



2026:CGHC:3742

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Order Reserved on 14-01-2026

Order Delivered on 22-01-2026

FA No. 7 of 2015

Smt. Ashawati D/o Late Dharam Singh Bariha Aged About 55 Years W/o Nurpo, R/o Village- Dongripali, P.S. Dongripali, Tah. Baramkela, Distt. Raigarh C.G., Chhattisgarh

Appellant

Versus

1 - Rukhmani D/o Late Dharam Singh Bariha Aged About 60 Years W/o Bhuneshwar, R/o Village- Rajadevri Sonakhan, P.S. And Tah. Pithoura, Distt. Mahasamund C.G., Chhattisgarh

2 - Jogeshwar S/o Late Dharam Singh Bariha Aged About 50 Years R/o Village- Dongripali, P.S. Dongripali, Tah. Baramkela, Distt. Raigarh C.G., District : Raigarh, Chhattisgarh

3 - Janhvi @ Jhumki W/o Jogeshwar Bariha Aged About 46 Years R/o Village- Dongripali, P.S. Dongripali, Tah. Baramkela, Distt. Raigarh C.G., District : Raigarh, Chhattisgarh

4 - Geetanjali D/o Late Jogeshwar Bariha Aged About 30 Years W/o Sanjay, R/o Village- Saraswati Rice Mill, Naharpara, Mahasamund, P.S., Tah. And Distt. Mahasamund C.G., District : Mahasamund, Chhattisgarh

5 - Pushpanjali D/o Jogeshwar Bariha Aged About 28 Years W/o Ramchandra Bariha, R/o Village- Laxmi Poja Chhak Burla, P.S. And Tah. Burla, Distt. Sambalpur Orrisa, District : Sambalpur, Orissa

6 - Pushpraj S/o Jogeshwar Bariha Aged About 26 Years R/o Village-Dongripali, P.S. Dongripali, Tah. Baramkela, Distt. Raigarh C.G., District : Raigarh, Chhattisgarh

7 - Shobhanjali D/o Jogeshwar Bariha Aged About 24 Years W/o Gokul, R/o Kelenda, P.S. And Tah. Saraipali, Distt. Mahasamund C.G., District : Mahasamund, Chhattisgarh

8 - Rajendra Kumar S/o Jogeshwar Bariha Aged About 22 Years R/o Village-Dongripali, P.S. Dongripali, Tah. Baramkela, Distt. Raigarh C.G., District : Raigarh, Chhattisgarh

9 - Nalni D/o Nurpo Bariha Aged About 42 Years W/o Biranchi, R/o Village-Kanshipali, P.S. And Tah. Bhathli, Distt. Bargarh Orissa, District : Bargarh *, Orissa

10 - Amrawati D/o Dharm Singh Aged About 53 Years R/o Village Rajmahal Padampur, Police Station, Tahsil Civil And Revenue District Padampur Orrisa , Orissa

11 - The State Of Chhattisgarh Through The Collector Raigarh Civil And Revenue Distt Raigarh C.G., Chhattisgarh

Respondents

(Cause-title taken from Case Information System)

For Appellant(s) : Mr. Ravipal Maheshwari, Advocate.

For Resp. No. 1 to 8 : Mr. Vivek Tripathi, Advocate.

For State/Resp. No. 11 : Mr. Anand Gupta, Dy.G.A.

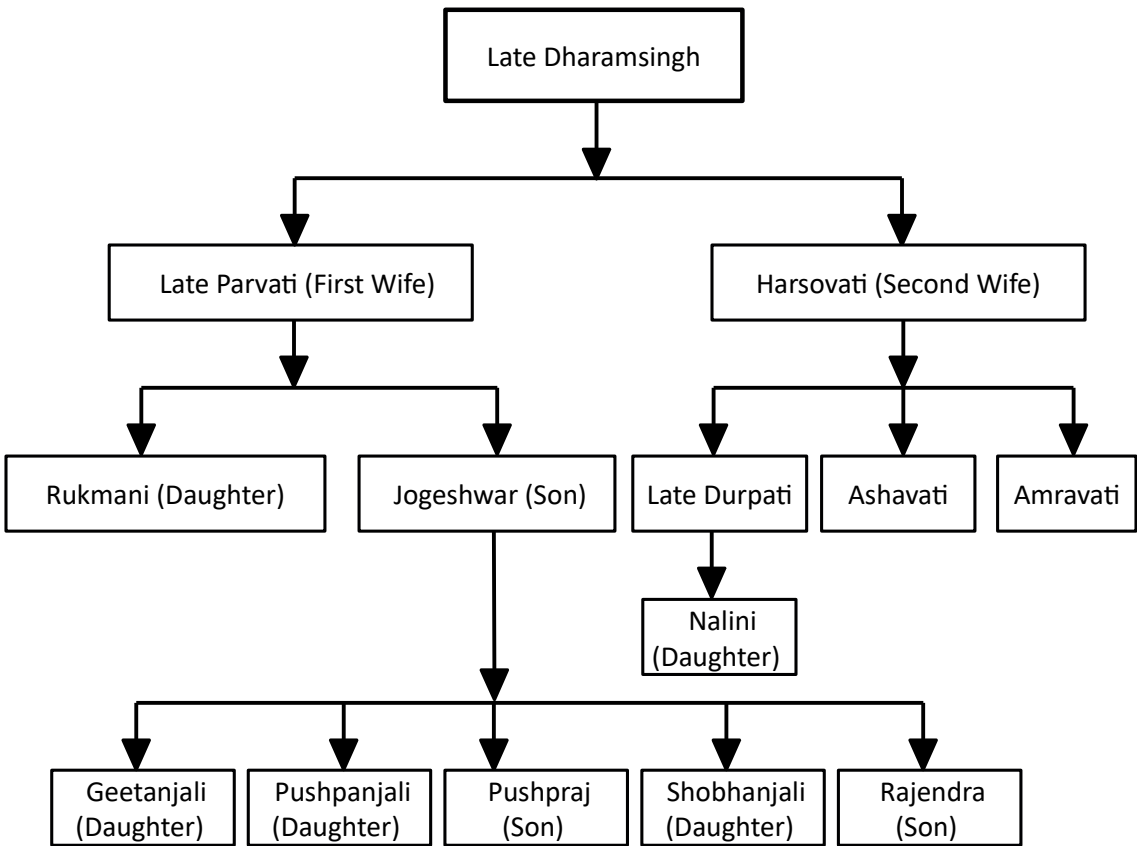
Hon'ble Shri Bibhu Datta Guru, Judge

C A V Judgment

1. The present appeal has been preferred under Section 96 of the Code of Civil Procedure, 1908, by the appellant/plaintiff assailing the judgment and decree dated 23.12.2014 passed by the learned Additional District Judge, Sarangarh, District Raigarh (C.G.) in Civil Suit No. 09-A/2013 (*Smt. Ashawati v. Rukmani & Ors.*), by which the suit instituted by the

appellant/plaintiff came to be dismissed.

2.
- For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
3.
- (a)
- The plaintiff Ashawati filed a Civil suit against Defendant Nos. 1 to 8 for declaration, partition and possession pleading, *inter alia*, that her father, late Dharamsingh, had two wives, namely, first wife late Parvati and his second wife Harsovati (Defendant No. 11). The parties to the suit are the descendants of late Dharamsingh, and their relationship *inter se* is shown in the genealogical tree produced herein below:-



- (b)
- According to the plaintiff, the ancestral property originally stood recorded in the name and possession of the common ancestor of both the parties, late Dharamsingh, son of late Shankar Singh Bariha, situated at Village Dongaripali, Patwari Halka No. 50. The total holding comprised

Khasra No. 45 admeasuring 83.08 acres, including Khasra No. 20 admeasuring 27.83 acres, Khasra No. 19 admeasuring 27.62 acres, Khasra No. 06 admeasuring 8.13 acres and Khasra No. 02 admeasuring 1.40 acres, consisting of agricultural land, Tikra land, pond, Dih house and residential plots. It is pleaded that, at present, agricultural land bearing Khasra No. 30 admeasuring 15.623 acres, situated at Village Dongaripali, Patwari Halka No. 50, stands recorded in the name of Defendant No. 2 Jogeshwar, son of late Dharamsingh Binjhawar, as shown in Schedule "A". Similarly, agricultural land bearing Khasra No. 14 admeasuring 6.666 acres stands recorded in the names of Defendant No. 6 Pushpraj and Defendant No. 8 Rajendra Kumar, sons of Jogeshwar Singh, as shown in Schedule "B". The plaintiff has been allotted only Khasra No. 06 admeasuring 3.027 hectares of agricultural land for her livelihood, shown in Schedule "C", whereas Defendant No. 10 Amravati has been allotted the entire Khasra No. 02 admeasuring 1.40 acres, shown in Schedule "D". Schedules "A", "B", "C" and "D" collectively constitute the suit property. It is further pleaded that the suit lands are ancestral in nature and that, apart from the heirs shown in the family tree, there are no other legal heirs of late Dharamsingh.

(c) The further case of the plaintiff is that Defendant No. 1 Rukmani and Defendant No. 2 Jogeshwar, in collusion with their mother late Parvati and with the connivance of the Patwari and Revenue Inspector, got the names of the plaintiff, the mother of Defendant No. 9, late Durpati, and Defendants No. 10 and 11 deleted from the revenue records

through Mutation Register Serial Nos. 87 and 88 dated 25.11.1971, which were subsequently certified by the Certifying Authority on 05.08.1972, with the intention of conferring undue benefit upon themselves. It is pleaded that on the date of mutation as well as on the date of certification, the plaintiff, the mother of Defendant No. 9, late Durpati, and Defendants No. 10 and 11 were minors and had never given consent for relinquishment of their rights. Therefore, the mutation order dated 05.08.1972 is alleged to be illegal, void, contrary to law and not binding upon the plaintiff. It is further pleaded that the alleged partition was not effected in accordance with the equal proprietary shares of the parties, as late Dharamsingh owned about 83 acres of agricultural land at the relevant time, and from the share of his second wife Harsovati (Defendant No. 11), her heirs, namely, the plaintiff and Defendants No. 9 and 10, ought to have been allotted about 41.50 acres. It is contended that the Certifying Authority passed the mutation and partition order without issuing notice, without affording an opportunity of hearing, without recording evidence and without conducting any inquiry, and that the Revenue Court had no jurisdiction to adjudicate disputes relating to the property of minor children, thereby giving rise to a question of title. The plaintiff further pleaded that upon obtaining a certified copy of the mutation register on 13.03.2013, she came to know about the deletion of her name and those of other heirs. The suit has been valued at ₹1,00,000/- and court fee of ₹565/- has been paid for the relief of declaration. Since the suit land is recorded as agricultural land,

the State of Chhattisgarh has been impleaded as a formal party.

(e) Defendants No. 1 to 8 filed their written statement denying the plaint averments and contended that the parties belong to the Binjhawar community, which is a Scheduled Tribe, and therefore the Hindu Succession Act is not applicable, succession being governed by local customary law. It is pleaded that late Parvati voluntarily and with consent allotted the lands described in Schedules “C” and “D” to the plaintiff and Defendant No. 10 respectively and that the mutation entries were made with consent. It is further pleaded that the suit, filed after about 41 years, is barred by limitation and that the valuation of the suit and payment of court fee are improper.

(f) Defendant No. 10, in her written statement, also denied the plaint averments, reiterated the applicability of tribal customary law and asserted that land was allotted as per custom and consent, and that during the lifetime of sons, daughters have no right in the ancestral property.

(g) Defendants No. 9 and 11, in their written statement, denied the plaint averments but alleged that the mutation proceedings were fraudulently carried out by Defendant No. 2 and his mother late Parvati by affixing forged thumb impressions and without obtaining consent.

(h) On the basis of the above pleadings, the learned Trial Court framed as many as twelve issues and, upon due appreciation of the oral and documentary evidence on record, dismissed the suit filed by the plaintiff holding that she failed to establish any subsisting right, title or

interest in the suit property. Hence, this appeal.

4. Learned counsel for the appellant/plaintiff submits that the Trial Court erred in dismissing Civil Suit No. 09-A/2013, as the appellant, being a minor daughter of late Dharamsingh by his second wife Harsovati, has a valid entitlement to one-half share of the ancestral property. The deletion of her name and those of other minor heirs from the revenue records through Mutation Register Serial Nos. 87 and 88 dated 25.11.1971, certified on 05.08.1972, was illegal, collusive, and without consent, and the appellant became aware of it only on 13.03.2013, making the suit timely. The alleged partition was not in accordance with legal rights, and the defendants failed to prove consent or prevailing custom justifying the mutation. The Trial Court overlooked the documentary and oral evidence establishing the appellant's entitlement and the illegality of the mutation. In view of the above, the impugned judgment is unsustainable, and the appellant is entitled to declaration of her share and partition of the ancestral property.
5. Learned counsel for Respondent Nos. 1 to 8 vehemently opposes the submissions advanced by the learned counsel for the appellant/plaintiff and supports the impugned judgment and decree of the Trial Court. It is contended that the Trial Court has rightly appreciated the evidence and correctly held that the appellant/plaintiff has failed to establish any subsisting right, title, or interest in the suit property. The respondents assert that the mutation order dated 05.08.1972 has long attained finality and cannot be challenged after such inordinate delay. It is further

submitted that the alleged deletion of names from the revenue records was made in accordance with the consent and customary practice of the community, and that the appellant/plaintiff, being aware of the mutation, chose to remain silent for several decades, thus rendering her suit barred by limitation. The respondents also contend that the Trial Court rightly rejected the claim of declaration and partition, as no evidence was produced to show any prevailing custom or legal entitlement that could override the mutation entries. He would submit that the parties belong to the Binjhawar community, which is a Scheduled Tribe, and therefore the Hindu Succession Act is not applicable, succession being governed by local customary law. In support of his contention, learned counsel has placed reliance in the matter of *Smt. Butaki Bai & Others. v. Sukhbati & Others*, reported in *2014(3) CGLJ, 590*, and submits that it is a settled law that Adiwasi Daughter is not entitled to inherit property right. In view of the above, it is submitted that the impugned judgment is well-reasoned, legally sound, and does not warrant any interference by this Court.

6. I have heard learned counsel for the parties perused the impugned judgment.
7. It is required to be noticed that the present appeal arises out of a judgment and decree passed after full-fledged trial. The jurisdiction of this Court under Section 96 of the Code of Civil Procedure, 1908, though wide, is nonetheless circumscribed by well-settled principles. Interference with findings of fact recorded by the learned Trial Court is

permissible only when such findings are shown to be perverse, based on no evidence, or arrived at by misreading or ignoring material evidence on record. This Court does not sit as a court of re-trial to substitute its own view merely because another view is possible.

8. In his affidavit under Order 18 Rule 4, Jogeshwar Singh Bariha (DW-1) has categorically stated that all the parties belong to the Binjhar Scheduled Tribe and that they are not governed by the Hindu Succession Act. He further deposed that, as per the understanding prevalent in the community, daughters do not claim a share in the father's property during the lifetime of a son.
9. Likewise, Ramchandro Bariha (DW-2), Bideshi Bariha (DW-3) and Raidhar Bariha (DW-4) have consistently stated that the parties belong to the Binjhar Scheduled Tribe and are not governed by the Hindu Succession Act. Bideshi Bariha (DW-3), who is a priest of the Binjhar community, fairly admitted in cross-examination that no codified personal law or authoritative text exists in respect of the said community. However, such admission does not advance the case of the plaintiff, as the burden squarely lay upon her to establish a statutory or customary right entitling her to inheritance or partition, which she has failed to do.
10. Learned counsel for the respondents has rightly placed reliance upon the judgment of this Court in **Smt. Butaki Bai (supra)**, wherein this Court, while interpreting the scope and effect of Section 2(2) of the Hindu Succession Act, 1956, has categorically held that the provisions of the

said Act are not applicable to members of Scheduled Tribes unless it is specifically established that they have abandoned their customary law of succession and have become “Hindus out and out” or are “sufficiently Hinduised”. It was further held that, in the absence of such proof, a tribal daughter cannot claim inheritance merely by invoking the principles of Hindu law, and consequently, the suit for declaration and partition in that case was dismissed.

11. Applying the aforesaid principle to the facts of the present case, it is an admitted position that the parties belong to the Binjhwar Scheduled Tribe. The appellant/plaintiff has neither pleaded nor proved that the members of the said tribe have given up their customary mode of succession or that inheritance amongst them is governed by any School of Hindu Law. In the absence of such pleading or proof, the statutory exclusion contained in Section 2(2) of the Hindu Succession Act, 1956, squarely applies, and the appellant/plaintiff cannot claim any right of inheritance or partition under the said Act. The learned Trial Court has, therefore, rightly rejected the claim of the appellant/plaintiff, and the reliance placed on Butaki Bai fully supports the impugned judgment and decree, calling for no interference by this Court.
12. The core of the dispute thereafter centres around the mutation proceedings reflected in Mutation Register Serial Nos. 87 and 88 dated 25.11.1971, which came to be certified on 05.08.1972. The entire foundation of the plaintiff's claim rests upon the plea that the said mutation was illegal, collusive and non-binding, primarily on the ground

that the plaintiff and certain other heirs were minors at the relevant time and that the proceedings were allegedly conducted without notice, consent or inquiry. It is therefore evident that unless the plaintiff is able to successfully impeach the legality and binding nature of the mutation order dated 05.08.1972, the consequential reliefs of declaration of share and partition cannot be granted.

13. It is well settled that though mutation entries do not by themselves confer title, they carry a presumption of correctness so long as they remain unchallenged and are acted upon for a considerable length of time. In the present case, the mutation order has remained intact and operative for more than four decades prior to the institution of the suit in the year 2013.
14. The learned Trial Court has rightly observed that such long-standing revenue entries, which have governed possession and enjoyment of the land for several decades, cannot be lightly brushed aside on the basis of bald and unsubstantiated allegations. The plaintiff has failed to produce any contemporaneous material to show that the certifying authority acted without jurisdiction or in violation of mandatory procedure.
15. The plaintiff has heavily relied upon the plea that she was a minor at the time of mutation and that no consent was ever given on her behalf. However, mere minority at the relevant time does not, by itself, render a revenue entry void or *non est* in the eye of law. It was incumbent upon the plaintiff to establish that the mutation was obtained by fraud,

misrepresentation or suppression of material facts.

16. It is also significant to note that the plaintiff has nowhere pleaded or proved that she had appended her signature or thumb impression on the mutation proceedings culminating in the order dated 05.08.1972, nor has she led any evidence to show that any such signature or thumb impression was obtained fraudulently or without authority. The contemporaneous revenue record, particularly Exhibit P-5, only records her presence and acceptance of the mutual partition, which stands corroborated by her long, uninterrupted possession and enjoyment of the land allotted to her for more than four decades. In such circumstances, the absence of any specific proof regarding signatures or thumb impressions is wholly inconsequential, as consent, knowledge and acquiescence to the mutation proceedings stand sufficiently established from the record and subsequent conduct of the plaintiff.
17. From the perusal of the contemporaneous revenue record, particularly Mutation Register Nos. 87 to 90 and Exhibit P-5, it clearly emerges that the plaintiff was present at the time of the mutation and partition proceedings, which culminated in the order dated 05.08.1972, and that the said proceedings bear her endorsement by way of signature/thumb impression, as recorded by the certifying authority. The plaintiff has neither specifically denied the affixation of her signature or thumb impression on the said proceedings nor has she led any cogent evidence to establish that the same was forged, fabricated or obtained by fraud or

misrepresentation. In the absence of any such proof, a statutory presumption attaches to the correctness of official acts, and the mutation order must be held to have been passed with the knowledge, consent and participation of the plaintiff.

18. The Trial Court, upon careful scrutiny of the evidence, has recorded a finding that no reliable evidence has been adduced to prove that the thumb impressions or signatures affixed during mutation proceedings were forged or fabricated. Allegations of fraud, being serious in nature, require strict proof, which is conspicuously absent in the present case.
19. The conduct of the plaintiff assumes significance. The plaintiff admittedly remained silent for more than forty years and did not raise any objection either before the revenue authorities or before any competent forum. Such prolonged inaction militates against the plea of lack of knowledge.
20. On due appreciation of the evidence, it further emerges that the plaintiff's own deposition materially weakens her case. In her cross-examination, the plaintiff candidly admitted that she does not remember her date of birth or even her present age and was unable to state what age was mentioned in her affidavit, asserting that the same was written by her advocate as she is illiterate. She also expressed ignorance about the extent of land standing in her father's name as well as in the name of Defendant No. 2, Jogeshwar Bariha, and failed to give any definite particulars in this regard. Such admissions clearly belie her plea that she

was a minor at the relevant time of mutation proceedings in the years 1971–72 and that the proceedings were conducted behind her back. On the contrary, her inability to state basic facts relating to her age and property, coupled with her admissions regarding long, continuous possession and enjoyment of land allotted to her for about four decades, demonstrates that her challenge to the mutation and partition is an afterthought, lacking credibility and evidentiary support.

21. The explanation that the plaintiff came to know about the mutation only on 13.03.2013 has rightly been disbelieved by the learned Trial Court, particularly in view of the admitted fact that land was allotted to the plaintiff and she was in possession thereof. A person in possession and enjoyment of ancestral property cannot plausibly plead complete ignorance of the revenue status for decades.
22. The learned Trial Court has correctly held that the suit is hopelessly barred by limitation. A suit seeking declaration that a long-standing mutation order is void and non-binding squarely attracts the law of limitation. Once the cause of action had arisen in the year 1972, or at least when the plaintiff attained majority, the plaintiff was required to seek appropriate relief within the prescribed period.
23. Permitting such stale claims to be agitated after an inordinate delay would defeat the very object of the law of limitation, which is founded upon public policy and aims at ensuring certainty and finality in legal relations.

24. The defendants have consistently pleaded that the parties belong to a Scheduled Tribe community and that succession and partition are governed by customary law. Even otherwise, the burden squarely lay upon the plaintiff to prove her entitlement to a specific share in the ancestral property, either under statutory law or under established custom.
25. The learned Trial Court has recorded a clear finding that the plaintiff failed to prove any such prevailing custom or legal provision entitling her to the reliefs claimed. In the absence of proof of title or enforceable right, a decree for declaration or partition cannot be granted.
26. The contention that the revenue authorities lacked jurisdiction to pass the mutation order in respect of minors has also been rightly repelled. Mutation proceedings are fiscal in nature and do not decide title. Unless the mutation order is shown to be patently without jurisdiction or vitiated by fraud, the same cannot be ignored in collateral civil proceedings after decades.
27. While dismissing the suit, the Trial Court specifically found that the mutation order dated 05.08.1972 had attained finality and could not be assailed after an inordinate delay, rendering the suit barred by limitation. It was further held that even the plaintiff failed to prove any prevailing custom or legal entitlement warranting the relief of declaration or partition and, in the absence of proof of title, the reliefs claimed were not maintainable.

28. On a cumulative consideration of the entire material on record and considering the detailed analysis made by the learned trial Court, this Court is of the considered opinion that the learned Trial Court has meticulously examined the pleadings, framed appropriate issues and rendered findings based on evidence. The impugned judgment and decree neither suffers from perversity nor from any legal infirmity warranting interference.
29. The appellant has failed to make out any ground under Section 96 of the Code of Civil Procedure for reversal of the well-reasoned judgment and decree passed by the learned Trial Court.
30. Accordingly, the appeal fails and is hereby dismissed. The judgment and decree dated 23.12.2014 passed by the learned Additional District Judge, Sarangarh, District Raigarh (C.G.) in Civil Suit No. 09-A/2013 are affirmed.
31. A decree be drawn accordingly.

Sd/-

(BIBHU DATTA GURU)
JUDGE