

**Sukh Pal (deceased) through LRs vs.
Chhodup Cherring and others.**

**CMP No.10998 of 2018
in RSA No.211 of 2007**

Reserved on 07.08.2023

Decided on 24.08.2023

24.08.2023 Present: Mr. K.D. Sood, Senior Advocate, along with Mr.Sanjeev Sood and Mr. Rahul Gathania, Advocates, for the appellants.,

Mr.Bhupender Gupta, Senior Advocate with Mr.Neeraj Gupta, Sr. Advocate, Mr.Janesh Gupta and Mr.Vedant Ranta, Advocates, for respondents No.1(c), 1(h), 2, 3(b) to 3(e) and 4 to 7.

CMP No.10998 of 2018

The present application has been filed for framing additional substantial questions of law in the appeal. It is asserted that the case of the plaintiff was that parties belong to tribal areas in District Kinnaur and they are governed by customary law of the area. The provisions of the Hindu Succession Act do not apply to females. The inheritance goes to the brother and not to the son and widow under the customary law of the area recorded in the Wazib-ul-arz. The widow or the mother does not acquire absolute rights in the property inherited by them. They acquire a life interest and do not

have a right to transfer the same. The inheritance went to the brothers of Nardass after his death. The mutation of inheritance of Nardass, Will executed by Smt. Palkit and the consequential mutations attested in favour of the defendant were challenged. It was admitted in the written statement that parties belong to tribal areas. It was asserted that a partition had taken place between the son of Khusuk in the year 1999. Smt. Palkit had a right to bequeath the property and she has executed a valid Will. The estate held by Smt. Palkit was not a limited estate. Both the Courts below decreed the suit of the plaintiff. This Court delivered a judgment titled *Bahadur v. Bratiya*, 2015 SCC OnLine HP 1555= AIR 2016 HP 58 = 2015 (3) HLR 1752, settling the legal position. Therefore, the following additional substantial questions of law arise for consideration:

“1. Whether females in the tribal areas in the State of Himachal Pradesh inherit the property in accordance with Hindu Succession Act and not under custom and usage and thus Smt. Palkit had become full owner of the property and was entitled to bequeath the same to the appellant?

2. Whether in the custom that Smt. Palkit had only a life estate and she had no right to sell, transfer and encumber the property?

3. Whether the custom stands abrogated and that Palkit had become a full owner of the property and as such was entitled to bequeath the property in accordance with Hindu Succession Act and Hindu Succession Act?”

2. These questions are important substantial questions of law and they deserve to be framed as additional substantial questions of law.

3. The application is opposed by filing a reply. It was asserted that the judgment passed by this Court was stayed by the Hon'ble Supreme Court of India on 04.04.2016. In the present case, the Will was declared null and void. Applicants cannot derive any benefit from the same. The additional substantial questions of law proposed to be framed do not arise for consideration in the present case. There is no necessity to frame the substantial questions of law; hence, it was prayed that this application be dismissed.

4. I have heard Sh. K.D. Sood learned Senior Advocate, assisted by Sh. Sanjeev Sood and Sh. Rahul

Gathania, Advocates, for the applicants and Sh. Bhupender Gupta, learned Senior Advocate, Sh. Neeraj Gupta learned Senior Advocate assisted by Sh. Janesh Gupta and Sh. Vedant Ranta, learned counsel for the respondents.

5. Sh. K.D. Sood, learned Senior Advocate for the applicants submitted that it was held by this Court in *Bahadur v. Bratiya, RSA No.8 of 2008 decided on 23.06.2015 2015 SCC OnLine HP 1555 = AIR 2016 HP 58*, that the custom regulating the tribal areas providing that a female would get a limited estate is contrary to the provisions of Hindu Succession Act and the female inherits the property as absolute owner. The same dispute is pending before this Court in the present litigation. Hence, it has become necessary to frame additional substantial questions of law keeping in view the pronouncement of the law laid down by this Court. He has also relied upon the judgment delivered in *Pradeep Chand Sharma v. Budhi Devi, 2017 SCC OnLine HP 1911 = AIR 2017 HP 73*.

6. Sh. Bhupender Gupta learned Senior Advocate submitted that the operation of the judgment of this Court in RSA No. 8 of 2003 was stayed by the Hon'ble Supreme Court in *Nawang and another versus Bahadur and others in SLP (Civil) No.41242 of 2015 on 04.04.2016*. Therefore, it is not permissible to frame the additional substantial questions of law based on the judgment delivered by this Court.

7. I have given considerable thought to the rival submissions at the bar and have gone through the records carefully.

8. The additional substantial questions of law are sought to be framed based on the judgment delivered by this Court in *Bahadur's case (supra)*. An appeal was filed against the judgment passed by this court and the Hon'ble Supreme Court of India was pleased to stay the same in *Nawang's case (supra)* regarding the persons who were not parties to the lis. It was ordered:

“The observations made by the High Court in respect of persons who were not parties before it and were not also parties to the

decree challenged before the High Court shall remain stayed.”

9. Revenue authorities were restrained from attesting mutation based on the judgment in *Bahadur (supra)* vide order dated 076.04.2017 passed in *Nawang (supra)*. It was ordered:

“We make it clear that in view of the interim order of this Court, it is not open for the Revenue Authority to decide any question on mutation or change of revenue records based on the impugned order of the High Court.”

10. It is apparent from the order passed by the Hon’ble Supreme Court that the observations made by this Court regarding the females located in tribal areas that they will inherit the property as per the Hindu Succession Act and not as per the customs, have been stayed. Therefore, it is not permissible for this Court to hold that the custom stands abrogated and the succession would be governed by the Hindu Succession Act. Doing so will amount to applying the judgment to the females located in the tribal area despite the stay order issued by the Hon’ble Supreme Court.

11. It was submitted that this Court had again laid down the same position in *Pardeep Chand Sharma (supra)* and there is no impediment in holding that the females inherit the property as full owners. This Court had held in Para 34 of *Pardeep Chand Sharma's case (supra)* as under:

“36. This question is no longer resintegra in view of the judgment rendered by a co-ordinate Bench (Justice Rajiv Sharma, J.) in *Bahadur v. Bratiya and others, AIR 2016 (HP) 58* wherein it was categorically held that custom providing that the daughters will not inherit the property will be in derogation of the provision of Hindu Succession Act and cannot be recognised. It was further held that such custom would be in violation of Article 15 of the Constitution of India.”

12. It is apparent from the observations made by this Court that it had relied upon the judgment of *Bahadur Singh (supra)* without any further discussion. It appears that the order passed by Hon'ble the Supreme Court on 04.04.2016 was not brought to the notice of this Court, as there is no reference to the same. When the observations have been stayed by the Hon'ble Supreme Court of India, it is not permissible to follow

the judgment in *Bahadur Singh's case (supra)* and *Pardeep Chand Sharma's case (supra)*.

13. It is undisputed that the additional substantial questions of law sought to be framed by filing the present application would not have arisen but for the judgment delivered by this Court in *Bahadur's case (supra)*. As already stated, the judgment of this Court in *Bahadur's case (supra)* has been stayed by Hon'ble the Supreme Court and the additional substantial questions of law sought to be framed by filing the present application cannot be so framed; hence, this application is dismissed.

RSA No.211 of 2007

List the RSA for hearing in due course.

(Rakesh Kainthla)
Judge

August, 24th 2023
(pathania)