2024 INSC 1005

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13516 OF 2024
(Arising out of SLP (C) NO.21506/2019)

TIRITH KUMAR & ORS. **… APPELLANTS**

VERSUS

DADURAM & ORS. **… RESPONDENTS**

J U D G M E N T

SANJAY KAROL, J.

THE CHALLENGE

1. This appeal questions the correctness of the judgment and order passed by the High Court of Chhattisgarh, Bilaspur, in Second Appeal No. 270 of 2003, dated 6th February 2019 and it raises the question as to whether the Hindu Succession Act, 1956[1] could be applied to the parties to the instant *lis*? The Courts below i.e. the First Appellate Court[2] in Civil Appeal No.09A/2001 vide judgment dated 27th January, 2003 and the Trial Court[3] in Civil Suit No. 131A of 1995, by judgment dated 16th December, 2000 found the appellants to be

[1] Hereinafter referred to as 'HSA, 1956'.
[2] The Court of Additional District Judge, Sakti, District Bilaspur.
[3] The Court of Civil Judge Class-2, Sakti, District Bilaspur.

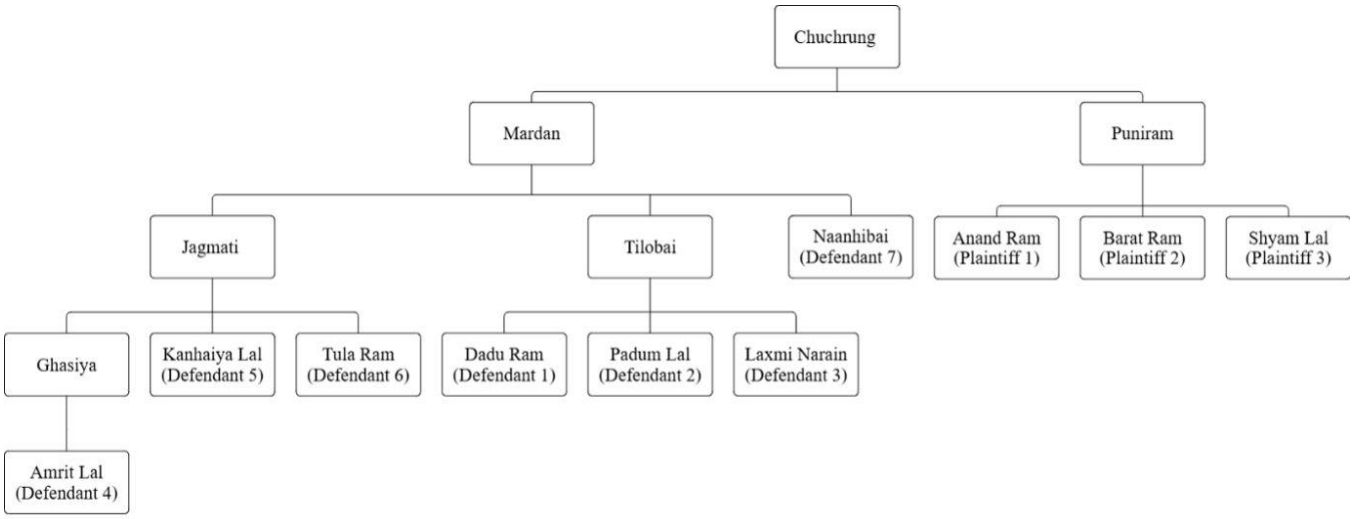
'sufficiently hinduised', having given up their customs as part of a tribal community and therefore are governed by Hindu law, and thereby the respondents herein do not have any rights over the property originally belonging to Mardan.

BRIEF FACTS

2. Brief facts as emanating from the record are:-

2.1 This dispute, at the heart of it, pertains to ownership of land between two sides of the same family, with a common ancestor by the name of Chuchrung. This common ancestor had two sons named Mardan and Puni Ram. The sons and legal heirs of Puni Ram set the law in motion, seeking a declaration that the suit property situated at village Bagri Pali, measuring 13.95 acres bearing Khasra No. 26, belongs to them and for a permanent injunction against the respondents.

2.2 The following is the family tree:



2.3 The dispute came before the Court of Civil Judge Class-2, Sakti, District Bilaspur, wherein six issues were framed. A perusal of the judgment shows that questions 2 to 6 were questions of fact. It was held as follows:

2.3.1 Relying on the testimony and cross-examination of PW1, Anandram is now represented by the present appellants and also the statement of DW1, Daduram, it was held that both the plaintiffs and defendants "abide and follow the Hindu principles of law".

2.3.2 The dispute regarding the death of Mardan was resolved with the Court observing that he had indeed died prior to the coming into force of the Hindu Succession Act, 1956. To return such a finding, reliance was placed on the evidence of PW1, Ugrasen PW2 and Karamaha PW3. It was further stated that DW1 himself, in his cross-examination, accepted such a fact.

2.3.3 Qua the possession of the suit property, it was held that post the death of Mardan in 1951, Puni Ram, father of the plaintiff, took possession. Any right possessed by Mardan would not have transferred over to his daughters as prior to the HSA 1956, a daughter does not receive any property upon the death of her father.

2.3.4 In conclusion, it was held that the defendants did not have any right of ownership over the property, which originally belonged

to Mardan and that the successors of Puni Ram had the right over the said property. It was ordered that the defendants would not interfere in the ownership of the plaintiffs.

2.4 The defendants, aggrieved by the findings summarised above, appealed the judgment. The First Appellate Court agreed with the findings arrived by the Court below in as much as that both parties did indeed follow the Hindu Religion and that the death of Mardan was prior to coming into force of the HSA, 1956, and as a result, the daughters of Mardan had no right over the subject property.

2.5 Further aggrieved, the matter was carried to the High Court in the Second Appeal. The substantial questions of law framed are as under:

> 1. Whether the parties follow the principle of Hindu Law and have been following as on today?
>
> 2. Whether Mardan and Puni Ram in succession the property which they had received and from the said property the income which accrued from the same both Mardan and Puni Ram purchased other property?
> 3. Whether the death of Mardan was done in the year 1951 since then the property of Muni Ram in succession has received and at present the Plaintiffs are in use, occupation and possession of the said property?
>
> 4. Whether the defendants, in accordance with law, got their name entered and are in use, occupation and possession?
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> 5. Assistance and expenses
>
> 6. Whether Mardan died before coming into force the Hindu Succession Act, 1956, in case yes and then the results?

2.6 The reasoning of the High Court in overturning the findings returned by the Courts below is that:

2.6.1 The Court noticed Section 2 (2) of the HSA, 1956 and the judgment of this Court in ***Madhu Kishwar & Ors***. v. ***State of Bihar***[4], and held that HSA, 1956 does not apply to the parties as they are Sawara, a notified scheduled tribe within the meaning of Article 366(25), and there is no notification on record which de-notifies them or directs the application of HSA, 1956 to them.

2.6.2 In regard to the question of whether the parties have become sufficiently hinduised reference was made to ***Smt Butaki Bai & Ors.*** v. ***Sukhbati & Ors.*** In the present facts, it was held:

> "The plaintiffs neither in the plaint nor in their evidence particularised the prevalent tribal customs except pleadings some ceremonies of marriage in their caste. It has neither been pleaded nor proved that they have abandoned their law of origin (customary law) and they have given up their customary succession and did not state anything so as to be governed by in their matter of succession and inheritance by any school of hindu law…"

2.6.3 In the aforesaid backdrop, the Court invoked the Central Provinces Laws Act, 1875 and in particular Sections 5 and 6 thereof. Referring to the judgment of this Court in ***M.V. Elisabeth and Others*** v. ***Harwan Investments and Trading Pvt. Ltd. Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa***[5], as also certain other

[4] (1996) 5 SCC 125
[5] 1993 Supp (2) SCC 433

authorities, the Court invoked the principles of justice, equity and good conscience to hold that the legal representatives of Mardan, i.e. his daughters and their successors-in-interest, would be entitled to half share in the total suit property. The appeal was partly allowed in these terms.

2.7 It is with this background that the present appeal has come up for consideration before this Court.

OUR CONSIDERATION

3. The parties to the present *lis* claim to be Hindus and therefore ask that they be governed by Hindu law in matters of inheritance. The High Court has disallowed this contention on the ground that the parties are members of the Sawara tribe, which is a notified tribe under Article 342 of the Constitution of India. The constitutional position in regard to Articles 341 and 342, which deal with scheduled castes and tribes, respectively, has been delineated by a Constitution Bench of this Court in ***M.R. Balaji*** v. ***State of Mysore***[6] in the following terms:

> "20. …It was realised that in the Indian Society there were other classes of citizens who were equally, or may be somewhat less, backward than the Scheduled Castes and Tribes and it was thought that some special provision ought to be made even for them. Article 34(1) provides for the issue of public notification specifying the castes, races or tribes which shall, for the purposes of this Constitution, be deemed to be Scheduled Castes either in the State or the Union territory as the case may be. Similarly Article 342 makes a provision for the issue of public notification in respect of Scheduled Tribes. Under Article 338(3), it is provided that

[6] 1962 SCC OnLine SC 147

> references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other Backward Classes as the President may, on receipt of the report of a commission appointed under Article 340(1) by order, specify and also to the Anglo-Indian community. It would thus be seen that this provision contemplates that some Backward Classes may by the Presidential order be included in Scheduled Castes and Tribes."

We may also notice the observations in ***State of Maharashtra*** v. ***Milind***[7] in this context:

> **"11.** By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are identical. What is said in relation to Article 341 mutatis mutandis applies to Article 342. The laudable object of the said articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words "castes" or "tribes" in the expression "Scheduled Castes" and "Scheduled Tribes" are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Articles 366(24) and 366(25). In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. Subsequently, some orders were issued under the said articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued, by amendment Acts passed by Parliament."
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> (Emphasis supplied)

Recently, a seven-judge Bench in ***State of Punjab*** v. ***Davinder Singh***[8] also made a reference to these judgments.

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[7] (2001) 1 SCC 4
[8] 2024 SCC OnLine SC 1860

4. As is clear from the aforesaid extracts, the lists made under Articles 341 and 342 are to be amended only with the permission of the President. So, naturally, for a tribe to be notified as a scheduled tribe, a notification to that effect has to be issued and vice versa, i.e. for a tribe to be de-notified as well. The High Court noted that the parties did not produce any notification demonstrating that the Sawara tribe stands de-notified. There is no possibility of a different view on this question.

5. The HSA, 1956, at the very outset, details as to whom the legislation would apply, and it clearly states that scheduled castes and tribes shall be outside its purview of application. Section 2(2) thereof reads as under:

> "**2. Application of Act.—** (1)This Act applies—
> …
> (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs."

6. The words of the section are explicit. The HSA, 1956, cannot apply to scheduled tribes. This position of law is well settled. We may reproduce with profit the observations made in certain judgments of this Court.

6.1 In ***Madhu Kishwar*** v. ***State of Bihar***[9], MM Punchhi, J as his Lordship then was, noted the application of Section 2(2) of HSA as follows:

> "4. …Sub-section (2) of Section 2 of the Hindu Succession Act significantly provides that nothing contained in the Act shall apply

[9] (1996) 5 SCC 125

> to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless otherwise directed by the Central Government by means of a notification in the Official Gazette. Section 3(2) further provides that in the Act, unless the context otherwise requires, *words importing the masculine gender shall not be taken to include females*. (emphasis supplied) General rule of legislative practice is that unless there is anything repugnant in the subject or context, words importing the masculine gender used in statutes are to be taken to include females. Attention be drawn to Section 13 of the General Clauses Act. But in matters of succession the general rule of plurality would have to be applied with circumspection. The afore provision thus appears to have been inserted *ex abundanti cautela*. Even under Section 3 of the Indian Succession Act the State Government is empowered to exempt any race, sect or tribe from the operation of the Act and the tribes of Mundas, Oraons, Santhals etc. in the State of Bihar, who are included in our concern, have been so exempted. Thus neither the Hindu Succession Act, nor the Indian Succession Act, nor even the Shariat law is applicable to the custom-governed tribals. And custom, as is well recognized, varies from people to people and region to region."

The aforesaid position was reiterated by a Bench of three learned judges in ***Ahmedabad Women Action Group (AWAG)*** v. ***Union of India***[10].

6.2 We find that the aforesaid position has been consistently adopted by the High Courts as well. Reference may be made to ***Bhuri*** v. ***Maroti***[11], ***Bhagwati*** v. ***Cheduram***[12], and ***Bini B. (Dr.)*** v. ***Jayan P.R.***[13]. Here only we may clarify that this reference to judgments of the High Courts shall not be construed as a comment upon their merits.

7. Therefore, the Courts below clearly erred on this count, and the High Court took the correct view. Having observed this, the High Court then proceeded to grant a portion as property to Mardan's daughters and their descendants on

[10] (1997) 3 SCC 573
[11] 2015 SCC OnLine Bom 3173
[12] 2019 SCC OnLine Chh 209
[13] 2015 SCC OnLine Ker 39489

the grounds of justice, equity and good conscience, apparently but without explicit mention, taking cue from the dissenting judgment ***Madhu Kishwar*** (*supra*) by Ramaswamy, J., wherein he held as under:

> "**38.** Law is the manifestation of principles of justice, equity and good conscience. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual would exercise his rights to his best advantage to achieve excellence, subject to protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties. Man's status is a creature of substantive as well as procedural law to which legal incidents would attach. Justice, equality and fraternity are trinity for social and economic equality…
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> x x x
>
> **56.** I would hold that the provisions of the Hindu Succession Act, 1956 and the Indian Succession Act, 1925 though in terms, would not apply to the Scheduled Tribes, the general principles contained therein being consistent with justice, equity, fairness, justness and good conscience would apply to them. Accordingly I hold that the Scheduled Tribe women would succeed to the estate of their parent, brother, husband, as heirs by intestate succession and inherit the property with equal share with the male heir with absolute rights as per the general principles of the Hindu Succession Act, 1956, as amended and interpreted by this Court and equally of the Indian Succession Act to tribal Christians…"

8. Let us examine a few pronouncements on the application of principle of justice, equity and good conscience.

8.1 In ***M. Siddiq (Ram Janmabhumi Temple-5 J.)*** v. ***Suresh Das***[14], five learned judges extensively dealt with the concept of justice, equity and good conscience. A few of the relevant paragraphs are as under:

> "1003. …The modification of general rules to the circumstances of the case is guided by equity, not in derogation or negation of

[14] (2020) 1 SCC 1

positive law, but in addition to it. It supplements positive law but does not supplant it. In a second sense, however, where positive law is silent as to the applicable legal principles, equity assumes a primary role as the source of law itself. Equity steps in to fill the gaps that exist in positive law. Thus, where no positive law is discernible, courts turn to equity as a source of the applicable law. In addition to these, Derrett notes that there is a third sense in which equity or *aequitas* assumed importance — where established political authority is taken away or is in doubt and the formal sources of law are in doubt, the nature of judicial office requires a decision in accordance with *ex bono et aequo*.

x x x x x

1019. …There is (at least in theory) a reduced scope for the application of justice, equity and good conscience when doctrinal positions established under a statute cover factual situations or where the principles underlying the system of personal law in question can be definitively ascertained. But even then, it would do a disservice to judicial craft to adopt a theory which excludes the application of justice, equity and good conscience to areas of law governed by statute. For the law develops interstitially, as Judges work themselves in tandem with statute law to arrive at just outcomes. Where the rights of the parties are not governed by a particular personal law, or where the personal law is silent or incapable of being ascertained by a court, where a code has a lacuna, or where the source of law fails or requires to be supplemented, justice, equity and good conscience may properly be referred to.

x x x x x

1022. The common underlying thread is that justice, good conscience and equity plays a supplementary role in enabling courts to mould the relief to suit the circumstances that present themselves before courts with the principal purpose of ensuring a just outcome. Where the existing statutory framework is inadequate for courts to adjudicate upon the dispute before them, or no settled judicial doctrine or custom can be availed of, courts may legitimately take recourse to the principles of justice, equity and good conscience to effectively and fairly dispose of the case. A court cannot abdicate its responsibility to decide a dispute over legal rights merely because the facts of a case do not readily submit themselves to the application of the letter of the existing law. Courts in India have long availed of the principles of justice, good conscience and equity to supplement the incompleteness or inapplicability of the letter of the law with the ground realities of legal disputes to do justice between the parties. Equity, as an essential component of justice, formed the final step in the just adjudication of disputes."

(Emphasis supplied)

8.2 In a case concerning the devolution of property either by custom or by law, when it comes to a 'dasi', arising out of the State of Madras, M.C. Mahajan, J., as his Lordship then was observed in ***Saraswathi Ammal*** v. ***Jagadambal***[15] as follows:

> "**21.** … In the absence of proof of existence of a custom governing succession the decision of the case has to rest on the rules of justice, equity and good conscience because admittedly no clear text of Hindu law applies to such a case. The High Court thought that the just rule to apply was one of propinquity to the case, according to which the married and dasi daughters would take the mother's property in equal shares. No exception can be taken to this finding given by the High Court. No other rule was suggested to us leading to a contrary result."

8.3 In ***M.V. Elisabeth*** (*supra*), the Court held as under:

> "**86.** The judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to Court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience."

9. Having considered the pronouncements of this Court as aforesaid, and keeping in view the fact that Mardan passed away in the year 1951, that is, prior to the enactment of HSA, 1956, we find no error in the judgment of the High Court applying the provisions of the Central Provinces Laws Act, 1875 and more particularly Section 6 thereof which postulates the application of the

[15] (1953) 1 SCC 362

principle of justice, equity and good conscience, to account for possibilities not covered by Section 5 of the Act.

10. We find that a coordinate Bench of this Court in ***Kamla Neti*** v. ***LAO***[16], held in para 11 thereof that equity cannot supplant the law, and when the law is clear, the same has to be applied. That case pertains to the division of compensation awarded for land acquired, however, the present dispute pertains directly to succession of property, and therefore in our considered view, this case stands on a different footing.

11. ***Kamla Neti*** (*supra*) is, therefore, distinguishable on facts and not applicable to the present case. However, the recommendation/suggestion made therein to the Central Government to look into pathways to secure the right of survivorship to female tribals is hereby reiterated. For emphasis, the observations in this regard are also extracted herein below:

> "**17.** Before parting, we may observe that there may not be any justification to deny the right of survivorship so far as the female member of the tribal community is concerned. When the daughter belonging to the non-tribal community is entitled to the equal share in the property of the father, there is no reason to deny such right to the daughter of the Tribal community. Female tribal is entitled to parity with male tribal in intestate succession. To deny the equal right to the daughter belonging to the tribal even after a period of 70 years of the Constitution of India under which right to equality is guaranteed, it is high time for the Central Government to look into the matter and if required, to amend the provisions of the Hindu Succession Act by which the Hindu Succession Act is not made applicable to the members of the Scheduled Tribe.
>
> **18.** Therefore, though we dismiss the present appeal, it is directed to examine the question by the Central Government to consider it just and necessary to withdraw the exemptions provided under the

[16] (2023) 3 SCC 528

> Hindu Succession Act insofar as the applicability of the provisions of the Hindu Succession Act to the Scheduled Tribes is concerned and whether to bring a suitable amendment or not. We hope and trust that the Central Government will look into the matter and take an appropriate decision taking into consideration the right to equality guaranteed under Articles 14 and 21 of the Constitution of India."

12. With the aforesaid observations, the appeal is dismissed as bereft of merit.

Pending applications, if any, shall stand disposed of.

.....……J.
(C.T. RAVIKUMAR)

.....……...……J.
(SANJAY KAROL)

Date: 19th December, 2024;
Place: New Delhi.