadhav Versus Nirmala, reported in (2002) 2 SCC 637, para-7 enunciates the course to be followed by the Family Court in a matter of divorce involving customary law. It has been held as under:-*
>
> > *".... As per the Hindu Law administered by courts in India divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, with only exception where it is recognised by custom. Public policy, good morals and the interests of society were considered to require and ensure that, if at all, severance should be allowed only in the manner and for the reason or cause specified in law. Thus such a custom being an exception to the general law of divorce ought to have been specially pleaded and established by the party propounding such custom since said custom of divorce is contrary to the law of the land and which, if not proved, will be a practice opposed to public policy. Therefore, there was an obligation on the trial court to have framed an issue whether there was proper pleadings by the party contending the existence of a customary divorce in the community to which the parties belonged and whether such customary divorce and compliance with the manner or formalities attendant thereto was in fact established in the case on hand to the satisfaction of the court...."*
>
> ***23.*** *It was further observed in case of Subramani Versus M. Chadralekha, reported in (2005) 9 SCC 407 in para-10:-*
>
> > *"it is well established by long chain of authorities that prevalence of customary divorce in the community to which parties belong, contrary to general law of divorce must be specifically pleaded and established by the person propounding such custom...."*
>
> ***24.*** *It was thus necessary for the Family Court to call upon the party, seeking divorce under the customary law to plead and establish such custom by leading evidence. In any event,*

learned Family Court would not have dismissed the suit as not maintainable, since the parties belonged to Tribal Community and are governed by Customary Law, which is not a codified substantive law, like the Hindu Marriage Act, 1955, Special Marriage Act, 1954 and Divorce Act, 1869.

25. *As observed at the outset, we have consciously refrained from referring to one or the other custom, said to be operating in the Oraon Community regarding divorce, since it is for the party to plead and prove such customs for seeking relief before the Family Court. The illuminating opinion of the Apex Court rendered in the case of Salekh Chand Versus Satya Gupta & ors., reported in (2008) 13 SCC 119, followed in the recent decision in the case 2021:JHHC:13641-DB of Rathnamma Versus Sujathamma, reported in (2019) 19 SCC 714, para-16 is quoted hereunder:-*

> *16. This Court in a judgment reported as Salekh Chand (Dead) by LRs v. Satya Gupta & Ors.4 while dealing with the claim of adoption under the Hindu Adoption and Maintenance Act, 1966, held as under:*
>
> *"21. In Mookka Kone v. Ammakutti Ammal [AIR 1928 Mad 299] 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. It is not disputed that even under the old Hindu Law, 4 (2008) 13 SCC 119 adoption during the lifetime of a male issue was specifically prohibited. In addition, I have observed that such an adoption even if made would be contrary to the concept of adoption and the purpose thereof, and unreasonable. Without entering into the arena of controversy whether there was such a custom, it can be said that even if there was such a custom, the same was not a valid custom."*

26. *In the case of Dr. Surajmani Stella Kujur Versus Durga Charan Hansdah, reported in (2001) 3 SCC 13, para-10 also, it has been held as under:-*

> *"For custom to have the colour of a rule or law, it is necessary for the party claiming it to plead and thereafter prove that such custom is ancient, certain and reasonable. Custom being in derogation of the general rule is required to be construed strictly. The party relying upon a custom is obliged to establish it by clear and unambiguous evidence."*

L. This Court has referred to the judgment in the case of ***Laxmibai (Supra) passed in S.A. No. 309 of 2016*** and has held that each of the aforesaid elements i.e., ancient, uniform, certain, continuous and compulsory have distinct meaning and is required to be proved by a person who relies upon a particular practice and terms it as a binding custom in law. Paragraphs 66 to 68 of the aforesaid judgment passed in S.A. No. 309 of 2016 are quoted as under:

> *"**66.** This Court is of the considered view that the exclusion of applicability of general law, on the ground of applicability of customary law, is an exception to the general law, and the exclusion is to be strictly construed. This Court is of the considered view that unless the party (here plaintiffs) who relies upon a custom so as to exclude applicability of general law, proves that the custom so relied upon is not only ancient but is also uniform, certain, continuous and compulsory amongst the people of the community in the area/region to which the custom is sought to be applied, the ancient custom does not translate into a customary law so as to exclude applicability of general law.*
>
> ***67**. This Court is of the considered view that unless every element of a binding customary law as pointed out by the Hon'ble Supreme court in the case of Laxmibai (supra) i.e. custom asserted by the plaintiffs was being followed with certainty, uniformity, continuously and compulsorily, the alleged custom as asserted by the plaintiffs cannot be said to be a binding customary law governing the parties.*
>
> ***68.** In Laxmibai case (supra), it has been held that a custom is an established practice at variance with the general law which is a rule in a particular family, a particular class, community or in a particular district owning to prolonged use and has obtained the force of law. Custom has the effect of modifying general personal law, but it does not override statutory law, unless the custom is expressly saved by it. It has been held that such a custom must be ancient, uniform, certain, continuous and compulsory and no custom is valid if it is illegal, immoral, unreasonable or opposed to public policy. It has also been held that the party who relies upon custom varying the general law, must plead and prove it and the custom must be established by clear and unambiguous evidence. It has also been clearly held that a custom must be proved to be ancient, certain and reasonable. The Hon'ble Supreme Court has further held in the aforesaid judgment that the evidence adduced on behalf of the*

> *party concerned must prove the alleged custom and the proof must not be unsatisfactory and conflicting and that a custom cannot be extended by analogy or logical process and it cannot be established by a priori method. Thus, the aforesaid judgment clearly holds that in order to declare a custom applicable in a particular case which is at variance with the general law, the onus of its applicability is on the person who alleges the custom to be a valid custom and in order to prove a custom to be binding custom enforceable under law, it must be ancient, uniform, certain, continuous and compulsory. This Court is of the considered view that each of the aforesaid elements i.e., ancient, uniform, certain, continuous and compulsory have distinct meaning and is required to be proved by the person who relies upon a particular practice and terms it as a binding custom in law."*

In the said 2nd appeal, this Court recorded a finding that the plaintiffs of the said case had failed to prove that the ancient custom of debarring daughter from inheriting the property of her father in the absence of son, was followed uniformly with certainty, continuously and compulsorily with respect to the area involved in the case. In the aforesaid 2nd appeal being S.A. No. 309 of 2016, the matter was relating to inheritance of property by daughters belonging to Santhal tribe and this Court answered the question formulated as under:

> *"Whether alleged custom amongst Santhals debarring females from their right of inheritance over the land left by the ancestors satisfies the test of binding custom as has been laid down in the case of* ***Laxmibai (dead) through LRs. Vs. Bhagwantbuwa (dead) through LRs.*** *Reported in* ***(2013) 4 SCC 97.****"*

The aforesaid substantial question of law was answered in favour of the appellants of the said case and the 2nd appeal was allowed wherein it was held in paragraph 72 of the aforesaid judgement as follows: -

> *"**72**. In view of the aforesaid findings in the light of the facts and circumstances of this case, this court is of the considered view that the alleged custom amongst Santhals debarring females from their right of inheritance over the land left by the ancestors does not satisfies the test of binding custom as*

has been laid down in the case of Laxmibai (dead) through LRs. Vs. Bhagwantbuwa (dead) through LRs. Reported in (2013) 4 SCC 97, inasmuch as, the plaintiffs have failed to prove that the ancient custom of debarring daughter from inheriting the property of her father in the absence of son, was followed uniformly with certainty, continuously and compulsorily with respect to the area involved in this case."

The SLP filed against the judgment passed in S.A. No. 309 of 2016 has been dismissed by the Hon'ble Supreme Court vide order dated 08.12.2025 in SLP (Civil) No. 30712 of 2025.

M. In the judgment passed by the Hon'ble Supreme Court in the case of ***Ram Charan & Ors. Vs. Sukhram & Ors. (Supra),*** the appellants were the legal heirs of one Dhaiya, a woman belonging to Scheduled Tribe and they sought partition of the property belonging to their maternal grandfather. The suit was dismissed. The 1st appellate court concurred with the findings of the trial court. The 2nd appeal was heard on the substantial question of law, as to whether both the Courts were justified in dismissing the suit of the plaintiffs by recording a finding which is perverse and contrary to the record. The High Court in the said case, while answering the substantial question of law, held that the plaintiffs seeking partition of property failed to establish their right over such property by way of custom, showing that a female heir is also entitled thereto. It was also argued by the plaintiffs of the said case that in absence of custom, justice, equity and good conscience must prevail. The substantial question of law was answered against the plaintiffs of the said case and consequently, the plaintiffs were before the Hon'ble Supreme Court challenging the judgment of all the three courts.

With the aforesaid background, the Hon'ble Supreme Court clarified that the question of the parties having adopted Hindu customs and way of life was no longer in play, inasmuch as, there was no such evidence brought on record.

The Hon'ble Supreme Court recorded that since the Hindu law had no application, the next possibility to be considered was that of application of custom.

In paragraph 13 of the judgment, the Hon'ble Supreme Court observed that for the application of a custom to be shown, it has to be proved, but it was not so in the case before the Hon'ble Supreme Court. The Hon'ble Supreme Court, in paragraph 15 of the said judgment, recorded that neither any particular law of a community nor custom can be brought into application by either side and then examined the case in the light of the principle of justice, equity and good conscience. The Court also recorded that such principle could be applied only when there is a void or, in other words, in absence of any law governing the particular aspect.

The Hon'ble Supreme Court also took note of the fact that though no such custom of female succession could be established by the plaintiffs of the said case, but it was equally true that a custom to the contrary also could not be shown in the slightest, much less proved. Paragraphs 27, 28 and 29 of the aforesaid judgment are quoted as under:

> *"**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.*
>
> ***29.** In view of the above discussion, we are of the firm view that in keeping with the principles of justice, equity and good conscience, read along with the overarching effect of Article 14 of the Constitution, the appellant-plaintiffs, being Dhaiya's legal heirs, are entitled to their equal share in the property. The judgments of the Courts*

below are accordingly set aside to that extent. The civil appeal is allowed accordingly."

The aforesaid judgment in the case of ***Ram Charan & Ors. Vs. Sukhram & Ors. (Supra)*** clearly reveals that in a case where party insists that females are excluded from succession under customary law, they have to not only plead, but also prove the same. The Hon'ble Supreme Court, in paragraph 15 of the said judgment, recorded that neither any particular law of a community nor custom could be brought into application by either side and then examined the case in the light of the principle of justice, equity and good conscience. The Court also recorded that such principle could be applied only when there is a void or, in other words, in absence of any law governing the particular aspect.

N. In the judgment reported in ***2026 SCC OnLine SC 1302 (Bejla Oraon Vs. Kali Das Oraon and others) (paragraph 6)***, it has been held as under:

"6. *We must at this stage look to how a custom is to be proved before a court. A perusal of previous decisions of this court reveals the following aspects:*

6.1 *He who alleges the custom must prove it. He must also prove that he is in fact governed by said custom;*

6.2 *In order for a custom to be binding, long usage thereof has to be established or in other words its practice and prevalence has to be shown;*

6.3 *It is proved by general evidence by the members of the tribe or family. If such a custom is supported by public record, then it can be safely acted upon;*

6.4 *Custom must be certain and reasonable; not immoral or optional or opposed to public policy;*

6.5 *Once judicial notice had been taken of a particular custom, the same need not be proved independently in every proceeding;*

6.6 *Another form of a custom acquiring the force of law is that the same be legally confirmed; or still further a statute may be passed on the basis of or in regulation of that custom transforming it into a statutory right;*

6.7 *A custom once disallowed cannot, once again be revived.*

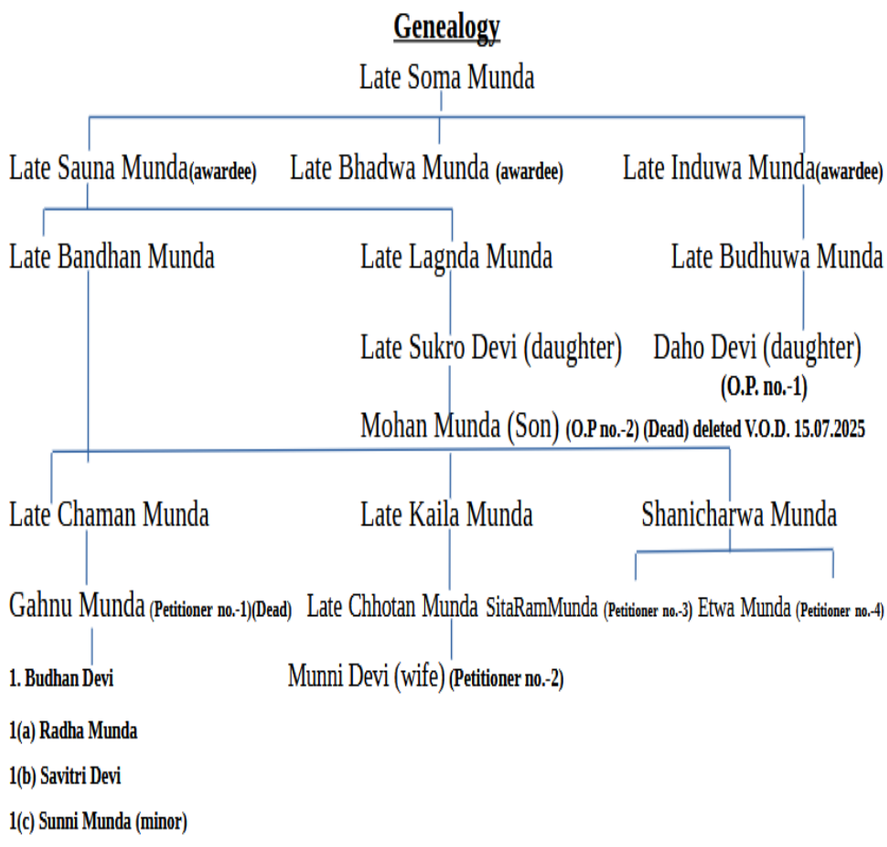
> ***6.8*** *Section 48 of the Evidence Act, 1872 provides that the opinion of those persons who are likely to know of the existence of the custom are to be taken into account by the court."*

O. At this stage it is reiterated that in the judgment of ***Madhu Kishwar (supra),*** the Hon'ble Supreme Court has clearly taken note of the fact that the customary law varies from tribe to tribe and from region to region and each case is required to be examined when full facts are placed before the Court. Further, while answering the substantial question of law in second appeal being ***S.A. No. 309 of 2016,*** this Court has referred to the judgment in the case of ***Laxmibai (Supra)*** and has held that each of the aforesaid elements i.e., ancient, uniform, certain, continuous and compulsory have distinct meaning and is required to be proved by a person who relies upon a particular practice and terms it as a binding custom in law. The S.L.P. against the judgement passed in the S.A. No. 309 of 2016 has already been dismissed.

17. This court finds that it has been rightly pointed out by the learned counsel for the respondent no.1 that the pleadings filed by both the parties appear to be independent of each other, inasmuch as, none of them have filed para-wise comments to show that one or the other pleading of the party concerned stood admitted by the other party. This is also apparent from the fact that at the very first page of the respective pleadings, both the parties have claimed themselves to be "petitioners/claimants" and the pleadings have not been filed in terms of the plaint/written statement, rather each side filed their respective petition. It has been rightly submitted by the learned counsel for the respondent no.1 that under aforesaid circumstances it cannot be said that it stood admitted on the part of the respondents that there is a custom which is consistently followed to exclude the female from inheritance. Otherwise also it is well settled that the party who alleges existence of a custom which is at variance with the general law, has to specifically plead and prove such custom and it has to be proved that such custom is ancient, uniform, certain, continuous and

compulsory and is also not opposed to public policy. The Hon'ble Supreme Court has held that custom, at variance with general law, should be strictly proved and the burden of proving such custom is heavy on the person who relies upon such custom. It has also been held that generally there is a presumption that the law prevails and whosoever claims custom against such law, has to discharge the onus of proving it with all requisites to the satisfaction of the court in the most clear and unambiguous manner. There may be many types of customs – general custom, local custom, tribal custom, etc. and the burden of proof for establishing a type of custom depends on the type and the extent of usage. It must be shown that the alleged custom has the characteristics of genuine custom i.e., it is accepted wilfully and having force of law and is not a mere practice more or less common. The acts required for establishment of customary law ought to be plural, uniform and constant.

18. During the course of hearing, it transpired that the genealogy, as projected in the impugned judgment at paragraph 8, is not in dispute. The genealogy is embossed as under:



19. It is not in dispute during the course of hearing that the common ancestor, ***Soma Munda,*** had three sons-

a) ***Bhadwa Munda*** *[son of Late Soma Munda]* died issueless.
b) ***Induwa Munda*** was left with only one descendant, that is, grand-daughter namely, Daho Devi *[opposite party no. 1 before the learned court]* ;
c) ***Sauna Munda*** had two sons, Bandhan Munda and Langda Munda.

Langda Munda had only one daughter, Sukro Devi and Mohan Munda was the son of Sukro Devi [*opposite party no. 2 before the learned court]*

Bandhan Munda's descendants and family members including widow and daughter were objecting to award of any portion of compensation to daughter/daughter's son stating that females are excluded from succession/inheritance as per tribal customary law governing the parties.

20. It is important to note that Mohan Munda expired during the pendency of the case before the learned court and his name was deleted and thus only Daho Devi is left as the sole contesting respondent in this case.

<u>The case of claimants /appellants before the learned court</u>

21. The claimants /appellants filed their response to the reference by terming themselves as petitioners and gave details of the property involved in the land acquisition, details of the various awards prepared by the authority and details of the genealogy with respect to which there are no disputes. After having given the aforesaid facts about description of the acquired lands and preparation of awards, the claimants /appellants described the entire genealogy as mentioned above which during the course of arguments is not in dispute. Thereafter, the claimants /appellants stated the ground of their objection to the award of portion of compensation to the female/descendant of female in the family as under: -

a) That the claimants and opposite parties are by caste Munda being members of Scheduled Tribe and are governed by their customary law in the matter of succession and inheritance.
b) That according to the customary law prevalent amongst Munda community, if a male Munda dies leaving behind no male issue, his

widow and unmarried daughters are entitled to be maintained out of the usufructs of the immoveable properties left by the last sonless male munda and upon their death the property of the last male sonless munda devolve upon his nearest male agnates.

c) That lands involved in this case were recorded in the revisional survey record of right finally published in the year 1935 in the name of ***Sauna Munda, Bhadwa Munda and Induwa Munda sons of Soma Munda***.

d) The recorded raiyat Induwa Munda died leaving behind his only son Budhuwa Munda who inherited the interest of his deceased father in the aforementioned land and came into possession. Budhuwa Munda died leaving behind no male issue and as such according to the customary law prevalent amongst Munda community, his interest in the lands devolved upon his nearest male agnates i.e. upon the surviving legal heirs of Late Sauna Munda including the claimants /appellants and they are coming in peaceful possession.

e) That ***Daho Devi,*** daughter of Late Budhuwa Munda was married with Shiv Dayal Munda, since deceased and is residing in her in-law's house since the time of her marriage and according to the customary law prevalent amongst Munda community, a married daughter does not inherit the property left by her deceased sonless father and as such after the death of Budhuwa Munda, Daho Devi is not entitled to receive any share of compensation with respect to the acquired land.

f) That so far as the claim of ***Mohan Munda*** is concerned, he is son of the granddaughter of Sauna Munda. Mohan Munda's maternal grandfather was late Langda Munda. It was the case of the claimants /appellants that Sukro Devi did not inherit the interest in her deceased father's property and according to the customary law prevalent amongst Munda community, after the death of sonless male munda his property devolves upon his nearest male agnates.

g) That the parties are following Sarna religion and are following their customary law till today. The claimants /appellants asserted that

they are entitled to the entire compensation amount and Daho Devi and Mohan Munda are not entitled to any share.

22. Thus, it was the specific case of the claimants /appellants that the parties are Munda by caste, they follow Sarna Religion and are governed by customary law in the matter of succession and inheritance; according to customary law prevalent amongst Munda community, if a male Munda dies leaving behind no male issue, his widow and unmarried daughter are entitled to be maintained out of the usufructs of the immovable property left by the sonless Munda so long as the widow does not marry and so long as the daughters remain unmarried. It was also their case that in case the widow remarriages and the daughters are married or if they die unmarried, the property then devolves upon the nearest male agnates. It was their specific case that the entire acquired property involved in this case was recorded in the revisional survey record-of-right in the name of Sauna Munda, Bhadwa Munda and Induwa Munda, all sons of Soma Munda;

Bhadwa Munda died issueless and therefore, his interest in land devolved upon his full brothers Sauna Munda and Induwa Munda;

Sauna Munda died leaving behind his two sons namely, Bandhan Munda and Langda Munda out of which Langda Munda died leaving behind no male issue and therefore, his interest devolved upon his full brother namely, Bandhan Munda; Bandhan Munda died leaving behind his three sons namely, Chaman Munda, Kaila Munda and Sanicharwa Munda who inherited the property of their deceased father; Chaman Munda died leaving behind his only son Gahnu Munda who inherited the property of his deceased father; Gahnu Munda died during the pendency of the case leaving behind his widow Budhan Devi (claimant no.1), his son Radha Munda [claimant no. 1(a)], unmarried daughter Savitri Kumari [claimant no. 1(b)] and minor son Sunni Munda [claimant no. 1(c)] represented through his mother who inherited the interest of the deceased Gahnu Munda and remained in possession; Kaila Munda died leaving behind his only son Chotan Munda who also died leaving behind his widow Munni Devi (claimant no. 2); Sanicharwa Munda died leaving behind his two

sons namely, Sitaram Munda and Etwa Munda (claimant nos. 3 and 4 respectively) who inherited the interest of their deceased father.

Induwa Munda died leaving behind his only son Budhuwa Munda who also died leaving behind no male issue (except his daughter Daho Devi, opposite party no.1).

23. The claimants /appellants claimed that Daho Devi was not entitled to any share in the compensation and she was married but became widow and was residing in her in-laws' house and as such, Daho Devi is not entitled to receive any compensation. It was their case that the parties are following *Sarna* religion and they are following customary law till today. It was their case that the claimants have absolute right, title, interest and possession with respect to Khata Nos. 447, 448 and 519 which are the acquired lands involved in this case. It was also their case that the parties are not governed by Hindu Succession Act.

The case of the opposite parties (private respondents) before the learned court

24. Mohan Munda and Daho Devi also filed their petition before the learned court and genealogy was not in dispute. It was their specific case that the *Mukhia* of the village had mentioned in the genealogical table that Langda Munda died leaving behind only one daughter namely, Sukro Devi and Budhuwa Munda died leaving behind only daughter, namely Daho Devi as legal heirs and they have inherited the property involved in this case and 103 decimals of land came in the share of Daho Devi out of 207 decimals. It was their case that they were entitled to inherit the property. Reference was made to certain judgments passed by other High Courts namely, Bombay High Court and Himachal Pradesh High Court and also the judgments passed by this Court. It was their specific case that they were performing Hindu religion in all kinds of festivals i.e., Deepawali, Holi festivals just like Hindu woman of Hindu religion. They took a specific plea that if the parties to the suit are sufficiently Hinduized, they are governed by Hindu law in the matter of inheritance and succession and they asserted that they have been sufficiently Hinduized. They have also claimed that they are performing Hindu religion and also

submitted that *Mukhia* of the village had given in writing in this regard which was signed by villagers. They asserted that a tribal woman has got right and inherits the parental and ancestral property just like Hindu women. Daho Devi also submitted an affidavit that she was performing Hindu religion in all kinds of festivals just like Hindu woman. The affidavit of Daho Devi was filed as Annexure-4 and the letter of the *Mukhia* with the signature of the villagers was filed as Annexure- 5 to the said petition.

25. ***So far as opposite party no. 1 namely, Daho Devi*** is concerned, she also filed response to the reference by way of a petition terming herself as the claimant stating that Induwa Munda – one of the recorded tenants died leaving behind only one son namely, Budhuwa Munda and upon his death, Daho Devi was the person who inherited his entire share. It was also asserted that there was one opposite party no. 2 namely, Mohan Munda, son of Sukro Devi, daughter of late Langda Munda, who had inherited the land after death of his mother Sukro Devi and she was the only daughter of late Langda Munda and consequently, Mohan Munda was also entitled to 1/2 share amongst the heirs of late Bandhan Munda.

The trial court's judgement /findings.

26. On the basis of the case of the respective parties, the learned court was of the view that the point for determination was, ***"as to whether the tribal woman/daughter or their legal heirs (the petitioners/claimants as well as opposite parties herein) are entitled for equal inheritance/succession right in the ancestral property of their father/maternal grandfather or not?"***

27. Both the parties led oral evidences. Six witnesses were produced from the side of the Claimants/appellants. Petitioner no. 2 Munni Devi was examined as C.W. 5, Petitioner no. 3 Sita Ram Munda was examined as C.W. 4 and petitioner no. 4 Etwa Munda was examined as C.W. 3. The khatiyans of khata nos. 447, 448 and 519 were exhibited as exhibits – 1, 1/1 and ½ respectively and exhibit 2 to 2/3 were the rent receipts.

28. So far as Daho Devi-opposite party no.1 is concerned, she examined altogether six witnesses, but no documentary evidences were produced. She herself was examined as O.P.W- 2.

29. The learned court recorded that the only legal question was, ***whether the opposite party no.-1 Daho Devi who is grand-daughter of one awardee Late Induwa Munda and opposite party Mohan Munda (now dead) who was the son of Sukro Devi (grand-daughter of another awardee Late Sauna Munda) are entitled for their right of inheritance/succession in the ancestral property of the grandfather of their mother (maternal grandfather)?***

30. The learned trial court, in paragraph 10, referred to certain judgments and straightaway came to the finding in paragraph 11 which is quoted as under:

> *"**11**. So, on considering as a whole of the above discussion and as per settled law in spite of absence of proof of any custom in the tribal, the tribal woman or her legal heirs has equal right of inheritance in her ancestral property (Maternal grandfather) and in the present case it is admitted fact by the parties that both are Tribals and the land acquired in question belongs to their predecessor in interest (awardee) namely Late Sauna Munda, Late Bhadwa Munda and Late Induwa Munda (grandfather of O.P. No-1 and maternal grandfather of O.P. Mohan Munda, now dead) in whose name the lands in question are recorded in the record of rights and all the above awardee are related to common ancestor Soma Munda, the question as above is answered in the favour of opposite parties No-1 Daho Devi and Mohan Munda (now dead) who are the successors in interest of the awardees as above being a granddaughter and grandson (daughter's son) respectively and they are entitled for equal share in the land acquired. Hence, claim of petitioners/claimants is hereby rejected."*

31. The learned trial court has referred to the following judgments:

> ***(i)*** *2001(1) BLJR 30 (Labishwar Manjhi Vs. Pran Manjhi and others)*
>
> ***(ii)*** *AIR 2004 Jhar 121 (Lakshmi Narayan Tudu @ Lakshmi Vs. Smt. Basi Majhian & others)*
>
> ***(iii)*** *2004 (3) JCR 561 Jhr. (Ram Nath Munda & Anr. Vs. Khaintu Munda and Anr.)*

(iv) *AIR 1956 Pat. 123 (Budhu Majhi & Anr. Vs. Dukhan Majhi & others)*

(v) *Judgment in Second Appeal No. 388 of 2016 (Babulal & Anr. Vs. Sau Resmabai Narayanrao Kaurati & Anr.)*

(vi) *Judgment in RSA No. 8 of 2003 (Bahadur Vs. Bratiya & Others).*

However, the aforesaid judgements have not been discussed by the learned trial court.

32. The learned trial court has given the gist of testimony /evidence and summarized as under: -

*"**5**. In order to support their case, some of the petitioners/claimants have examined themselves and further produced certain documentary evidence for consideration of the Court. In order to ensure clarity in presentation, the gist of the testimony, both oral and documentary may conveniently be summarized as under: -*

CW-1	*Aghnu Munda*	*The gist of the all oral evidences of petitioners/claimants' witnesses that they have only supported the claim of petitioners/claimants and denied the claim of opposite parties and stated that both the parties belongs to Munda Community and are Schedule Tribe and they are guided by Sarna Religion and as per custom of Munda Community they follow the rituals of the said community and as per the custom the widow woman and daughters have no right of inheritance except for their maintenance till lifetime/remarry/marry, as the case may be, and stated it is not true that they follow rituals of Hindu Religion.*
CW-2	*Ramkishun Munda*	
CW-3	*Etwa Munda*	
CW-4	*Sita Ram Munda*	
CW-5	*Munni Devi*	
CW-6	*Radha Munda*	

Exhibit- 1	*C.C. of Khatiyan of Khata No- 447*
Exhibit- 1/1	*C.C. of Khatiyan of Khata No- 448*
Exhibit- 1/2	*C.C. of Khatiyan of Khata No- 519*
Exhibit- 2 to 2/3	*Rent Receipts*

6. *On the other hand, opposite parties have also examined altogether 06 witnesses but have not produced any documentary evidence. The oral witnesses are mentioned below:-*

OPW-1	*Manoj Munda*	*The gist of the all oral evidences of opposite parties witnesses that they have only supported the claim of opposite parties and denied the claim of petitioners/claimants and admitted that both the parties belongs to Munda Community and are Schedule Tribe and also related to common ancestors as per genealogy and stated that they follow all rituals of Hindu Religion in their festivals like Deepawali, Durga Pooja, Ram Navmi, Saraswati Mata and Laxmi Pooja, Shiv and Kali Pooja and in their marriage, adoption, funerals, nomination etc and they completely become Hinduised and thus the Hindu Succession Act is applicable in the matter of succession and inheritance and in support of that contention they have filed one notarized affidavit showing the genealogy between the parties along with certificate given by Mukhiya of village Sukurhuttu signed by the villagers of the same village.*
OPW-2	*Daho Devi*	
OPW-3	*Mohan Munda*	
OPW-4	*Babu Lal Munda*	
OPW-5	*Mahabir Munda*	
OPW-6	*Nakul Munda*	

33. The learned trial court further discussed the evidence in paragraph 9 of the impugned judgement as under: -

*"**9**. In support of their claim both the parties have adduced oral as well as documentary evidence which are described earlier in para- 5 & 6. So, only the legal question is that whether the opposite party No-1 Daho Devi who is grand daughter of one awardee Late Induwa Munda and opposite party Mohan Munda (now dead) who was the son of Sukro Devi (grand daughter of another awardee Late Sauna Munda) are entitled for their right of inheritance/ succession in the ancestral property of the grandfather of their mother (maternal grandfather) and in this regard the opposite parties are claiming their rights by oral evidence that they follow the rituals of Hindu religion in their festivals like Durga Pooja, Deepawali, marriage, adoption, death, nomination etc which is denied by the petitioners/claimants on the basis of their*

oral evidence that in absence of any custom of Munda Community, the woman/daughter or their legal heirs have no right of inheritance/succession in the ancestral property."

34. The learned trial court thereafter referred to the judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No. 9537 of 2025 (Ram Charan & Ors. Vs. Sukhram & Ors.)*** reported in ***2025 LiveLaw (SC) 717*** and applied the principle of justice, equity and good conscience and held that in the present case also same question arises for consideration.

35. In the judgement passed by the Hon'ble Supreme Court it has been held that where no such custom as claimed by the plaintiffs with respect to female succession could be established by the plaintiffs and a custom to the contrary also could not be shown in the slightest, much less proved, the principles of justice, equity and good conscience, read along with the overarching effect of Article 14 of the Constitution could be applied and the plaintiffs of the said case were found entitled to their equal share in the father's property. The learned trial court, while dismissing the case of the claimants/appellants, followed the judgement passed by the Hon'ble Supreme Court and held in paragraph 11 of the judgement as under:

"11. So, on considering as a whole of the above discussion and as per settled law in spite of absence of proof of any custom in the tribal, the tribal woman or her legal heirs has equal right of inheritance in her ancestral property (Maternal grandfather) and in the present case it is admitted fact by the parties that both are Tribals and the land acquired in question belongs to their predecessor in interest (awardee) namely Late Sauna Munda, Late Bhadwa Munda and Late Induwa Munda (grandfather of O.P. No-1 and maternal grandfather of O.P. Mohan Munda, now dead) in whose name the lands in question are recorded in the record of rights and all the above awardee are related to common ancestor Soma Munda, the question as above is answered in the favour of opposite parties No-1 Daho Devi and Mohan Munda (now dead) who are the successors in interest of the awardees as above being a granddaughter and grandson (daughter's son) respectively and they are entitled for equal share in the land acquired. Hence, claim of petitioners/claimants is hereby rejected."

The point for determination

The point for determination in this appeal would be the same legal question as has been considered by the learned trial court and it is framed as under: -

> ***Whether the respondent no.1 [Daho Devi] who is grand-daughter of one awardee Late Induwa Munda and Mohan Munda (now dead) who was the son of Sukro Devi (grand-daughter of another awardee Late Sauna Munda) are entitled for their right of inheritance/succession in the ancestral property of the common ancestor?***

36. Upon scrutiny of the evidence of all the witnesses from the side of the appellants i.e., CW-1 to CW-6, it appears that they have deposed on similar lines and fully supported their case that the parties belong to Munda community which is a Scheduled Tribe. They have consistently stated that parties are following Sarna religion and have stated that they are not following Hindu religion. They have stated that they perform religious ceremonies, marriage, tonsure (mundane), last rites, baby naming ceremony etc. as per Sarna Customs applicable to Munda community. They have also deposed that as per their custom, the widow women and daughters have no right of inheritance except for their maintenance till lifetime/re-marriage/marriage. They have denied the suggestion that they follow Hindu religion.

37. This Court finds that although the learned trial court has not separately discussed the evidence of each of the witnesses i.e., CW-1 to CW-6, but the gist of the oral evidences appears to have been rightly recorded. The recording of the learned trial court in paragraph 5 of the impugned judgment is already quoted above.

38. Altogether 6 witnesses were examined on behalf of the opposite parties (respondent herein) including Daho Devi (respondent no. 1), who herself was examined as OPW-2. Mohan Munda who had joined with Daho Devi was examined as O.P.W. - 3, but he has died during the pendency of the case before the learned court and his name has been

deleted from the cause title by the learned trial court. The learned trial court recorded the gist of oral evidence on behalf of the opposite party.

39. However, after recording the gist of evidence of both the sides, the learned trial court has not recorded any finding as to whether the parties are governed by their customary law in the matter of succession and inheritance and whether the alleged custom of exclusion of daughters and widows from inheritance and succession, which is sought to be relied upon by the present appellants, has been proved as required by law, so as to bind the parties. The learned court has also not recorded any finding as to whether the initial onus to prove the custom as asserted has been discharged by the appellants. The learned court has also not recorded any findings as to whether the parties are sufficiently hinduised so as to be governed by Hindu Succession Act as claimed by the opposite parties.

40. The various witnesses of private opposite parties i.e., OPW-1 to OPW-6 have admitted that the parties belong to Munda community and relate to common ancestor as per genealogy. They have stated that the parties follow Hindu religion and celebrate festivals like Deepawali, Durga Puja, Ramnavami, Saraswati Mata Puja, Laxmi Puja, Shiv and Kali Puja. The witnesses have deposed that widow in their society do not wear vermillion and in case of alive husband only, the women wear vermillion. They have also stated that the family members of the parties are keeping Hindu names such as Shiv Dayal Munda, Mohan Munda, Sita Ram Munda etc. They claimed that they are completely Hinduised and also claimed that they are governed by Hindu Succession Act. However, during the cross-examination, it has come that the last rites are performed by burying the dead in Masna belonging to Munda Community and that they are following Sarna Religion. The statement of Daho Devi with respect to last rites are self-contradictory during cross -examination.

41. There is no doubt that many of the family members and close relatives of the appellants have Hindu names for example - Radha Munda, Savitri Kumari, Sita Ram Munda, Ram Kishun Munda, Sita Kumari and Mohan Munda. However, at the same time the last rites are certainly not done as per Hindu Religion and during cross examination Daho Devi has

admitted that the parties follow Sarna Religion. Considering the totality of the evidences placed on record, this Court is of the considered view that the witnesses from both the sides have supported their respective cases. However, the opposite parties have not been able to prove that the parties are sufficiently hinduised so as to be governed by Hindu Succession Act.

42. So far as the claimants /appellants are concerned, except the statement from the side of the witnesses of the present appellants that the widow and daughters in the family have no right of inheritance, no example denying inheritance to widow and daughter has been cited either by way of documentary evidence or oral evidence. The law is well settled as discussed above by referring to the various judicial pronouncements that in order to rely upon custom, which is contrary to the general law, such custom must be proved to be ***ancient, uniform, certain, continuous and compulsory and one who relied upon custom, must plead and prove it***. Custom must be established by clear and unambiguous evidence. It has also been settled that the custom being in derogation of a general rule is required to be construed strictly and a party relying upon a custom is obliged to establish it by a clear and unambiguous evidence.

43. This court is of the considered view that the appellants have not been able to prove the alleged custom of complete exclusion of daughters and widows from inheritance and succession and that they are only entitled to maintenance as per alleged customary law governing the parties. The requirement of law to prove the alleged custom as claimed by the claimants /appellants has not been satisfied in the present case.

44. Thus, this court is of the considered view that neither the appellants have been able to prove the custom of complete exclusion of daughters and widows from inheritance and succession and that they are only entitled to maintenance as required by law ***nor*** the opposite party/ respondent has been able to prove that the parties were sufficiently hinduised so as to be governed by Hindu Succession Act in the matter of inheritance and succession. There is a complete void as to under what provision of law the compensation has to be allotted to the parties.

However, the fact remains undisputed that both the parties belong to Munda community belonging to Scheduled Tribe.

45. It is also important to note that amongst the appellants, the daughters and the widows falling in the lineage of Late Bandhan Munda, son of Late Sawna Munda and grandson of Late Soma Munda, have all joined to claim the compensation of the acquired land. One of the claimants Munni Devi is a widow in the family and she has also stated that she is one of the claimants and in her cross-examination also, she has reiterated that she is claiming the compensation of the acquired land.

46. Further, C.W. 6, who is one of the appellants (claimants) has stated in his evidence that all the appellants have right, title and possession over the acquired land and all of them are entitled to claim compensation of the acquired land. Thus, when it comes to the appellants (claimant) consisting of widows and daughters of the family also falling in the lineage of Late Budhan Munda, S/o Late Sawna Munda grandson of late Soma Munda, they jointly claim right, title and possession of the acquired land and also compensation of the acquired land. But when it comes to opposite parties falling in the lineage of other branch, their case is that as per Munda community, daughters/widows are not entitled to inherit any property of their father/husband.

47. It is also important to note that the claimants/appellants include widow and daughter in the family under the lineage of Bandhan Munda son of Sauna Munda and each have been allocated share in the compensation amount but the claimants /appellants have no grievance with respect to such allocation of share and when it comes to share of opposite party, the claimants /appellants have raised an objection that the daughter in the family has no right to inheritance or succession.

48. This court is of the considered view that under the aforesaid circumstances and in view of the discussions of the materials on record, the judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No. 9537 of 2025 (Ram Charan & Ors. Vs. Sukhram & Ors.)*** reported in ***2025 LiveLaw (SC) 717*** is fully applicable and the principle of justice, equity and good conscience is required to be applied. This court is of the

considered view that the learned trial court has rightly relied upon the judgment passed in ***Civil Appeal No. 9537 of 2025 (Ram Charan & Ors. Vs. Sukhram & Ors.)*** reported in ***2025 LiveLaw (SC) 717 (supra)*** to allocate share of the awarded compensation amount to Daho Devi and also to Mohan Munda, but failed to consider that Mohan Munda having died issueless without leaving behind any heir or successor and his name was deleted from the cause title by the learned court, could not have been allocated any share as his share would go to the nearest family members who happen to be the descendants/ family members in the line of Bandhan Munda son of Sauna Munda , that is, the claimants /appellants in the present case. Daho Devi, daughter of Budhuwa Munda [son of Induwa Munda] would be entitled to ½ share of the compensation as out of three sons of the common ancestor, one son, namely, Bhadwa Munda, died issueless.

49. The point for determination is answered by holding that the respondent no.1 [Daho Devi] who is grand-daughter of one awardee Late Induwa Munda and Mohan Munda (now dead) who was the son of Sukro Devi (grand-daughter of another awardee Late Sauna Munda) are entitled for their right of inheritance/succession in the ancestral property of the common ancestor. It is further held that Daho Devi has been rightly allocated half share of the compensation amount. It is also held that Mohan Munda (now dead) has also been rightly allocated ½ share of ½ share (that is 1/4th share) of the compensation amount as Sauna Munda had two sons and Mohan Munda was the descendant of one of his sons.

50. This court has also gone through the allocation of share as prepared by the learned trial court on the basis of the impugned judgement vide order dated 03.01.2026 and finds that Daho Devi has been allocated ½ share of the entire compensation amount relating to each award (award nos. 8, 27, 26, 9 and 4) involved in this case and is of the considered view that the allocation of share to Daho Devi has been rightly made by the learned Court. ***The allocation of ½ share of the entire compensation amount to Daho Devi does not call for any interference.***

51. ***So far as allocation of share to Mohan Munda (deceased and deleted) to the extent of 1/4th share vide order dated 03.01.2026 passed by the learned court while allocating the share of the compensation amount is concerned, the same can be disbursed to his legal heirs and successors as may be claimed as per law. Admittedly, the claimants/appellants are in the lineage of Bandhan Munda 1st son of Sauna Munda and Mohan Munda falls in the lineage of Langda Munda 2nd son of Sauna Munda.***

52. This appeal is accordingly dismissed.

53. Pending interlocutory application, if any, is closed.

54. Office to prepare decree.

55. Let this judgement be communicated to the learned court concerned through FAX/e-mail.

56. Let the records received from the learned court concerned be sent back forthwith.

(Anubha Rawat Choudhary, J.)

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