



2026:CGHC:3534

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 7 of 2016**

Smt. Dulari Bai Wd/o Lakhan Lal Chouhan, Aged About 55 Years R/o Village Murmunda, Tahsil Dhamdha, District Durg Chhattisgarh.

Appellant**Versus**

1 - Shiv Singh Chouhan S/o Late Lakhanlal Chouhan, Aged About 35 Years R/o Village Murmunda, Tahsil Dhamdha, District Durg Chhattisgarh.

2 - Ajit Singh S/o Late Lakhanlal Chouhan, Aged About 32 Years R/o Village Murmunda, Tahsil Dhamdha, District Durg Chhattisgarh.

3 - Vijay Singh S/o Late Lakhanlal Chouhan, Aged About 33 Years R/o Village Murmunda, Tahsil Dhamdha, District Durg Chhattisgarh.

4 - Smt. Nirmala Bai D/o Late Lakhanlal Chouhan, Aged About 40 Years R/o Village Rampura, Tahsil And District Bemetara Chhattisgarh, District : Bemetara, Chhattisgarh

5 - Smt. Ramkali @ Urvashi D/o Late Lakhanlal Chouhan, Aged About 39 Years W/o Shri Giteshwar Singh Chouhan, R/o Village Kurud, Tahsil And District Durg Chhattisgarh.

6 - Smt. Rekha D/o Late Lakhanlal Chouhan, Aged About 36 Years W/o Shri Ramji Chouhan, R/o Village Lakholi, Tahsil And District Rajnandgaon Chhattisgarh.

7 - Smt. Sunita D/o Late Lakhanlal Chouhan, Aged About 32 Years W/o Shri Manohar Singh Chouhan, R/o Village Lawan, Tahsil And District Balodabazar Chhattisgarh.

8 - The Collector Through Tahsildar, Dhamdha, District Durg Chhattisgarh



... Respondent(s)

(Cause title taken from CIS)

For Appellant : Shri Avinash Chand Sahu, with Shri Amit Nayak, Advocates.

For Respondent(s) Nos. 1 to 7 : Shri Sanjay Kumar Agrawal, Advocate.

For Respondent No. 8. : Shri Lekhram Dhruv, Panel Lawyer.

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

21.01.2026

1. By the present appeal under Section 100 of the CPC, the appellant/defendant is challenging the impugned judgment and decree dated 16.11.2015 passed by the Learned VI Additional District Judge, Durg District Durg (C.G.) in Civil Appeal No. 00032A/2014 (Dulari Bai vs. Shiv Singh Chouhan & Others) arising out of the judgment and decree dated 15.05.2014 passed by the learned IX Civil Judge, Class-II, Durg, District Durg (C.G.) in Civil Suit No. 03-A/2013 (Shiv Singh & Others v. Dulari Bai) by which the Civil Suit filed by the plaintiff was allowed, whereby the Appellate Court dismissed the appeal filed by the appellant/defendant. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
2. The plaintiffs instituted a civil suit seeking declaration of title and permanent injunction, pleading that the land situated at Village Murmunda, Patwari Halka No. 40, Revenue Circle Ahivara, Tahsil Dhamdha, District Durg (Chhattisgarh), bearing Khasra Nos. 416, 818/1 and 895, admeasuring 0.050, 0.030 and 0.080 hectares respectively, is



the ancestral property of the plaintiffs' father, Late Shri Lakhan Lal. It was pleaded that the plaintiffs' mother, Smt. Padmin Bai, wife of Late Shri Lakhan Lal, expired on 25.11.2001, and thereafter Late Shri Lakhan Lal expired on 18.08.2003 and after his death, with the consent of Plaintiff Nos. 04 to 07, the names of Plaintiff Nos. 01 to 03 were recorded in the revenue records. However, due to an inadvertent clerical error, the name of Defendant No. 01 was wrongly recorded as the wife of Late Shri Lakhan Lal and as a co-bhumiswami along with Plaintiff Nos. 01 to 03. It was alleged that Defendant No. 01 thereafter filed an application dated 12.06.2008 before the Naib Tahsildar, Ahivara, seeking partition of the suit land and separation of accounts, which was opposed by Plaintiff Nos. 01 to 03. It was further averred that the Tahsildar, by order dated 20.09.2010, directed the parties to get the question of title adjudicated by a competent civil court and stayed the revenue proceedings for a period of three months, which compelled the plaintiffs to institute the present civil suit.

3. The appellant/defendant, while denying the averments made by the plaintiffs in the plaint, has pleaded that Defendant is the widow of late Lakhan Lal and, her name being recorded as a joint owner and co-sharer in respect of the suit land, she is also in cultivating possession thereof. On the basis of an application submitted by her before the Tehsildar, proceedings for partition of account (khata) have been initiated by the Revenue Court. About 30 years ago, late Lakhan Lal, on the basis of oral consent given by his wife Padmin Bai, had married Plaintiff No. 1 according to social customs and traditions under the Chudi practice and



made her as his wife. The first wife of Lakhan Lal, Padmin Bai, was also made a wife under the Chudi practice. The name of Defendant No. 1 is recorded as the widow of late Lakhan Lal in all revenue records, and Gram Panchayat records.

4. After appreciating the evidence available on record and after framing the issues, the learned trial Court by the judgment and decree dated 15.05.2014 allowed the suit of the plaintiffs holding that Padmini Bai is the legally wedded wife of Lakhanlal whereas Dulari Bai is the legally wedded wife of Shivprasad and when Lakhanlal performed marriage with Dulari Bai, by adopting Chudi Pratha, her first husband Ramprasad was alive and even Padmini Bai who is the wife of Lakhan Lal was also alive and as such Chudi marriage between Lakhanlal and Dulari Bai is contrary to the provisions of Section 5(i) of the Hindu Marriage Act, 1955. Against the said judgment, the defendant filed an appeal before the learned first Appellate Court, which has been dismissed by the impugned judgment and decree. Thus, this appeal by the defendant.
5. Learned counsel for the appellant would submit that the appellant/defendant is the widow of Late Lakhan Lal Chouhan and, as such, is entitled to a share in the suit property. It is further submitted that the appellant has been in continuous possession of the suit land, which fact has been admitted by the plaintiff before the revenue authorities. Therefore, on the principle of estoppel, as embodied under Section 114 of the Indian Evidence Act, the plaintiff is not entitled to take a stand contrary to such admission, particularly in respect of title. Consequently, the judgment and decree passed by the learned Trial Court are bad in



law. Learned counsel would further submit that it is borne out from the record that the appellant/defendant was the legally wedded wife of Late Lakhan Lal Chouhan, the marriage having been solemnized in accordance with the customary practice of Chudi Pratha. Hence, the appellant is entitled to succeed to the property of Late Lakhan Lal Chouhan.

6. I have heard learned counsel for the appellants, perused the material available on record.
7. The present Second Appeal has been preferred under Section 100 of the Code of Civil Procedure, 1908. The appellant seeks to assail the concurrent findings recorded by the learned Trial Court and the learned First Appellate Court holding that the appellant/defendant, Dulari Bai, was not the legally wedded wife of Late Lakhan Lal Chouhan and, consequently, is not entitled to any right of succession in respect of the suit property. The appellant has also sought to set up a claim of possession over the suit land on the basis of revenue entries and alleged admissions before the revenue authorities. However, the substantial question sought to be projected in the present Second Appeal essentially relates to the correctness of the finding regarding the marital status of the appellant and the validity of the alleged customary “Chudi Pratha” marriage, both of which stand concluded by concurrent findings of fact recorded by the courts.
8. It is well settled that a Second Appeal lies only on a substantial question of law. Findings of fact concurrently recorded by the courts below are ordinarily final and cannot be interfered with unless such findings are



shown to be perverse, based on no evidence, arrived at by misreading of material evidence, or recorded by applying incorrect legal principles.

9. On careful examination of the judgments of both the Courts below and the evidence available on record, this Court finds that the learned Trial Court as well as the learned First Appellate Court have recorded categorical findings of fact that Padmin Bai was the legally wedded wife of Late Lakhan Lal Chouhan and that the appellant/defendant, Dulari Bai, was the legally wedded wife of Shivprasad. Both the courts have further held that at the time when the appellant allegedly entered into a marriage with Lakhan Lal Chouhan by adopting the customary practice of Chudi Pratha, her first husband was alive.

10. Sections 5(i) and 11 of the Hindu Marriage Act, 1955 provide as under:

5. Conditions for a Hindu marriage.-- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely;--

(i) neither party has a spouse living at the time of the marriage;

xxx xxx xxx

11. Void marriages.--Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

11. The Supreme Court, in ***Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav & Anr., (1988) 1 SCC 530***, while examining the status of a Hindu woman marrying a Hindu male having a living spouse, has



categorically held that for appreciating the validity of such a marriage, the provisions of the Act, 1955 must prevail. Interpreting Sections 5(i) and 11 of the Act, the Supreme Court observed that a lawful Hindu marriage necessarily requires that neither party should have a spouse living at the time of the marriage, and that a marriage solemnised in contravention of this condition is null and void. The Supreme Court further rejected the contention that such a marriage could be recognised on the basis of prior Hindu law or custom, holding that by virtue of the overriding effect of Section 4 of the Act, no aid can be taken of any custom or usage inconsistent with the provisions of the Act. It was further clarified that such marriages do not fall under Section 12 of the Act, as marriages covered by Section 11 are void ipso jure, that is, void from the very inception, and are required to be ignored as not existing in law at all, even without a prior decree of nullity. The Supreme Court ultimately held that the marriage of a woman with a man having a living spouse is a complete nullity in the eyes of law and does not confer any legal status upon her. It is an admitted fact that at the time of the alleged customary marriage by adoption of Chudi Pratha between the appellant/defendant, Dulari Bai, and Late Lakhan Lal Chouhan, the first husband of the appellant was alive.

12. Mere assertion of a “Chudi” marriage or evidence of cohabitation cannot convert a marriage, which is otherwise void under law, into a valid one. The learned Trial Court has found that the first husband of the appellant, Dulari Bai, was alive at the relevant time when she allegedly performed customary marriage by following the Chudi Pratha with Late Lakhan Lal



Chouhan. This finding is decisive. In view of the conditions enumerated in Sections 5(i) and 11 of the Hindu Marriage Act, 1955, it is held that since the first husband of the appellant was alive, the alleged subsequent customary marriage by adopting Chudi Pratha with Late Lakhan Lal Chouhan is not acceptable in the eyes of law and is void ab initio.

13. The Supreme Court in the matter of ***Ratnagiri nagar Parishad v. Gangaram Narayan Ambekar and Others***, reported in (2020) 7 SCC 275 held thus:

“18. Be that as it may, on a fair reading of the judgment of the trial court, it is manifest that the trial court had opined that the plaintiffs failed to substantiate the case set out in the plaint regarding the actionable nuisance. The trial court justly analysed the evidence of the plaintiffs in the first place to answer the controversy before it. The first appellate court, however, after adverting to the oral and documentary evidence produced by the parties, proceeded to first find fault with the evidence of the defendants to answer the controversy in favour of the plaintiffs. The first appellate court committed palpable error in not keeping in mind that the initial burden of proof was on the plaintiffs to substantiate their cause for actionable nuisance, which they had failed to discharge. In such a case, the weakness in the defence cannot be the basis to grant relief to the plaintiffs and to shift the burden on the defendants, as the case may be. Thus understood, the findings and conclusions reached by the first appellate court will be of no avail to the plaintiffs.”

14. The Delhi High Court in the matter of ***Sushma v. Rattan Deep and Anr.*** reported in 2025 SCC OnLine Del 8663 held thus at para 17:-



“17. One of the ways to prove the custom is reference to any text or interpretation of Hindu Law or uses for long period of time. Once the Court is called upon to declare that there exists a custom which is contrary to the codified law, the burden of proof is heavy upon the party asserting custom.....”

15. The legal position governing such a dispute is no longer res integra. Sections 5(i) and 11 of the Hindu Marriage Act, 1955 clearly mandate that a Hindu marriage is valid only if neither party has a spouse living at the time of marriage, and a marriage solemnised in contravention of this condition is void ab initio.
16. The burden to plead and strictly prove a customary marriage, especially a custom permitting remarriage during the subsistence of a prior marriage, squarely lies on the person asserting such custom. In the present case, except for bald assertions regarding Chudi Pratha, no cogent evidence has been brought on record to establish the existence, continuity, certainty, or legal permissibility of any such custom overriding the statutory mandate of the Act, 1955.
17. In view of the aforesaid settled position of law, the concurrent finding recorded by the courts below that the alleged Chudi marriage between the appellant and Late Lakhan Lal Chouhan was void cannot be said to be erroneous, much less perverse.
18. The submission of the learned counsel for the appellant that the appellant was in possession of the suit land and, therefore, entitled to protection of her rights is also devoid of merit. Both the courts below have concurrently held that the appellant failed to establish any lawful right,



title or interest in the suit property. Possession, even if assumed, when not referable to a lawful title, does not confer any legal right to succession or ownership, particularly when the very foundation of such claim is based on a void marriage.

19. The submission of the learned counsel for the appellant that the appellant was in possession of the suit land and, therefore, entitled to protection of her rights is also devoid of merit. Both the courts below have concurrently held that the appellant failed to establish any lawful right, title or interest in the suit property. Possession, even if assumed, when not referable to a lawful title, does not confer any legal right to succession or ownership, particularly when the very foundation of such claim is based on a void marriage.
20. The reliance placed by the appellant on revenue entries and alleged admissions before the revenue authorities is equally misconceived. It is well settled that revenue records are maintained for fiscal purposes and do not confer title. Such entries cannot determine marital status nor can they override the substantive provisions of personal law governing marriage and succession.
21. The plea of estoppel raised on behalf of the appellant also deserves rejection. Estoppel cannot operate against statute. When the law declares a marriage void, no amount of acquiescence, admission, possession, or revenue entry can clothe such a relationship with legal validity or create rights contrary to statutory provisions.
22. This Court finds that the appellant is essentially seeking re-appreciation



of evidence and reassessment of factual findings under the guise of raising a question of law, which is impermissible in a Second Appeal. No substantial question of law, as contemplated under Section 100 of the CPC, arises for consideration in the present appeal.

23. In *State of Rajasthan and others v. Shiv Dayal and another, reported in (2019) 8 SCC 637*, the Supreme Court, while reiterating the settled proposition of law, has held that when concurrent findings of fact are assailed in a Second Appeal, interference is permissible only if the appellant is able to demonstrate that such findings are vitiated in law, having been recorded de hors the pleadings, based on misreading of material documentary evidence, recorded in contravention of any statutory provision, or are such which no judicially acting court could reasonably have arrived at.
24. Be that as it may, the arguments advanced by the learned counsel for the appellant and the questions sought to be projected cannot be regarded as satisfying the test of a “substantial question of law” within the meaning of Section 100 of the Code of Civil Procedure, 1908. The issues raised are essentially questions of fact, already concurrently decided by both the courts upon due appreciation of evidence. The appellant has failed to demonstrate the existence of any substantial question of law warranting interference by this Court.
25. The findings recorded by the learned Trial Court and affirmed by the learned First Appellate Court are based on proper appreciation of evidence and correct application of settled principles of Hindu law. This Court does not find any perversity, illegality, or jurisdictional error



2026:CGHC:3534

warranting interference.

26. Accordingly, the Second Appeal fails and is hereby **dismissed**.

Sd/-

(Bibhu Datta Guru)
Judge

Rahul/Shoaib