



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 05.08.2022

Pronounced on 10.11.2022

FA No. 122 of 2006

- Beer Singh S/o Umendram Aged About 19 Years R/o Village Khargaon, Tehsil Kharsia, District Raigarh, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

1. Pratap Singh S/o Kushal Singh Aged About 60 Years R/o Village Khargaon, Tehsil Kharsia, District -Raigarh, Chhattisgarh, Chhattisgarh
2. Talam Singh Sidar S/o Kushal Singh Sidar Aged About 47 Years R/o Village Khargaon, Tehsil Kharsia, District- Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh
3. Bhagwat Singh S/o Bhutneshwar Singh Aged About 40 Years R/o Village Khargaon, Tehsil Kharsia, District- Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh
4. Darbar Singh S/o Bhutneshwar Singh Aged About 35 Years R/o Village Khargaon, Tehsil Kharsia, District- Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh
5. Dadu Singh S/o Bhutneshwar Singh Aged About 38 Years R/o Village Khargaon, Tehsil Kharsia, District- Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh
6. Sukhmat Bai (Deleted) As Per Hon'ble Court Order Dated 19/11/2019.
7. State Of Chhattisgarh, Through Collector, District Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh

---- Respondents

For Appellant : Mr. Himanshu Pandey and Ms. Anmol Sharma,
Advocates

For Respondent No. 1&2 : Shri R.V. Rajwade, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

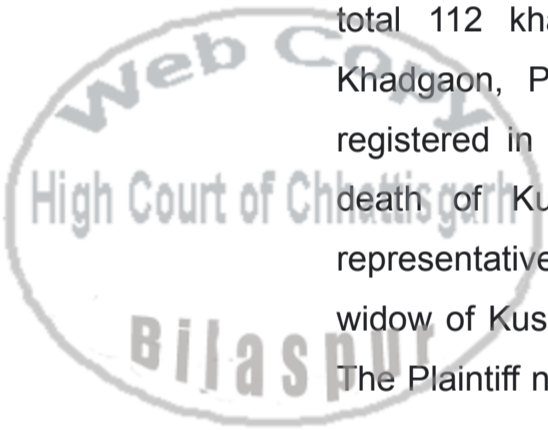
C.A.V. JUDGMENT

- 1) Defendant No.1 has filed present appeal under Section 96 of the CPC challenging the judgment and decree dated 05.04.2006 passed by the learned First Additional District Judge, Raigarh in Civil Suit No. 4-A/2006 by which the learned trial Court decreed the suit for declaration and permanent injunction in favour of the plaintiff granting permanent



injunction to plaintiff holding that defendant No. 2 is not in possession of the suit property mentioned in Schedule A and B, therefore, the sale deed executed on 30.09.2003 in favour of defendant No. 1 is not binding upon the plaintiff. Learned trial Court further restrained defendant No. 1 from possession of the suit permanently.

- 2) For the sake of convenience parties would be referred to as per their status in the suit filed before the trial Court.
- 3) The brief facts as reflected from the plaint averments are that the plaintiff has filed civil suit for declaration that the sale deed dated 30.09.2003 is not binding upon them. It has been contended that the plaintiff and defendants are Gond tribals and as per their custom defendants cannot inherit succession and in Gond community widow and daughter are only entitled to get maintenance as they have no right over the property as they are not governed by Hindu Law. It has been further contended that total 112 khasra numbers total area 33.804 Ha. are situated in Khadgaon, P.H. No. 1 of Tahsil Kharsiya District – Raigarh were registered in the name of Kushal Singh and Bhuteshwar Singh. After death of Kushal Singh and Bhuteshwar Singh names of legal representatives were recorded in the revenue record but fraudulently the widow of Kushal Singh got registered her name in the revenue record. The Plaintiff never objected in recording the name of defendant No. 2 in revenue record due to love and affection between mother and son and also it is responsibility of the son to take care of his mother. Defendant No. 2 was never in possession of the suit property and has not done any agricultural work over there.
- 4) On 01.06.2003 defendant No. 1 has provoked his mother defendant No.2, therefore, she filed an application for partition before the Tahsildar on 12.06.2003. In the said proceedings the plaintiffs have raised objection contending that defendant No. 2 has no share over the property still Tahsildar without following the procedure passed final order on 09.09.2003 for recording the name of defendant No. 2 in the land measuring area 2.247 Ha. in six khasra numbers described in Schedule B of the plaint. The plaintiff preferred an appeal before the Sub Divisional Officer and obtained stay order. During the pendency of the case before the Sub Divisional Officer, defendant No. 1 instigated defendant No. 2 to execute sale deed in his favour for an agreed value

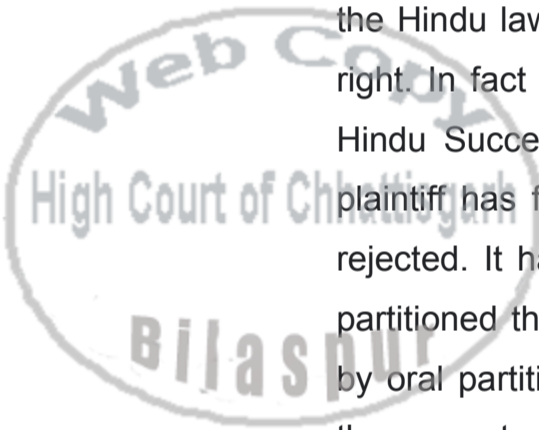




of Rs. 1,55,000/- whereas market value of the said land was 1,69,000/-. Defendant No. 2 was never in possession of the said land as plaintiff is in possession of the said land. It has been further contended that the sale deed has been executed without following due procedure, as such the partition and sale deed are not binding upon him. It has been further contended that the plaintiff and defendants No. 1 to 6 belong to Gond community and they are not governed by the Hindu Law as such widow has no right to inherit the property and prayed that the sale deed executed on 30.09.2003 be held not binding upon them, as such it be kindly declared that defendant No. 1 has no right over the suit property pursuant to sale deed dated 30.09.2003 and he be restrained from interfering in the suit property by way of permanent injunction.

5) Defendant No. 1 has filed separate written statement contending that the tribals are following the Hindu law and their rituals are governed as per the Hindu law. He specifically denied that widow and daughter have no right. In fact Gond community is governed by the Hindu law, therefore Hindu Succession Act, 1956 is applicable to them. Due to greed the plaintiff has filed the present suit, therefore, the same deserves to be rejected. It has been further contended that Kushal Singh had already partitioned the property and has given the suit land to defendant No. 2 by oral partition prior to 25-30 years as such the defendant No. 2 was the competent to execute the sale deed and would pray for dismissal of the suit.

6) Defendant No. 2 has filed her written statement denying the allegation made in the plaint mainly contending that the people from Gond community are following Hindu religion and all the rituals are performed through Hindu Law therefore, they are governed by Hindu Law. It is emphatically denied that widow and daughter of Gond community has no succession right and in fact, they are governed by Hindu Law as such Hindu Succession Act is applicable upon them. The plaintiff on account of greed has filed the suit. It has also been contended that Kushal Singh has already orally partitioned the land prior to 25-30 years and the plaintiff who is son of Kushal Singh and Talam Singh, have been given respective shares and after partition they are in possession of their shares. Defendant No. 2 after being separated from her husband is living separately as per oral partition and she is in possession of the said





land doing agricultural work and maintaining her livelihood. It has also been contended that plaintiffs are not looking after their parents and after death of her husband Kushal Singh the name of defendant No. 2 Brindabai has been recorded in the Revenue Record as per the procedure. It has also been contended that the defendant No. 2 has sold her land to defendant No. 1 as per registered sale deed and would pray for dismissal of the suit.

7) Defendant No. 3 has also filed separate written statement reiterating the same stand taken by defendant No. 1 and 2 that plaintiff and defendants No. 2 to 6 belong to one family and since their ancestral time they are following the Hindu law, and they are following the Hindu tradition also, as such in the Gond community the provisions of Hindu law is applicable. Therefore, Defendant No. 2 has right to inherit the property and sale deed executed by her is legal and justified and would pray for dismissal of the suit.

8) On the pleadings of the parties, learned trial Court framed as many as 8 issues. The issue No. 2 to 5 are relevant which are extracted below:-

(2) Whether the plaintiff and defendant No. 1 with regard to succession is not governed by Hindu Succession Act, 1956?

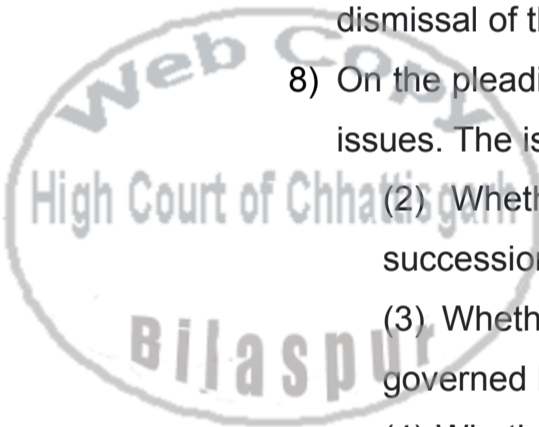
(3) Whether succession of plaintiff and defendants No. 1 to 6 are governed by custom or not?

(4) Whether in the community of parties according to the custom and usage widow is entitled to inherit property or not?

(5) Whether the widow has only right to maintenance only?

9) The plaintiff to substantiate his averments exhibited documents Ex.P.1 to 3 Kistbandi Khatoini, Ex.P.4- order sheets of Naib Tahsildar from 06.10.2003 to 21.10.2003, Ex.P5- order of SDO dated 22.09.2003, Ex.P6- Sale deed and the plaintiff to substantiate his averments made in the plaint has examined Pratap Singh as PW/1, Jodhai Ram Sidar as PW/2, Bhagat Ram Gond as PW/3, Chainsingh Rathiya as PW/4. Defendants to substantiate their case have exhibited Ex. D-1 Order of the Naib Tahsildar dated 24.10.2003., Ex. D-2 Order of Naib Tahsildar dated 09.09.2003, Ex. D-3 Rin Pustika and examined Beer Singh as DW/1, Tirathram as DW/2, Itwar Singh as DW/3.

10) The plaintiff's witnesses have been examined by way of affidavit and cross-examined as provided under order 18 Rule 4 of the CPC and





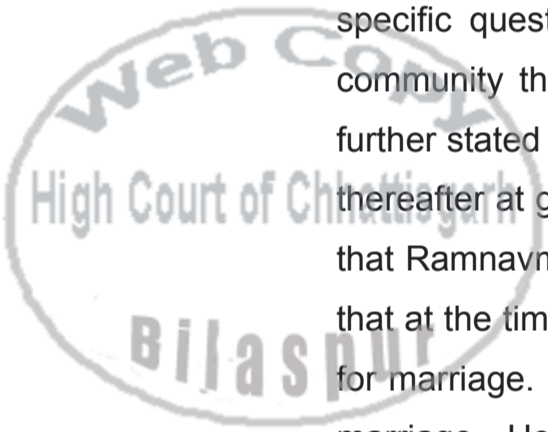
have stated that they are Gond and not governed by Hindu Law and according to their caste widow and daughter are not entitled to get succession in the ancestral property nor any partition in the family is given to them. During the life time of widow right of maintenance is only given to her. At the time of marriage as per their custom dowry is given to daughter as such daughter has no right over the property. It has also been stated in examination in chief that widow has no right to get succession still her name has been recorded. It has also been stated that Beer Singh has taken forceful possession of the land from his mother and thereafter his mother has started quarreling with him and his brother. Subsequently, her name has also been recorded in the property which has been mentioned in Schedule B of the plaint. Other witnesses namely Johit Ram, Bhagat Ram Gond and Chain Singh Rathia have reiterated the same stand. The witnesses were extensively cross-examined by defendants No. 1 to 3. PW1 and have stated in cross-examination that they follow Gond community. He has also stated that according to their religion 7 Feres are taken to perform marriage and Chhatti is also celebrated. He has admitted they don't burn the dead body but bury the body. He has also admitted that they celebrate Holi, Diwali, Dashara and has stated that they don't worship God or photo of God. He has admitted that after death of his father name of his mother has been recorded. Other witness Johitaram in his cross-examination has stated that he used to visit temple, celebrating festival and in Diwali they worship their God. Other witness Bhagat Ram also reiterated the same stand which they have taken in their written statement and in cross-examination also reiterated the same version which has been brought on record iduring course of the examination. The witness has admitted that when the Registry was executed by Brindabai in the name of Beer Singh at that time he was not present. He has also stated that in the suit property defendant Beer Singh's crop is standing.

- 11)Defendant No.1 Beer Singh was examined wherein he has reiterated the stand which has been taken in his written statement and has stated that they following the Hindu religion and the Gond community is also governed by Hindu Law. He has also stated that in Gond community widow, daughter and son are entitled for succession. He has also stated



that in the Gond community as per Hindu Law if a family member is expired then cremation is being carried out and after that Pind Dan and Ganga Pooja are followed. It has also been stated in Gaya through Brahman after worship Pind Dan and bone ash are flown in river. They are following Hindu festival like Ganesh Pooja, Diwali, Dashara, Shivpooja, Laxmipooja, Goverdhanpooja etc. and other festivals of Hindus are being followed. The witness was extensively cross-examined wherein he has stated that on 29.09.2003 the Tahsildar has granted stay but the same was not communicated to him and he has admitted that on 30.09.2003 the sale deed was executed. The witness has admitted that he belong to Gond community and they are worshipping the God of Gond and he has also admitted that at the time of marriage they are doing the Pooja of their family Godess and in their own community, after digging Madwa, seven Feres are taken to perform marriage. When specific question was put to him how marriage is performed in their community then he has stated that similar to Hindu marriage. He has further stated that as per Muhrat time girl is demanded for marriage, and thereafter at good time marriage is being performed. He has also stated that Ramnavmi is treated as good time for marriage. He has also stated that at the time of Dashara if Panchak is there, then it is not a good time for marriage. He has also stated that Kartik Ekadashi is a good time for marriage. He denies that according to Gond community the said proceeding is not done. He has stated that if anybody expires in community there is no Timahi and Chhahmahi.

- 12) Other witness Firat Ram has taken the same stand in his examination by way of affidavit and in cross-examination by the plaintiff he has admitted that Budhadev is Gond tribal's God who is Hindu's God also. He has stated that he does not know Snatan religion, he has also admitted that whether person following the Snatan religion worships God or not. He does not know who are following Hindu religion. Other witness Itwar by way of affidavit under Order 18 Rule 4 of the CPC has reiterated the same stand.
- 13) The learned trial Court after appreciating the evidence and material on record has allowed the suit on 05.04.2006. Being aggrieved with the judgment and decree dated 05.04.2006 the defendant No. 1 preferred the present appeal mainly contending that learned trial Court has





committed gross error in holding that the parties are not governed by the Hindu Law and governed by the customs in the matter of succession. It has been further contended that Section 2(2) of the Hindu Succession Act, 1956 is not applicable in the present facts of the case to exclude the plaintiff and defendants from application of Hindu Succession Act. It has been further contended that learned trial Court has committed gross error on fact that parties though are original tribes they are following hinduism, therefore, provisions of Hindu Succession Act are applicable, as such, finding recorded by the trial Court is perverse as such, the judgment and decree passed by the learned trial Court deserves to be set aside by this Court. It has been further contended that decree of permanent injunction has been granted to the plaintiff without any evidence or pleading on record and prayed that the appeal may kindly be allowed.

14) On the other hand learned counsel for the plaintiff would submit that the finding recorded by the learned trial Court is just, proper and does not warrant any interference by this Court. The plaintiff is in possession of the suit property, defendants were never in possession of the suit land. It has been further submitted that the plaintiff and defendants have admitted before the trial Court that they are governed by the customs prevailing in their community, therefore, it is clear that the parties are being governed by their own Gond customs. He would further submit that as per the provisions of Section 2(2) of the Hindu Succession Act, 1956 Hindu Succession Act is not applicable to the members of the Scheduled Tribe within the meaning of Clause 25 of the Article 366 of the Constitution of India unless Central Government by notification in the official Gazette, otherwise directs. In support of his submission he would refer to the Judgment of the Hon'ble Supreme Court in case of **Madhu Kishwar and Others vs State of Bihar and Others**¹ and **Labishwar Manjhi vs. Pran Manjhi and Others**² Judgment and decree of this Court in case of **Smt. Butaki Bai and others vs Sukhbati and others**³ and **Daduram and Others vs Bhuri Bai**⁴, Judgment of the Hon'ble High Court of Madhya Pradesh in case of

¹ (1996) 5 SCC 125

² (2000) 8 SCC 587

³ 2014 (3) CGLJ 590

⁴ 2019 SCC Online Chhattisgarh 13



Shagun Bai and Anr. vs. Siya Bai and Others⁵.

- 15) I have heard learned counsel for the parties, perused the documents with utmost satisfaction.
- 16) For better understanding the issue raised in this appeal, it is expedient for this Court to extract the provisions of Section 2 (2) of the Hindu Succession Act which is as under;-

“Section 2(2) of the Hindu Succession Act -Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

- 17) Learned counsel for defendant No. 1 would submit that plaintiff has not been able to prove that they are not governed by the Hindu Succession Act. The plaintiff has examined the witnesses who in his examination-in-chief has stated that they are governed by the tribal custom prevailing in the Gond caste and according to their customs widow has no right to get succession and no partition to widow and daughter is given. Therefore, it is incumbent upon the plaintiff to prove the custom as alleged in the plaint. The custom has to be proved by proving the fact that the custom is long being continued. The witness was cross-examined by defendant No. 1 to 3 wherein he has said that seven Feres are observed in their community at the time of marriage.

- 18) This Court has to examine whether the plaintiff has been able to prove that widow lady and daughter are not entitled to get share in the property left by her husband. The plaintiff has not examined in person who is well aware of the customs prevailing in the tribals and at least the plaintiff should have examined any old person in the community to narrate the custom with regard to grant of share to widow. The law is well settled by the Courts in India how customs has to be proved. This issue with regard to proving of the custom has come up for consideration before Hon'ble Supreme Court in case of **Salekh Chand vs. Satya Gupta and Ors.**⁶ in which Hon'ble the Supreme Court has held as under:-

“21. In *Mookka Kone v. Ammakutti Ammal* [AIR 1928 Mad 299 (FB)], 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

⁵ 1999 (2) MPLJ 307

⁶ (2008) 13 SCC 119



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, 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."

22. It is incumbent on party setting up a custom to allege and prove the custom on which he relies. Custom cannot be extended by analogy. It must be established inductively and not by a priori methods. Custom cannot be a matter of theory but must always be a matter of fact and one custom cannot be deduced from another. It is a well established law that custom cannot be enlarged by parity of reasoning.

23. Where the proof of a custom rests upon a limited number of instances of a comparatively recent date, the court may hold the custom proved so as to bind the parties to the suit and those claiming through and under them; but the decision would not in that case be a satisfactory precedent if in any future suit between other parties fuller evidence with regard to the alleged custom should be forthcoming. A judgment relating to the existence of a custom is admissible to corroborate the evidence adduced to prove such custom in another case. Where, however a custom is repeatedly brought to the notice of the courts, the courts, may hold that the custom was introduced into law without the necessity of proof in each individual case.

24. Custom is a rule which in a particular family or a particular class or community or in a particular district has from long use, obtained the force of law. Coming to the facts of the case P.W.1 did not speak any thing on the position either of a local custom or of a custom or usage by the community, P.W.2, Murari Lal claimed to be witness of the ceremony of adoption he was brother-in-law of Jagannath son of Pares Ram who is said to have adopted Chandra Bhan. This witness was 83 years old at the time of deposition in the Court. He did not speak a word either with regard to the local custom or the custom of the community. P.W.3 as observed by the lower appellate Court was only 43 years' old at the time of his deposition where as the adoption had taken place around 60 years back. He has, of course, spoken about the custom but that is not on his personal knowledge and this is only on the information given by P.W.2, Murari Lal. He himself did not speak of such a custom. The evidence of a plaintiff was thus insufficient to prove the usage or custom prevalent either in township of Hapur and around it or in the community of Vaish.

25. The evidence of D.W.3 refers only to one instance. From his evidence it cannot be inferred that Om Prakash had adopted Munna Lal who was his real sister's son. As already





pointed out above, the trial court found that the evidence of D.W.3 was not so clear and unambiguous as to lead to no other conclusion except that Munna Lal was son of real sister of Om Prakash. Besides, this solitary instance of adoption of his sister's son cannot amount to long usage, which has obtained the force of law. Mulla has categorically commented that where the evidence shows that the custom was not valid in numerous instances, the custom could not be held to be proved. A custom derives its force from the evidence from long usage having obtained the force of law. All that is necessary to prove is that usage has been acted upon in practice for such a long period with such invariability as to show that it has, by consent, been submitted so as to establish governing rules of a particular locality or community.

26. 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 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.

27. A custom may be proved by general evidence as to its existence by members of the tribe or family who would naturally be cognizant of its existence, and its exercise without controversy, and such evidence may be safely acted on when it is supported by a public record of custom such as the Riwayat or Manual of Customary Law."

19) Hon'ble Supreme Court in case of **Ratanlal vs Sundarabai Govardhandas Samsuka (dead) Through Lrs and Others**⁷ has examined the issue of custom in details which is as under:-

"13. 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. Pravin 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

⁷ (2018) 11 SCC 119



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 condition. 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 Sathupathi*, 12 MIA 397 (1868), has observed that

"under the Hindu System of law, clear proof of usage will outweigh the written text of law".

14. As per the settled law under Section 2(a) the Act, the following ingredients are necessary for establishing a valid custom-

- a. Continuity.
- b. Certainty.
- c. Long usage.
- d. And 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 depend 1 Bryan A. Garner, *Black's Law Dictionary* (10th Eds.), p. 468. 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 willfully 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.

15. 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 recognizing 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.

16. 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 Prasad*, (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 centers 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".

17. In *Sheokuarbai v. Jeoraj*, AIR 1921 PC 77, 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.

18. 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 concerned community. 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."

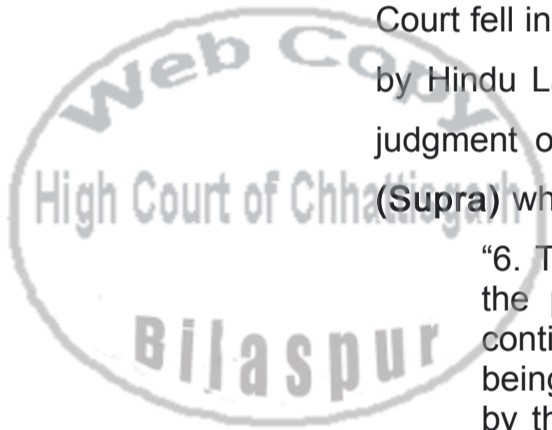
20) From the evidence it is quite vivid that the parties though admittedly belong to the tribals but they are still continuing with the customary





tradition of Hindu customs such as worship of God, Fere at time of marriage, Pinddan at the time of death of family member which clearly establishes that they belong to Hindus. The plaintiff's witness No. 1 has admitted in cross-examination that they perform Pinddan on death of anybody and admitted that PW/2 performs Shrad ceremony, this evidence clearly proves that they are performing customs of Hindus not Gond. In view of such position it cannot be said that Section 2(2) of the Hindu Succession Act excludes the present parties from application of Hindu Law. Sub-section 2 only excludes members of the Scheduled Tribe. As per the finding recorded in the present case though they originally belong to Gond community they are Hindus and they follow Hindu tradition. Therefore, this Court is not hesitant to hold that Sub-section 2 of the Hindu Succession Act will not apply to exclude the parties from application of Hindu Succession Act. The trial Court fell in to error in recording the finding that they are not governed by Hindu Law. The judgment passed by the trial Court is against the judgment of Hon'ble Supreme Court in case of **Labishwar Manjhi** (Supra) wherein the Hon'ble Supreme Court has held as under:-

“6. The question which arises in the present case is, whether the parties who admittedly belong to Santhal tribe are still continuing with their customary tradition or have they after being Hinduised changed their customs to that what 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 findings, that most of the names of their families of the parties are Hindu names. Even P.W. 1 admits in the cross examination that they perform the pindas at the time of death of anybody. Females do not use vermilion on the forehead after the death of their husbands, widows do not wear ornaments. Even P.W. 2 admits that they perform Shradh ceremonies for 10 days after the death and after marriage, females use vermilion on their foreheads. The finding is that they are following the customs of the Hindus and not of the Santhal's. In view of such a clear finding, it is not possible to hold that Sub-section 2 of Section 2 of 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 Tribe 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 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 appellant Nos. 2 and 3 were valid gift, hence the suit of respondent No. 1 for setting aside the gift deed and inheritance stand dismissed.”

21) Even on record the plaintiff has not brought any evidence to establish custom which denies the widow and daughter to inherit the succession in the property. As such, it is held that widow is entitled to inherit succession as per Hindu Succession Act though they are tribals which itself does not oust them from the purview of application of Hindu Succession Act. In view of such finding recorded by this Court the widow defendant No. 2 is the full owner of the suit property and not a limited owner as provided under Section 14 of the Act. Defendant No. 2 being full owner of the suit property as prescribed in Schedule B of the plaint has very much right to succeed the property and consequently to dispose off according to her convenience, therefore, sale deed executed in favour of defendant No. 1 was legal and justified.

22) Accordingly, the first appeal deserves to be and is hereby allowed and the judgment and decree passed by the learned trial Court is set aside. It is held that sale deed executed in favour of defendant No. 1 present appellant, is legal and justified.

23) A decree be drawn up accordingly.

Sd/-
(Narendra Kumar Vyas)
Judge