

Second Appeal No.104 of 2001

[Against the judgment and decree dated 19.07.2001, decree signed on 31.07.2001 passed by learned District Judge, Gumla whereby and whereunder the judgment and decree passed by learned trial court in Title Suit No.02 of 1989 has been set aside]

1 (a) Gondauri Devi W/o late Dibru Oraon, R/o village-Puso, P.O., P.S.-Puso, Dist.-Gumla

2 (a) Soma Oraon

2 (b) Tembu Oraon, both son of late Lalu Oraon R/o vill. P.O., P.S.-Puso, District-Gumla

.... Appellants/Plaintiffs
Versus

1. Mangra Oraon

2. Jhirgi Orain, wife of Birsu Oraon

3. Nandu Oraon

4. Pandri Orain, minor son and daughter of Birsu Oraon, represented through their mother Jhirgi Orain

5. Bhandna Oraon

6. Charwa Oraon

7. Marwari Oraon, all sons of late Ghasic Oraon

8. Sukra Oraon, Gandura Oraon

All residents of village-Puso, P.S.-Sisai, District-Gumla

.... Defendants/Respondents

9. Deputy Commissioner, Gumla

.... Defendant/Respondent

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

For the Appellant : Mr. Arun Kumar, Advocate

For the Respondents : Mr. Om Prakash Singh, Advocate

Mr. Praveen Akhouri, SC Mines-I

Mr. Diva Kant Roy, AC to SC Mines-I

CAV On 02/07/2025

Pronounced On 10 / 07 / 2025

1. Heard the arguments of learned counsel for the appellants and learned counsel for the respondents.

2. The instant second appeal has been preferred against the judgment and decree dated 19.07.2001, (decree signed on 31.07.2001) passed by learned District Judge, Gumla in Title Appeal No.25 of 1995 whereby and whereunder allowing the Title Appeal, the judgment and decree passed by learned trial court in Title Suit No.02 of 1989 has been set aside.
3. The factual matrix giving rise to this appeal is that the father of appellants (original plaintiffs) had filed the suit for adjudication for his right, title and interest over the suit land and khas possession by evicting the defendants therefrom. Further, the order passed by S.D.O. in S.A.R. Case No.70 of 1987/88 dated 26.10.1987 be declared null, void, inoperative, illegal and not binding upon the plaintiffs/appellants.

It is alleged that the suit property pertaining to Khata No.105, Plot No. 180, area 1.15 acres and Plot No.182/1611, area 0.18 acres and land pertaining to Khata No.20, Plot No.182/1601, area 0.31 acres, total area 1.64 acres were recorded in the name of Gandura Oraon in revisional survey. Gandura Oraon has a son Budhuwa Oraon and a daughter, Jhari Orain and Budhuwa Oraon died during lifetime of his father, Gandura Oraon. Thereafter, Gandura Oraon got solemnized marriage of his daughter, Jhari Orain with Royon Oraon in form of ghar-damad

and Jhari Orain and Royon Oraon had started living in the house of Gandura Oraon. After the death of Gandura Oraon, the land was mutated in the name of Jhari Orain after her death, the plaintiffs have succeeded the suit land. It is further alleged that the defendants without having any right, title and interest over the suit land dispossessed the plaintiffs from the land in question and the plaintiffs filed a S.A.R. case, which was also dismissed by S.D.O., Gumla on 26.10.1987.

4. The defendants/respondents appeared and filed their written statement wherein, it is admitted that the suit land was recorded in the name of Gandura Oraon, who has one son and one daughter namely Budhuwa Oraon and Jhari Orain. The specific case of the defendants is that Budhuwa Oraon died after the death of this father Gandura Oraon, hence, no question of adopting Royon Oraon arises. It is further stated that after the death of Gandura Oraon, his nephew Budhuwa has come into possession over the land and got mutated in his name and after his death the defendants came into possession over the land in question.
5. On the basis of pleadings of the parties, apart from the other issues, the following main issues for adjudication were settled by learned trial court.

Issue No.5 Had Gandura Oraon (the recorded tenant) adopted Royon Oraon and Jhari Orain living in the house of Gandura Oraon after their marriage and cultivating the suit lands?

Issue No.6 Have the plaintiffs got their right and title over the suit lands? If so are they entitled to get the delivery of khass possession as alleged?

Issue No.7 Is the order passed by S.D.O., Gumla in S.A.R. Case No.70/87-88 dated 26.10.1987 legal, valid and binding upon the plaintiffs?

6. Learned trial court after apprising and appreciating the oral as well as documentary evidence adduced in this case by the parties and pleader commissioner's report found that the defendant No.1 Mangra Oraon (D.W.10) has deposed in his evidence that the Gandura Oraon has one son, Budhuwa Oraon and one daughter Jhari Orain, Jhari Orain was married with Royon Oraon but not in the form of ghardamad and they never came into possession over the suit land. However, he further deposed in his cross-examination that Gandura Oraon died 30-35 years before and his son Budhuwa Oraon died much before at the time of Jamindari. Therefore, learned trial court found that the defendant himself has admitted the ghardamand in form of

marriage of Jhari Oraon with Royon Oraon and Gandura Oraon's son Budhuwa Oraon pre-deceased him. This witness has also admitted at para 10 of the evidence that the house of Gandura Oraon is in possession of Dibru Oraon as such the defendant himself has supported the case of the plaintiff. Accordingly the above issues were decided in favour of the plaintiffs/appellants and suit was decreed.

7. Learned appellate court reversed the judgment and decree passed by the learned trial court and dismissed the suit of the plaintiffs/appellants.
8. The plaintiffs/appellants have filed this second appeal wherein vide order dated 03.09.2004 following substantial question of law has been formulated:

"Whether the lower appellate Court has erroneously set aside the judgment and decree of the trial court observing that the claim of Ghar-damad of Royan Uraon could not be proved, for he did not get his name mutated in the record with respect to the suit land?"

9. Learned counsel for the appellant pressing the aforesaid substantial question of law has submitted the learned first appellate court has ignored the clear cut evidence of contesting defendant as regards Ghar-damad form of marriage with Jhari

Oraon and Royon Oraon and also the fact that the son of recorded Raiyati, Budhuwa Oraon pre-deceased father of Gandura Oraon. As such under Oraon customary law, the suit property was inherited by them and succeeded by the plaintiff and the house of the deceased Gandura Oraon is still found in possession of the plaintiffs/appellants. It is further submitted that merely by reason of mutation in the name of Jhari Oraon, after death of her father does not divest her from the property, which has been legally acquired as per customary law of Oraon Community. The title of the appellant cannot be doubted as per admitted facts and there is no case of defendant of adverse possession. Therefore, learned appellate court has erred in reversing the judgment of the trial court without meeting of the reason assigned by the learned trial court while decreeing the suit. Learned first appellate court has further committed serious illegality by giving weightage to the mutation, which does not transfer right, title and interest to any of the parties and arrived at wrong conclusion. It is further submitted that when the title of the appellants has been proved beyond doubt then he is entitled for possession unless the possession of other party become adverse to him and defendant has never got adverse possession perfected into his title. Therefore, the impugned judgement and

decree passed by the learned first appellate court is fit to be set aside allowing this appeal.

10. Learned counsel for the appellants has placed reliance upon the reported judgment in *Budhu Oraon and Biras Mani Minz & Ors. (2002) (1) JCR 178 (Jhrkhand)*.

11. *Per contra*, learned counsel for the respondent has vehemently opposed the aforesaid contentions raised on behalf of the appellants and submitted that learned appellate court has very wisely and aptly apprised and appreciated the evidence adduced by the parties before the trial court and assigning very valid reasons for not concurring with the judgment of learned trial court has arrived at definite findings that the decree passed in favour of the plaintiff is absolutely illegal and not sustainable under law, therefore, allowed the appeal dismissing the suit of the plaintiff. The points and reasons pointed out by the appellants were not sustainable and there is no requirement of any interference in the impugned judgment and decree passed by the learned first appellate court. This appeal has no merits and fit to be dismissed with cost.

12. It is yet another case pertaining to “**Gender Discrimination**” of a tribal woman in matter of succession since the provisions of Hindu Succession Act, 1956 are not applicable to the members of

Schedule Tribe by virtue of Section 2(2) of said act. Therefore, the tribal community is still governed by way of own customary law which recognized reversionary right of the agnates excluding the wife and daughter from inheritance. A custom is also prevailing in the form of "Ghar-Damad" or "Ghar-Jamai" form of marriage of the daughter as discussed in the case of *Budhu Oraon and Biras Mani Minz & Ors. (2002) (1) JCR 178 (Jhrkhand)* relied upon by learned counsel for the appellants/plaintiffs, wherein it has been held as under:

11. "According to custom of Oraon community if the last male owner left a son less widow, such widow may have a Ghardamad selected either by her late husband or by herself on the death of her husband. In Orain community, if there was no male issue or adopted son, a person could have been adopted as Ghardamad into the house as a prospective son-in-law by the last male owner or even by his widow. A Ghardamad is required to live at the house of his father-in-law before and after the marriage to look after the works of his father-in-law and he gets the property of his father-in-law only after the death of his father-in-law and mother-in-law. For the aforesaid proposition reference may be made to the book "Oraons of Chotanagpur" written by Sri Sarat Chandra Roy."

13. The Hon'ble Apex Court as well as the Social Welfare Scholars and Researchers have expressed their concern to curve out the above vices in the matter of inheritance by the tribal women including daughters and set as at par with the provision of

Hindu Succession Act, which recognizes the equal right of inheritance to the widow and daughters of intestate.

14. In the case of *Haradhan Murmu and Anr.. Vs. The State of Jharkhand and Ors* passed in W.P.(C) No.186 of 2011 vide order dated 07th September, 2018, the Single Bench of this Court has discussed the issue of “Ghar-Jamai” form of marriage of daughter and their right of succession of the property of father has been discussed. It is also discussed that in the Santhal Pargana Tribal Community, Gantzer’s Survey Settlement Report was published. The relevant extract of the same is as under:

“Santhal Tribal Law of Inheritance.- “According to Santhal tribal law only males can inherit land. Sons jointly succeed their father. If brothers are co-sharer in a holding and one brother dies without issue, the surviving brothers and the sons of pre-deceased brothers inherit his share per stirpes. The Hindu and Muhammadan laws of succession do not apply to Santhals. Santhal tribal law is quite definite in not allowing females to inheritance but this law is gradually undergoing a change and the situation created by this change is discussed in a separate paragraph below. According to tribal custom it is permissible for a man with daughters and no sons to take a son-in-law into his house as a ghar-jamai is a formal proceeding leaving no room for doubt as to the father-in law’s intention and resulting in the ghar-jamai cutting off all connections with his own family as far as his rights to property are concerned and becoming to all intents and purposes the son of his father-in-law. When such adoption has been formally made, the ghar-jamai can succeed as a son and oust

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other male relatives. It is of importance to note that a ghar-jamai can be adopted only by a deliberate public act in the presence of the village community at the time of the marriage, and that according to tribal law a father-in-law cannot at a later stage convert an ordinary son-in-law into a ghar-jamai. In both cases the bridal party goes from the bride's house to fetch the prospective husband and no dowry (pon) is given, but whereas the ghar-jamai is adopted permanently as a son, a ghardi jamai merely lives and labours in his wife's home for a previously stipulated period which may extend up to five years. He thereby works off the debt due on account of the non-payment of pon. A ghardijamai is not entitled to get anything from his wife's family, but the woman herself is usually given a small present (arpa) annually at the harvest season and this is utilized for setting up her new home. At the expiry of the stipulated period, the ghardi-jamai is free and may return to his own home with his wife.

When a ghar-jamai has succeeded to his father-in-law's estate the holding has usually been recorded in his sole name. In some cases, at the request of the parties, the wife has been jointly recorded with her husband.

The rules against female succession among Santhals whether Christian or non-Christian are changing owing to the force of public opinion, and the rules which have been previously accepted, cannot be treated as hard and fast and binding for all time. The change which is occurring is in the direction of ameliorating the condition of women and giving them a more assured footing in the family. During the course of the revision of settlement operations the daughters of a deceased Santhal have sometimes been recorded as his heirs not only without opposition from the agnates but at their request. In other cases it appears from title suit decisions, that arbitrators in Santhal cases have found in favour of daughters. This is particularly so in the case of girls who suffer from any physical defects.

In dealing with cases of this nature the custom adopted in a particular locality must be carefully considered. It would be unwise to force upon an unwilling litigant a decision in advance of custom. If a change in custom has been well established and generally accepted it will, of course, be treated as the customary law of the locality in mitigation of the harshness of the ancient tribal law.

As a rule we have tried as far as we could legally do so, to record daughters in all cases where not to do so would have involved real hardship, e.g. where the male relations not only want to claim the land but refuse to maintain the girl. Where close male relations, who obviously have a clear right under the law, have been suspected to be likely to desert the girl, we have recorded them, but have also endeavoured to record the girl in the remarks column of the khatian as khorposhdar until death or marriage.

As regards, widows, the entries have had perforce to be even less uniform. There have been not a few cases in which no objection has been raised to be recording of the widow in her own right, and in such cases she has been described as wife of so and so. As in the case of Hindu widows, this entry is intended to indicate that she has inherited the property from her late husband, and that when she dies it will revert to those male relations who would ordinarily have inherited it at once under Santhal law. In other cases the widow has like the daughter been recorded only in the remarks column as a khorposhdar for certain plots sufficient to maintain her, until her death.

To sum up it may be said that where a Santhal woman has been recorded as wife of so and so, she holds a widow's right as if she were a Hindu widow. Where a Santhal woman has been recorded as daughter of so and so, she may be taken to have full rights of inheritance somewhat in the manner of a woman inheriting stridhan property under the Hindu law. The question of succession in such cases is still somewhat

in doubt as the system is so new, but there seems little doubt that if she dies issueless, Santhal sentiment would prefer that the property should revert to her nearest male relatives."

15. Now a days, discrimination in succession right of female based on customs prevailed in vogue, led violence and oppression of women in the State of Jharkhand, irrespective of customary protection to a limited extent recognized to such women.
16. Now reverting back to the main substantial question of law involved in this appeal, it is clear that this appeal is based upon reversal of the findings of learned trial court that father of the plaintiff, Royon Oraon was married with the mother of the plaintiff, Jhari Orain in the form of ghar-damad. Moreover, there was no mutation in the record of rights in the name of either Jhari Orain or Royon Oraon and the rent receipts were issued without prejudice. Learned appellate court also found that the son of recorded raiyat, Gandura Oraon died leaving behind his son, Budhuwa Oraon alive. Therefore, no question of inheritance through ghar-jamai form of marriage arises.
17. I have gone through the judgment of learned trial court as well as the appellate court in the light of rival submission of the parties, it appears that learned trial court in a threadbare manner has apprised and appreciated the oral as well as documentary evidence adduced by the parties and the learned appellate court

has formulated a single point for determination, which was challenged in the first appeal **“As to whether the recorded tenant Gandura Oraon has adopted Royon Oraon as his ghar-damad as per custom prevailing in the Oraon Community.”**

18. Learned first appellate court entered into strict proof of ghar-damad form of marriage of Jhari Orain with Royon Oraon. Admittedly, the marriage of Jhari Orain with Royon Oraon was solemnized at the childhood age of the defendant No.1 (D.W.10 examined in this case.) Although, there is no dispute that Jhari Orain and Royon Oraon were married and the plaintiff is their son. It is also admitted fact that the after marriage, both the couple were residing in village Puso at parental house of Jhari Orain and thereafter plaintiff is also continuously residing in the same village. Learned appellate court appeared to have completely ignored the evidence of contesting defendant No.1 Mangra Oraon, who is eldest among all the witnesses examined in this case either by the plaintiff or defendants and on the date of his examination in 1995, he was aged about 72 years. According to his evidence in cross-examination, he has categorically admitted that Gandura Oraon had one son Budhuwa Oraon and one daughter, Jhari Orain when he was aged about 14 to 15 years, Jhari was married with Royon Oraon

but he cannot tell what form of marriage was adopted. He has also admitted that the son of Gandura Oraon predeceased his father at the relevant time of Jamindari and Babusahi. It also appears that there was frequent litigation during lifetime of Jhari and Royon with the defendant and his father as regards the disputed property. The S.A.R. Case No. No.70/87-88 was also disposed by S.D.O., Gumla with findings that the question of title is involved in the case and it is not a case falling under S.A.R. proceeding. Therefore, insistence of the appellate court upon strict proof of ghar-jamai form of marriage between plaintiff's mother and father, which was not possible in the case to be decided definitely on the basis of oral evidence. Therefore, this sensitive issue was not properly considered by the learned appellate court and no valid reasons were assigned for differing with the views/findings of the learned trial court. It appears that learned appellate court has substituted its own finding without recording any reasons for taking a different view and the discussion of evidence of the oral witnesses examined by the defendants, who are mostly in between 50 to 60 years having no knowledge about family affairs of the parties due to their childhood, which cannot be justified and sustained.

19. In view of the above discussion and reasons, mere entries or absence in the revenue record cannot decide the title of a party and also in view of the above, it appears that reversal of decree passed by the first appellate court is based upon the conjecture and surmises while appreciating oral testimony of the witnesses examined by the defendants which led to perverse findings and dismissal of the suit. Therefore, I find merits in this appeal, which is hereby **allowed** and impugned judgment and decree passed by learned first appellate court in Title Appeal No. 25 of 1995 is hereby set aside and the judgment and decree passed by learned trial court in Title Suit No. 02 of 1989 is hereby upheld and confirmed. Accordingly, the decree will be prepared.
20. Pending I.A(s), if any, is also disposed of accordingly.
21. Let the copy of this judgment along with Trial Court Records be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Date: 10 /07 /2025

Pappu/- A.F.R.