



IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No. 278 of 1992

[In the matter of an appeal under Section 100 of the Code of Civil Procedure, 1908.]

**Bastu Charan alias Batu
Charan Soren**

.....

Appellant

-Versus-

**Chitta Majhiani (dead) and
Others**

.....

Respondents

Advocate(s) appeared in this case :-

For Appellant : Mr. R.K.Mohanty, Senior Advocate
with Ms. S.Mohanty, Advocate

For Respondents: Mr. S.Sahoo, Advocate

CORAM

JUSTICE SASHIKANTA MISHRA

JUDGMENT

27.02.2026

SASHIKANTA MISHRA, J. The LRs of the original defendant No.1 are in appeal against a confirming judgment. The appeal questions the correctness of judgment dated 25.09.1992, followed by decree passed by learned District Judge, Baripada in Title Appeal No. 50 of 1988, whereby the judgment dated 04.10.1988, followed by decree passed by learned



Subordinate Judge, Rairangpur in Title Suit No. 10 of 1995, was confirmed.

2. The suit was filed by the original plaintiff for recovery of possession and for declaration that the sale deeds dated 17.04.1984 executed by her mother in favour of the defendants are invalid. It is the plaintiff's case that one Bhagmat Majhi was the original owner of the suit properties, who had married Damani. The plaintiff was born out of said marriage. Her father, Bhagmat died when she was two years old. Her mother, Damani remarried Dasmal Soren after death of her husband. The plaintiff possessed her half share of her father's property separately from her mother and she allowed her to possess the other half till her death in 1984. The defendants managed to get the sale deeds in question executed by Damani in their favour in respect of the suit property, which are invalid.

3. The defendants contested the suit by resisting the plea of the plaintiff that she was the daughter of Bhagmat. According to them, Bhagmat had never



married Damani and plaintiff was not his daughter as Damani was married to Dasmath. The plaintiff is the daughter of Dasmath and Damani. The suit properties originally belonged to Kanda and Bastu, who were brothers but Bhagmat was the son of Kanda. Dasmath and four others were sons of Bastu. The suit properties were recorded jointly in the names of Bastu and Bhagmat in 1927 settlement and were being possessed jointly. Dasmath died unmarried for which his share passed on to the other four sons of Bastu by survivorship. Damani had never executed any sale deed in favour of the defendants but they possessed the suit property for about 45 years.

4. On the rival pleadings as above, the trial Court framed the following issues for determination:

- 1. Has the plaintiff any cause of action?*
- 2. Is the suit barred by limitation?*
- 3. Is the suit not maintainable?*
- 4. Is the suit bad for non-joinder of parties?*
- 5. Is the suit barred by waiver, estoppel and acquiescence?*
- 6. Is the suit barred by law of adverse possession?*
- 7. Is the plaintiff not daughter of Bhagmat Majhi?*
- 8. Was Damani the wife of Bhagmat and the plaintiff is their daughter?*
- 9. Was Bhagmat the sole owner of the lands in equation and after his death his widow inherited the lands?*



10. *Were Balia and Kanda, natural brothers and as such they were jointly living and got the property by law of survivorship after the death of Bhagmat?*
11. *Has the plaintiff sole right, title and interest over the suit land?*
12. *Is the plaintiff entitled to the relief of reliefs claimed?*
13. *To what relief, if any is the plaintiff entitled?*

5. After analysing the oral and documentary evidence adduced by the parties in detail, the trial Court found adequate evidence of the plaintiff's claim of being the daughter of Bhagmat through Damani. It was also found that Damani re-married Dasmata and the defendants were his son. The trial Court further found that Bhagmat was the sole owner of the suit properties and after Damani's remarriage, plaintiff being the only daughter and heir, succeeded to the same. The plea of adverse possession set up by the defendants was negatived. The sale deeds in question were held invalid. On such findings, the suit was decreed by declaring the plaintiff's right, title and interest over the schedule land with recovery of possession. The sale deeds in question were declared void and inoperative and the defendants were



directed to deliver possession of the suit land to the plaintiff.

6. Being aggrieved, the defendants carried appeal to the District Court. The First Appellate Court reappreciated the evidence on record vis-à-vis the grounds of challenge to the trial Court's judgment. As such, the First Appellate Court found that Damani was married to Bhagmat and plaintiff being the only daughter naturally inherited the properties of Bhagmat. The First Appellate Court further found that Bhagmat was separately possessing his share which was succeeded by the plaintiff after his death and the plea of adverse possession was also negatived. The appeal was thus dismissed.

7. Being further aggrieved by the confirming judgment of the First Appellate Court, the LRs of defendant No. 1 have preferred the present appeal, which was admitted on the following substantial questions of law.

(a) Whether the suit property devolves upon the plaintiff & defendants after Damani's death.



(b) Whether the new relationship of Damani and Dasmal will made the defendants' possession permissive?

(C) Whether the learned Courts have erred in omitting to consider material evidence on record?

8. Heard Mr. R.K.Mohanty, learned Senior counsel with Ms. S.Mohanty, for the defendant-appellant and Mr. S. Sahoo, learned counsel appearing for the plaintiff-respondents.

9. Learned Senior counsel Mr. Mohanty would argue that both the Courts below have committed manifest illegality in proceeding on the wrong premise that the parties being Advasis, their custom permits remarriage by a widow but no such custom was either pleaded or proved. The parties being Adivasis the old Hindu law applies to them. Mr. Mohanty refers to Article 43 of Mulla's Hindu Law (24th edition) of which Entry 4 names, the widow as successor to the property of her deceased husband. Therefore, on death of Bhagmat in the year 1946-47, both the plaintiff as well as her mother Damani would be the two survivors, each having half share. According to Mr. Mohanty, the subsequent



remarriage of Damani to Dasmata cannot lead to forfeiture of her half share of the property as contemplated in the Hindu Widow's Remarriage Act, 1856 because the same does not apply to Adivasis. Since succession opened in 1946-47, it is to be seen as who were the heirs of Bhagmat at that point of time. Both the Courts below, according to Mr. Mohanty, proceeded on the erroneous premise that remarriage of Damani entails forfeiture of the share of the property inherited by her from her first husband. No issue was framed in this regard nor such a case was ever made out by the plaintiff. Therefore, Damani's property, at the time of her death in 1984, would devolve upon for all her children namely, the plaintiff as also the defendant. In any case, by the time of Damani's death in 1984, the Hindu Widows' Remarriage Act had already been repealed.

10. Per contra, Mr. S.Sahoo would argue that the plaintiff clearly pleaded that she belongs to the Santal community and therefore, the provisions of



the Hindu Succession Act, 1956 do not apply. The old Hindu law relating to succession applies. The widow as per Article 43 of Mulla has limited share and on her death her share goes to the reversioner of her husband. Such limited right gets forfeited automatically by her remarriage. The defendants have therefore no manner of right over the property of Damani inherited from Bhagmat.

11. This Court finds that the facts of the case are not disputed. The concurrent findings by both the Courts below to the effect that the plaintiff is the daughter of Bhagmat and Damani and that Damani remarried Dasmata after the death of Bhagmat are not to be disturbed in this Second Appeal, especially when the evidence adduced on that score before the learned Trial Court has not been shown to be perverse.

12. The undisputed fact of this case is that the parties are Adivasis belonging to Santal community and are governed under the laws applicable to the Scheduled Tribe community. There is also no dispute



that the defendants are the sons of Damani born through Dasmāt. Overwhelming evidence has been laid to the effect that the plaintiff was a child, aged about 6 years at the time of her father's death in the year 1946-47. It is also borne out from the evidence on record that the suit properties were originally of Kanda and Bastu, who were related as full-blooded brothers. Dasmāt was admittedly one of the sons of Bastu whereas Bhagmat was the son of Kanda. Besides, both the Courts below have held that as on the date of his death, Bhagmat was separately possessing the suit properties from the sons of Bastu signifying thereby that coparcenary was no longer existing as on that date. This concurrent finding is equally beyond the scope of being interfered with at this stage.

13. The pertinent question is, who are entitled to inherit the suit properties left by the deceased Bhagmat.

Section 2(2) of the Hindu Succession Act, 1956 in absence of a specific Government Notification to



the contrary, explicitly excludes the Scheduled Tribes from being governed under the said Act. The inheritance of the properties belonging to the Scheduled Tribes is ordinarily determined by the local tribal customary law. A meticulous reading of the available pleadings does not spell out any such specific custom. In such scenario, as rightly held by the learned First Appellate Court, the principles of old Hindu Law (prior to 1956 Act) shall govern the mode of inheritance of the properties of a male Hindu of this community dying intestate.

14. As the pleadings suggest, the parties are governed under the Mitakshara School of Hindu Law. As stated above, Bhagmat died intestate in the year 1946-47 leaving behind his widow, Damani and the sole daughter, the plaintiff. By then, the Hindu Women's Rights to Property Act, 1937 had already come into effect. Section 3 thereof granted limited inheritance rights to the widow of a Hindu, known as Hindu Women's Estate. Though the right of claiming partition at par with a male heir was available to her



yet, no absolute right of disposition of the properties, either by sale or by gift, except on the ground of pressing legal necessity, was given to her. Thus, the ordinary rule was that on her death, the property so inherited, would pass not to her heirs but to the next heirs of her deceased husband, called reversioners. However, the situation would be different if the property, so inherited, was the exclusive and separate property of the deceased husband. The daughter's position with reference to the inheritance of property was, however, different during the pre-1956 era. The daughters were ordinarily excluded from absolute inheritance since tribal customary laws were in favour of inheritance by survivorship by male agnates.

15. It is significant to note that despite the Hindu Women's Rights to Property Act, 1937 having come into effect, the Hindu Widow's Remarriage Act, 1856 had not been repealed. Section 2 of the said Act clearly provides that a widow upon her remarriage was to forfeit her interest (including the life estate



conferred under the Act of 1937) in her deceased husband's property and the property, so inherited would ordinarily pass on to the next heirs of the deceased husband (reversioners), as if the widow was dead. But, in the facts and circumstances of this case, it is significant to address the issue pertaining to inheritance of the exclusive and separate property of the deceased male Hindu. The Supreme Court in the case of ***Satrughan Isser Vrs. Sabujpari & others (AIR 1967 SC-272)*** while examining a similar question, held that on extinguishment of coparcenary, even in absence of full-fledged partition of the properties, the right of coparceners (reversioners) to take the interest of the widow by survivorship does not exist. On her death it devolves on the nearest heirs of her husband, her daughters. More importantly, the right of a widow or daughter to inherit the self-acquired property (exclusive and separate property) or share received in partition of a Hindu male dying intestate is well recognised not only under the old customary Hindu Law but also in



various judicial pronouncements. The Supreme Court in the case of ***Arunachal Gounder (Dead) by LRs Vrs. Ponnusamy, reported in 2022 SCC online SC-72***), while giving importance to this aspect has held thus:

“If a property of a male Hindu dying intestate is self-acquired or obtained in partition of a coparcenary or a family property, the same would devolve by inheritance and not by survivorship and a daughter of a such a male Hindu would be entitled to inherit such property in preference to other collaterals.”

16. Besides, in a recent judgement, the Apex Court, taking note of the absence of a codified law governing the field of inheritance of the properties of the Scheduled Tribes in the case of ***Ramcharan Das and Others Vrs. Sukhram and Others (in Civil Appeal No.9527 of 2025)*** has emphasized that exclusion of tribal daughters even from the ancestral properties violates the constitutional right to equality. It is observed therein that denying the tribal female heir a right in the property not only exacerbates gender division and discrimination but also violates her right to equality especially when the custom to the contrary is silent. Thus, on meticulous



analysis of the facts of the case in the backdrop of the legal position, this court finds no error in the concurrent findings of the both the trial court and the first appellate Court that soon after the remarriage of Damani with Dasmal, the rights, which Damani had inherited being the widow of Bhagmat devolved on the sole lineal descendant of Bhagmat, the plaintiff. Accordingly, the substantial question framed to that effect is answered against the appellant.

17. The next question to be answered is as to whether the claim of adverse possession of the defendants is legally sustainable. It is not disputed that after the death of Bhagmat, Damani remarried Dasmal. As noted above, the plaintiff is held to be the daughter of Damani through Bhagmat, who was the exclusive owner of the suit properties. It is borne out from the evidence on record that the plaintiff was a child, aged 6/7 years as on the date of death of her father that occurred in 1946-47. Evidence is ample to the extent that the plaintiff was staying with her



mother even after the latter's marriage with Dasmata. By operation of law, Damani forfeited her right over the suit properties after her marriage with Dasmata.

18. As noted above, the properties devolved on the plaintiff upon the marriage of Damani with Dasmata. There is no iota of evidence to even indicate that at any point of the possession of Damani or Dasmata or both was hostile to the plaintiff and continued for more than the statutory period. On the contrary, it appears that such possession was backed by the implied consent of the plaintiff, who was then a child, thereby making the same permissive in nature. It is well settled that permissive possession howsoever long cannot turn to adverse possession unless the possessor asserts any hostile claim over such property. Thus, the findings of the first appellate court that being the second husband of Damani, it was natural for Dasmata to remain in possession of the properties of Bhagmat and thereby making their possession permissive, appear to be reasonable. This court finds nothing to interfere



therein. Accordingly, this question is answered in favour of the plaintiff.

19. The appellant having failed on both counts in his attempt to demonstrate any illegality, this Court is not inclined to interfere with the judgment and decree of the learned first appellate court.

20. In the result, the appeal fails and is dismissed. There shall be no order as to cost.

.....
Sashikanta Mishra,
Judge

Deepak