IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No. 35 of 1995 [R]

Bejla Oraon .... Appellant(s)

Versus

1(A) Kali Das Oraon
(B) Konda Oraon
(C) Shankar Oraon
2. Punai Oraon
3. D. C., Gumla .. ..Respondent(s)

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CORAM :HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

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For the Appellant(s) : Mr. Awadhesh Pandey, Advocate
Mr. Kaushlendra Kr. Singh, Advocate
For the Respondent(s) : Mr. Arun Kumar, Advocate

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21/ 10.06.2024. Heard, learned counsel for the parties.

1. The instant Second Appeal has been filed under Section 100 CPC against the judgment and decree passed by learned 1st Addl. District Judge, Gumla in T.A. No.42 of 1990 affirming the judgment and decree passed by learned Munsif, Gumla in T.S. No.22 of 1975.

2. Appellant is the plaintiff who filed the suit for the following relief:

a. declaration of title and possession over the suit land mentioned in Schedule-A of the plaint and alternatively for recovery of possession if he was found to be dispossessed during pendency of the suit.
b. declaration of registered deed of partition deed dated 27.02.1975 executed by Ledura Oraon and Budhain Oraon in respect of the suit land and the same was not binding upon the plaintiff.

3. Both the parties are of Oraon community and the members of the Scheduled Tribe. Case of the Plaintiff is that Sukhu Oraon was the owner of the suit property, who died leaving behind his three sons, namely, Dhungru Budhu Oraon, Ledura Oraon and Bhoula Oraon.

4. The dispute is with respect to the property of Ledura Oraon who died issueless and the plaintiff is the son of Dhungru Budhu Oraon and is claiming property inherited by Ledura Oraon who died issueless and that of Bhoula Oraon who died leaving behind his three daughters but without any male heir. The claim of inheritance is based upon the principle of *propinquity* and agnatic relationship on the ground that females have no right of inheritance under customary law of Oraon community.

5. The case of the defendant(s) is that plaintiff was not the grand-son of Sukhu Oraon and he had no son named as Dhungru Budhu Oraon. Sukhu Oraon had only two sons, namely, Ledura Oraon and Bhoula Oraon, out of whom Bhoula Oraon died in jointness leaving behind three daughters, widow and his brother, Ledura Oraon. Ledura Oraon had no issue, so he married defendant no.2 (Punai Oraon) with Budhain Oraon, the daughter of Bhoula Oroan and kept him as

ghardamad and since then defendant no.2 had been living in the house of Ledura Oraon and Bhoula Oraon as *ghardamad.*

6. Separate possession has been recorded in the revisional survey record of right of Khata No.42 for the sake of convenience, but the land was acquired jointly by co-sharers. The property was divided by registered deed of partition dated 27.02.1975.

7. On the basis of pleadings of the parties, the following main issues were framed :-

(5) *Is the plaintiff grand son of Sukhu Oraon*?
(6) *Has defendant no.2 been kept as ghardamad by Ledura Oraon*?
(7) *Is the deed of partition (Exhibit-D) not binding upon the plaintiff*?

8. Learned Trial Court dismissed the suit by recording that the plaintiff was the son of Dhungru Budhu Oraon and was the grand-son of Sukhu Oraon. It was however held that defendant no.2 was accepted as *ghardamad* by Ledura Oraon and it was also held that the deed of partition was binding upon the plaintiff and the plaintiff had no title of possession over the suit land.

9. Learned First Appellate Court concurred with the finding of fact and dismissed the appeal.

10. The instant Second Appeal was admitted to be heard on the following substantial question of law :-

"Whether uncle-in-law is entitled under the customary law amongst the Oraon community to keep a Ghardamad?"

11. It is argued by learned counsel for the appellant that there is no custom that uncle-in-law can keep *ghardamad* under Oraon customary law and the females are barred from inheritance. Ledura Oraon had died issueless and Bhoula Oraon had no male heir(s) and, therefore, the plaintiff had a complete right of inheritance to the property of Ledura Oraon and Bhoula Oraon.

12. Learned counsel for the respondent(s) submits that there is no pleading or evidence in support of the plaintiff that the uncle in law cannot adopt a ghardamad. _It is further argued that the same issue has been decided by this Court in the case of **Prabha Minj's Vs Martha Ekka and ors in S.A. No.127 of 2014** that there is no uniform customary law of inheritance among Oraon and Santhal tibes that natural female heirs were debarred from the right of inheritance. In absence of any pleading or evidence that uncle in law under customary law has no right to adopt a ghardamad, such an inference cannot be drawn.

13. Having considered the submissions advanced on behalf of both the sides, the factum of valid custom is matter to be pleaded and proved. This Court has held in **Prabha Minj's case** (supra) "*The cumulative effect of these judicial precedent*

demonstrate and reflect beyond doubt that a general customary law of inheritance among Oraon and Santhal tribes has not crystallized in a uniform general customary law having binding force debarring natural female heirs from right of inheritance. Judicial decision also reflects an unease to accept and recognize such inequitable custom. The Courts have refrained to uniformly or consistently recognize the customary law of inheritance excluding female from inheritance so as to hold that they have acquired binding force of general customary law. In every case the claim of title is to be decided on the pleading and proof of customary law regarding the prevailing custom. Ideally it is high time that customary law of succession should be codified and be given a statutory shape. But in the meantime each case has to be judged individually regarding the applicable custom".

14. There is no pleading and evidence on behalf of plaintiff to establish that the females were disentitled from inheritance and further-more the uncle in law had no right to adopt a ghardamad.

Under the circumstances, the substantial question of law is answered in favour of defendant(s)/ respondent(s).

Accordingly, I do not find any infirmity in the concurrent finding of fact recorded by both the courts below.

The Second Appeal is dismissed with cost.

(**Gautam Kumar Choudhary, J.**)

Sandeep/

Uploaded.