

No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>SA No. 95 of 2023 <u>Hon'ble Subhash Upadhyay, J.</u></p> <p>Mr. Ajay Joshi, learned counsel for the appellant.</p> <p>2. Mr. Deep Prakash Bhatt, learned counsel for the respondent no.1</p> <p>3. Mr. V. D. Bisen, learned Additional C.S.C., assisted by Mr. P. S. Bisht and Mr. Tarun Mohan, Brief Holders for the State.</p> <p>4. Present Second Appeal has been preferred against the judgment and decree dated 15.02.2023, passed by learned Additional District Judge, Pithoragarh, in Civil Appeal No. 11 of 2022, Smt. Manju Devi vs. Smt. Bhagirathi Devi and others, arising out of the Judgement and Decree dated 30.04.2022, passed by Civil Judge (J/D), District Pithoragarh in Original Suit No. 03 of 2020, Smt. Bhagirathi Devi vs. Smt. Manju Devi and others.</p> <p>5. Learned counsel for the appellant submits that respondent no.1 was convicted of the murder of her husband and in a Criminal Appeal filed by respondent no.1 being Criminal Appeal No. 160 of 2018 Manju Devi vs. State, vide order dated 17.05.2022, learned Coordinate Bench of this Court stayed the sentence, however, there is no order of stay of conviction. As such, the learned Appellate Court erred in law in allowing the Appeal filed by the respondent no.1 and in setting aside the order passed by learned Trial Court in favour of appellant/plaintiff. It is further contended that unless and until respondent no. 1 is</p>

acquitted by the Criminal Court, she cannot inherit the property of her late husband, in view of Section 25 of the Hindu Succession Act, 1955.

6. The Appeal is Admitted on the following substantial questions of law:

“(i) Whether the Appellate Courts’ order in setting aside the order of the learned Trial Court was sustainable in law as the sole basis of the said order was the grant of interim stay of sentence and whether the learned Appellate Court has considered the aspect as to what would be the difference between the stay of sentence and stay of conviction?”

“(ii) Whether the Appellate Court erred in law in allowing the Appeal preferred by respondent no. 1 without considering the provisions of Section 25 of the Hindu Succession Act, 1955 and the right of the plaintiff as defined under the Hindu Succession Act, 1955 being class -1 heir of the deceased being her mother?”

7. Summon the Lower Court Record.

8. It is provided as an interim measure that the effect and operation of the order dated 15.02.2023, passed by learned Additional District Judge, Pithoragarh, in Civil Appeal No. 11 of 2022, Smt. Manju Devi vs. Smt. Bhagirathi Devi and others, shall remain stayed till the next date of listing. *(Stay Application stands disposed of).*

(Subhash Upadhyay, J.)

27.06.2025