

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Appeal/LR/5104/2007/Chittorgarh.**

1. Prem Chand son of Rawati caste Meena resident of Devad Majra  
Karadiya Tehsil & Distt. Pratapgarh.
2. Laxmi Narain son of Raoji caste Meena resident of Devad Majra  
Karadiya Tehsil & Distt. Pratapgarh.

...Appellants.

Versus

Sunder Bai daughter of late Nanda wife of Limba caste Meena resident  
of Devad Majra Karadiya Tehsil & Distt. Pratapgarh.

...Respondent.

**D.B.**

**Shri Bajrang Lal Sharma, Member**

Present:-

Shri Khadag Singh, counsel for the appellants.

Shri N.K. Goyal, counsel for the respondent.

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Date: 29.1.2014

**J U D G M E N T**

The appellants have filed this second appeal under section 76 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act') being aggrieved by the judgment passed by Additional Divisional Commissioner, Udaipur on 29.11.2006 in appeal No. 36/2004.

2. The brief facts of the appeal are that Nanda Meena was the tenant in village Devad in Tehsil Pratapgarh. Nanda died on 12.9.2001 and on his death a mutation No. 357 was sanctioned by Gram Panchayat in favour of Sunder Bai, the respondent on 10.1.2002. Being aggrieved by this mutation, a review petition was filed which was accepted on 12.2.2004. Being aggrieved by the judgment passed by Tehsildar, Pratapgarh on 12.2.2004, an appeal was preferred by Sunder Bai before Additional Divisional Commissioner, Udaipur which was accepted and Tehsildar was directed to sanction mutation in favour of Sunder Bai on

29.11.2006. This second appeal has emanated from the judgment passed by Additional Divisional Commissioner, Udaipur.

3. Heard the learned counsels of the parties.

4. Mr. Khadag Singh, the learned advocate appearing for the appellants contended that Nanda, the deceased tenant, belonged to scheduled tribe community and on the basis of a will executed by deceased Nanda, Tehsildar ordered to sanction mutation in favour of the appellants in whose favour the will was executed. He further argued that Sunder Bai is a married daughter of Nanda and she does not need any maintenance after her marriage. Since succession of a deceased tribal person is governed by old Hindu Law, therefore, the impugned judgment be quashed and set aside.

5. Mr. N.K. Goyal, learned counsel appearing for the respondent contended that the appeal is hopelessly time barred, therefore, it may be dismissed on the solitary ground of limitation. He also submitted that so called document of will contains false statements that Nanda, the deceased tenant, did not have any child. He submitted that the respondent is the daughter of the deceased, therefore, she cannot be denied her share. He further argued that the tribals are also human beings and their succession cannot be left to the destiny, Sunder Bai is the only inheritor of her father's property. Therefore, she should be given her share in the property held by her father.

6. I have given serious consideration to the rival contentions raised by the learned counsels of the parties and have perused the record available on file.

7. This court has carefully perused the judgments passed by both the lower courts. Indisputably Nanda, the deceased tenant, belonged to scheduled tribe community and section 2(2) of the Hindu Succession Act explicitly provides that the provisions of Hindu Succession Act will not be applicable to the families of scheduled tribe till a notification to this

effect is issued by the Government of India. The said provisions of Hindu Succession Act are reproduced here for convenient reference:-

**"(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 Cl. (25) of Art. 366 of the Constitution unless the Central Government by notification in the Official Gazette, otherwise directs."**

8. The above provision explicitly provides that the provision of 1956 Act will be made applicable only when the Government of India issues such notification. So far the Government of India has not issued any notification. Therefore, the provisions of Hindu Succession Act will not apply while deciding the inheritance of the deceased tenant under this Act. This is an accepted fact that if the provisions of Hindu Succession Act do not apply to the tribal community then the succession of such community will be decided as per the provisions of Hindu Law and in Hindu Law there is no provision to confer rights of succession to females. In this case this court finds it appropriate to refer Madhu Kishwar's judgment rendered by Hon'ble Apex Court (Madhu Kishwar Vs. State of Bihar, 1996(5) SCC 125) and specifically the minority judgment rendered by Justice Ramaswami wherein the following observations have been made:-

"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 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."

9. Hon'ble Justice Ramaswami has very categorically held that tribal communities are as much citizens as others and they are entitled to the benefit of guarantees of the constitution and it will be inhumane if

the natural inheritance of daughter and widow are precluded from the succession of the deceased person. In this case there is no evidence before this court that where Sunder Bai after her marriage has adequate means of sustenance for her livelihood. This court is of the considered opinion that Sunder Bai who is indisputably the daughter of Nanda, the deceased tenant and on the basis of this relationship she has a right to sustenance from the property left by her father.

10. There is an additional fact in this case that Nanda, the deceased, executed a will in favour of the appellants and on that basis learned Tehsildar, Pratapgarh held that on the basis of the will, the agricultural land held by Nanda should be mutated in name of the petitioners. Since the will executed by Nanda is not a registered will and the learned appellate court has observed that the contents of the will are not factually true as the will reads that Nanda does not have any child of his own, whereas Sunder bai is his biological daughter. Therefore, on the basis of such contradictions the learned appellate court has held that the will executed by the deceased has not been proved beyond doubt.

11. In these circumstances, this is obligatory on the part of Prem Chand and Laxmi Narain, in whose favour the will has been executed, to get their rights declared from a competent court. The learned appellate court has also justly held that in the matters of succession possession is not a vital issue. This is also very pertinent to mention here that this court is not aware that Sunder Bai who is biological daughter of Nanda, the deceased tenant, has any problem of maintenance. This fact has brought before this court that she is a married person but if she faces a threat of sustenance even after marriage, as per provision of old Hindu Law she is entitled to get her maintenance from her father's property. The relevant part of Hindu Law is reproduced as under:-

**Daughter:-**

**(i) Priority among daughters-** Daughters do not inherit until all the widows are dead. As between daughters, the inheritance goes, first, to the unmarried daughters, next to daughters who are married and "unprovided for", that is indigent, and lastly, to daughters who are married and are "enriched", that is, possessed of means. A married

daughter may be a widow, No member of the second class can inherit while any member of the first class is in existence, and no member of the third class can inherit while any member of the first or the second class is in existence. The rule about one married daughter excluding the other married daughter from inheritance comes into operation only if one daughter is indigent while the other one is possessed of wealth. It does not apply where both the daughters are financially well off and well placed in life. The rules of preference are those stated above and there is no rule of preference that a daughter who is without issue is to be preferred to one with issue. Nor is there any rule that a daughter who is married to an idol and leads a life of prostitution is to be preferred to her married sisters.

**(ii) Survivorship-** Two or more daughters of a class take the estate jointly as in the case of widows, with rights of survivorship. Any one daughter may alienate her life-interest in the property, but not so as to affect the rights of survivorship of the other daughters. And, like widows, daughters may enter into any agreement regarding their respective rights in their father's estate, provided such agreement does not prejudice the rights of reversioners. They may divide the estate merely with a view to convenient enjoyment, retaining the right of the survivor to take the whole on the death of one of them, or they may agree that the right of survivorship should be extinguished as between themselves. The agreement may be effected orally and without a registered writing.

**(iii) Limited estate-** The daughter takes a limited interest in the estate of her father corresponding to the widow's estate. On her death, the estate passes not to her heirs, but to the next heirs of her father. The next heirs of the father are called reversioners.

12. In light of the provision of old Hindu Law this court is of the opinion that learned appellate court has not committed any error in disposing of the first appeal filed by Sunder Bai. The appellants are directed to file a regular suit before the competent court to get their rights settled impleading Sunder Bai as a necessary party in such a suit.

13. As discussed hereinabove, the second appeal filed by the appellants is hereby dismissed. The judgment and decree passed by the first appellate court dated 29.11.2006 is upheld.

Pronounced.

(Bajrang Lal Sharma)  
Member