

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 286 of 2002**

- 1.a Hari Ram, S/o Late Bari, aged about 55 years,  
 1.b Ramkaran, S/o Late Bari, aged about 45 years,  
 1.c Dashrath Ram, S/o Late Bari, aged about 40 years,  
 1.d Pawan Kunwar, W/o Bhikhari, aged about 50 years,

All R/o. Village – Babauli, Post Babauli, Tahsil – Lundra, District Surguja  
 (C.G.)

2. Bholo, w/o Late Puran Gond,  
 3. Shiv Kumar, S/o Puran Gond,

Both r/o village Babauli, Tehsil Lundra, Distt. Surguja (C.G.)

(LRs of plaintiff No. 2)

**----Appellants/plaintiffs**

**Versus**

1. Smt. Kendi, w/o Ghasi Gond, d/o Sunder Gond, age 46 years,  
 Occupation – Agriculture, r/o village Babauli, Tehsil Lundra, Distt. Surguja  
 (C.G.)

2. The State of Madhya Pradesh (Now C.G.), through Collector, Surguja,  
 Ambikapur, Distt. Surguja (C.G.) (Proforma defendant No. 2)

**---- Respondents**

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 For Appellants : Mr. A.K. Prasad, Advocate.

For Respondent No.1 : Ms. Priyanka Mehta, Advocate.  
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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**19/09/2018**

- (1) The substantial questions of law involved, formulated and to be answered in

this plaintiffs' second appeal state as under:

- “1. Whether, the lower appellate Court was not justified in reversing a well reasoned judgment and decree passed by the trial Court ?
2. Whether, the lower appellate Court erred in giving a finding that the defendant No.1 was given a share by her father on account of her physical disability (due to one eye) and in that manner she became the owner of 1/3 share of the suit land ?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court).

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) Original plaintiffs filed a civil suit for declaration of title and permanent injunction in relation to the agricultural lands shown in Schedule 'C' attached with the plaint stating inter alia that suit land shown in Schedule 'A' attached with the plaint was self acquired property of Late Bhausa Gond and the parties are Gond by caste, in which, daughter do not get any right in the father's property. It was further pleaded that after the death of Late Bhausa Gond, the entire property was succeeded by his two sons namely Banshidhari and Sunder by which land shown in Schedule 'B' of the plaint was given to Banshidhari whereas land shown in Schedule 'C' of the plaint was given to Sunder.

(2.2) Sunder died in the year 1983. After his death, the land shown in Schedule "C" of the plaint was succeeded by plaintiffs namely Bari and Puran. It has further pleaded that defendant No.1 – Kunti Bai is the daughter of Sunder. Since the parties are "Gond" by caste, the defendant No. 1, being daughter, could not get any right after the death of her father along with her brothers but since the defendant

No. 1 got her name mutated in the revenue records of Schedule "C" attached to the plaint along with the plaintiffs and has got an order for partition dated 30.10.1993, therefore, instant civil Suit was filed on 29.03.1994 for the aforesaid reliefs.

(2.3) The defendant No.1 filed written statement and denied the averments made by the plaintiffs. She pleaded that though they are Gond by caste but are governed by Hindu Law. She further pleaded that in their caste, daughter gets her right in the properties of father like a son and she was given 1/3<sup>rd</sup> share in the property by her father in his life time and, therefore, she is entitled for 1/3<sup>rd</sup> share in the suit land shown in Schedule "C" attached with the plaint.

(3) The trial court, on the basis of evidence led in the case, decreed the suit of the plaintiffs holding that in the Gond Caste, the daughters do not succeed to the property of their father in presence of son; and the defendant No.1 has failed to establish that she is gharjiha daughter of plaintiffs' father and she was given 1/3 share by her father in his life time.

(4) On appeal being preferred by defendant No. 1, the First Appellate Court allowed the appeal and set aside the judgment of trial Court holding that the defendant No.1 was given 1/3<sup>rd</sup> share in the property by her father on account of her physical disability (due to one eye) as humanitarian ground and in that manner she has become the owner of 1/3<sup>rd</sup> share of the suit land.

(5) Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellants/plaintiffs in which the substantial questions of law formulated for consideration and which have been

incorporated in the opening paragraph of the judgment.

(6) Shri A.K. Prasad, learned counsel appearing for the appellants/plaintiffs would submit that trial Court has clearly held by a well reasoned finding that the parties are governed by Gond caste, in which the daughters do not get any share like a son in the property of father; and the defendant No. 1 has failed to prove that she was gharjiha daughter of the plaintiffs' father. He further submits that the defendant No. 1 cannot get any property on humanitarian grounds without there being any issue for adjudication in that regard as the right of property are governed by provisions having force of law, as such, the impugned judgment and decree passed by the first appellate Court deserves to be set aside and the decree of the trial Court deserves to be restored, and thereby the suit deserves to be decreed.

(7) Per contra, Ms. Priyanka Mehta, learned counsel appearing for respondent No. 1/defendant supported the judgment and decree passed by first appellate Court and submitted that in the facts and circumstances of the case, the appeal is devoid of merit and the same deserves to be dismissed.

(8) I have heard the learned counsel appearing for the parties and perused the judgment and decree impugned including records of both the courts below.

(9) The trial Court as well as first appellate Court has clearly recorded a finding that the parties are Gond by caste and in which provisions of Hindu Succession Act, 1956 are not applicable. The first appellate Court, having found that in the Gond Caste, daughter can be kept as Gharjiha daughter, but further found the fact of *gharjiha* daughter has not been established, dismissed the suit of the plaintiff but treating the plaintiff's case as special case that her father had given share on

account of her physical disability and set aside the decree of the trial Court on that ground.

(10) The defendant No. 1 had miserably failed to prove that she is entitled to get share in the property of her father along with the plaintiffs by succession as she was gharjiha daughter of her father. The defendant cannot get any property on the humanitarian grounds as the right of property is governed by prescribed canons of devolution of property to the heirs and legal representative of the deceased. No property right can be granted by Courts on humanitarian consideration as right to property is constitutional right under Article 300 A of the Constitution of India and no person can be deprived of his property except in accordance with law. More so, she did not plead and prove that she was given any share in suit property by her father on account of her physical disability (due to one eye) nor it was tried by framing issues, as such, the first appellate Court is absolutely unjustified in setting aside the well reasoned judgment and decree of the trial Court.

(11) In view of the foregoing, the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. The second appeal is consequently, allowed the plaintiff's suit stands decreed. The substantial questions of law are answered accordingly. No cost(s).

(12) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)  
Judge

D/-

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Second Appeal No. 286 of 2002**

**APPELLANT** : Hari Ram & others.

**Versus**

**RESPONDENTS** : Smt. Kendi & another

**Head Note**

Rights on property must be granted as per law and it cannot be granted by Courts on humanitarian consideration.

सम्पत्ति पर अधिकार विधि के अनुसार प्रदान किया जाना चाहिए यह न्यायालय द्वारा केवल मानवीय विचार पर प्रदान नहीं किया जा सकता ।

