IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

SECOND APPEAL No. 2 of 1994

CNR No.: MPHC010139011994

SAHABA @ SAHAB & ORS.

Versus

SMT.SAVITRI & ORS.

Appearance:

Shri Ranno Rajak - Advocate for appellants.

None appeared for respondent.

Reserved On :-01.07.2026
Pronounced On :- 02.11.2026

JUDGMENT

1. This appeal under Section 100 of the Code of Civil Procedure has been preferred by the defendants/appellants, being aggrieved by the judgment and decree dated 25.11.1993 passed in Civil Appeal No.9-A/1989 by the District Judge, District Satna, affirming the judgment and decree dated 04.04.1989 passed in Civil Suit No.56-A/1987 by the Civil Judge Class-I, Nagod, District Satna, whereby the claim of plaintiff/respondent no.1 for declaration of her 1/3rd share in the suit land and for consequential reliefs was decreed.

2. It is an admitted position that the original holder of the suit land was Sadhuwa, who had four sons: Gopaliya, Lalli, Saheba, and Ramshel. Plaintiff was earlier married to Gopaliya, who died issueless in 1950. Thereafter, as per caste customs, plaintiff started living as wife of Lalli, from whom one daughter was born to her. After death of Lalli, she started living

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with Saheba as his wife. Saheba was married earlier and was having a daughter from his first marriage. As per the plaintiff, after death of Lalli, she inherited 1/3rd share in the suit land and was recorded alongwith the other co-owners in the revenue records. The defendants have, however, illegally got the suit land partitioned between themselves and have excluded her therefrom, which has necessitated filing of the present suit by her.

3. The defence of the defendants was that after death of Gopaliya, plaintiff had married Lalli as per caste customs and upon death of Lalli, had started living with Saheba as his wife according to caste customs. She hence, does not have any right to claim share in the suit land except that of her husband Saheba and also does not have any right to challenge the partition to the said extent.

4. The Courts below have decreed the plaintiff's claim by holding that though after death of Lalli, she had started living with Saheba as his wife but at that time Saheba was already married, which marriage had not been dissolved by way of customary divorce, hence plaintiff did not become the wife of Saheba and continued to be the widow of Lalli and hence is entitled for 1/3rd share in the suit lands, since only Saheba and Ramshel were remaining.

5. By order dated 22.12.2009, the appeal was admitted on the following substantial questions of law:-

> *"1. Whether the plaintiff-respondent having married Saheba; could be said to be the widow of Lalli entitling her to a share in Lalli's property ?*
> *2. Whether the Courts below were right in decreeing the suit even though on plaintiffs own saying that she had become unchaste ?"*

6. I have heard the learned counsel for the parties at length and have

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perused the record.

7. Admittedly, plaintiff had married Lalli, upon whose death she became his widow. Though the defendants contended that thereafter she started living with Saheba as his wife, hence is entitled to claim share in the suit land only to the extent of share of Saheba but from the record and particularly the admissions made by the witnesses of the defendants, it is clear that when plaintiff allegedly started living with Saheba as his wife, another wife of Saheba namely; Kamli, was alive. There is no plea or proof by the defendants that Saheba had divorced Kamli according to caste customs. It is only stated that Kamli had left Saheba. Though it is stated that Kamli had come to Saheba after he had kept the plaintiff as his wife, but it has nowhere come on record that he actually divorced her as per customs. In that situation, even as per the Hindu law as was prevailing prior to coming into force of the Hindu Succession Act, 1956, the marriage of Saheba with plaintiff was illegal, since he had no right to have a second wife. The alleged marriage of plaintiff with Saheba would hence not be a legal marriage, as a result of which she would continue to be the widow of Lalli.

8. At the time when Lalli had expired, the plaintiff was not living with Saheba, meaning thereby that she was not unchaste at the time of his death. As per the defendants themselves, she started residing with Saheba after a few years of death of Lalli, meaning thereby that her unchastity was after death of Lalli and not at the time of his death. As per paragraph 96 of Hindu Law by Mulla, 25th Edition, a widow who is unchaste at the time of her husband's death is not entitled to inherit his estate but once the husband's

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estate has vested in her, which could only be if she was chaste at the time of his death, it cannot be divested by her subsequent unchastity. At the time when Lalli expired, plaintiff was not unchaste but her unchastity was subsequent thereto. Since she was not unchaste at the time of death of Lalli, she inherited his estate, though as a limited estate but upon coming into force of the Hindu Succession Act, 1956, became the absolute owner thereof and is entitled to claim share in the suit land accordingly.

9. The Courts below have, after examining the entire oral evidence available on record and application of legal principles applicable to the facts of the case, held that plaintiff is entitled for 1/3rd share in the suit land and have consequently decreed her claim. No illegality or perversity has been committed by them in doing so. The substantial questions of law as framed are hence answered against the defendants/appellants and in favour of plaintiff/respondent No.1.

10. Consequently, the appeal fails and is hereby dismissed. No costs.

(PRANAY VERMA)
JUDGE

V

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