2026 INSC 672

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C.) No. 23458 of 2024)

BEJLA ORAON … APPELLANT(S)

VERSUS

KALI DAS ORAON & ORS. … RESPONDENT(S)

J U D G M E N T

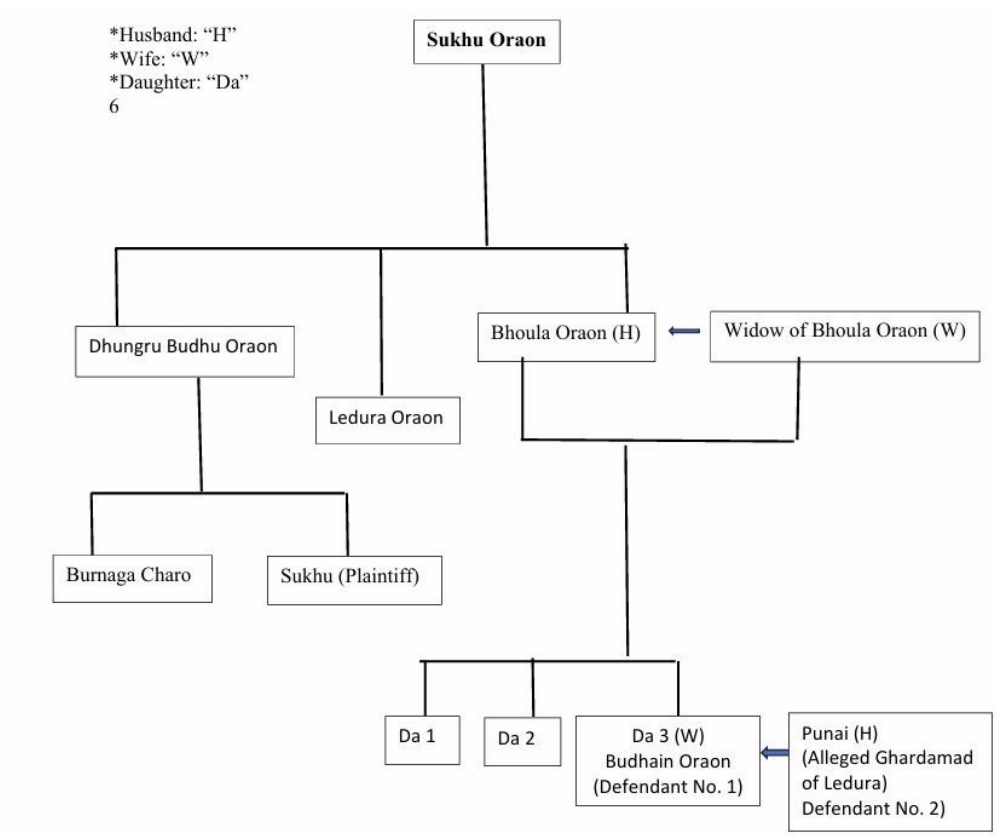
SANJAY KAROL, J.

1. Leave Granted.

2. Under challenge, at the instance of the original Plaintiff now represented through legal heirs, is the judgment and order dated 10 June 2024 passed by the High Court of Jharkhand at Ranchi in Second Appeal No. 35 of 1995. The impugned judgment upheld the findings returned in first appeal by the 1st Additional District Judge, Gumla in TA No. 42 of 1990[1] which in turn affirmed the judgment and decree of the Munsif, Gumla in TS No. 22 of 1975[2]. In other words, we are asked to examine the correctness of concurrent findings returned by the courts below.

[1] First Appellate Court
[2] Civil Court

3. One Sukhu Oraon (the grandfather) had three sons, namely Dhungru, Ledura and Bhoula. The plaintiff (Sukhu) was Dhungru's second son and his grandfather namesake. He claimed ownership of all land owned by Sukhu. Such a claim was opposed by Bhoula's daughter, Budhain, and her husband Punai (the original defendants 1 and 2). This is based on Sukhu's second son namely, Ledura, having apparently taken Punai as his *ghardamad,* for he had no children of his own. It is the undisputed case of the parties that in the local customs that govern them, daughters have no right of inheritance. The defendants claim that Ledura's property had come to Punai, who is now deceased. The defendants also state that Bhoula having died, Budhain and Ledura partitioned the properties amongst them *vide* deed dated 27th February 1975, whereas the plaintiff submits that since they had no title whatsoever such a partition deed would be *non est.* For ease of understanding, a family chart is placed below:



4. The civil court and the first appellate court framed and confirmed respectively the issue as to whether Punai was Ledura's *ghardamad*. It is in the impugned judgment that the High Court framed the question of the uncle's (Ledura Oraon) ability to adopt a *ghardamad* (Punai). In view of the concurrent dismissal of the plaintiff's suit, such relationship has been accepted by the courts.

5. *Halsbury's Laws of England*, (Fourth Edition), Volume 12(1) describes the following attributes of a 'custom':

> "**606. Essential attributes**. To be valid, a custom must have four essential attributes : (1) it must be immemorial; (2) it must be reasonable; (3) it must be certain in its terms, and in respect both of the locality where it is alleged to obtain and of the persons whom it is alleged to affect; and (4) it must have continued as of right and without interruption since its immemorial origin. These characteristics serve a practical purpose as rules of evidence when the existence of a custom is to be established or refuted.
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> **[Page No. 160]**
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> **626. Nature of proof.** All customs of which the courts do not take judicial notice must be clearly proved to exist, the onus of establishing them being upon the parties relying upon their existence. Proof must be made either by matter of record or by evidence of usage since time immemorial. Evidence to prove a custom must not only be consistent with the custom which is alleged, but must also prove a custom which is no wider than that alleged. If the evidence tends to prove a custom wider than that which is alleged, the party seeking to establish the custom is not at liberty to adopt part only of the evidence and to reject the rest.
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> **[Page No. 177]**
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> **627. Usual method of proof.** In proving an immemorial custom, the usual course taken is to call persons of middle or old age to state that in their time, usually at least half a century, the custom has always prevailed. This is considered, in the absence of countervailing evidence, to show that the custom has existed from all time. There are two sorts of countervailing evidence. First, other old person may be called to show that there was an interruption during the period spoken of by the first set of witnesses; secondly, evidence may be given that, from the nature of the case, it was quite impossible that such a right should have existed from time immemorial, or that there is some legal difficulty or obstacle in the way which makes the alleged assertion of the right incompatible with the law of the country. Whether the evidence supports the custom as alleged or not is a question of fact for the court. A custom possible in law, being reasonable and otherwise fulfilling the requisites of a good custom, may be established by very slender evidence.
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> **[Page No. 178]**"

6. We must at this stage look to how a custom is to be proved before a court. A perusal of previous decisions of this court reveals the following aspects:

6.1 He who alleges the custom must prove it. He must also prove that he is in fact governed by said custom;

6.2 In order for a custom to be binding, long usage thereof has to be established or in other words its practice and prevalence has to be shown;

6.3 It is proved by general evidence by the members of the tribe or family. If such a custom is supported by public record then it can be safely acted upon;

6.4 Custom must be certain and reasonable; not immoral or optional or opposed to public policy;

6.5 Once judicial notice had been taken of a particular custom, the same need not be proved independently in every proceeding;

6.6 Another form of a custom acquiring the force of law is that the same be legally confirmed; or still further a statute may be passed on the basis of or in regulation of that custom transforming it into a statutory right;

6.7 A custom once disallowed cannot, once again be revived.

6.8 Section 48 of the Evidence Act, 1872 provides that the opinion of those persons who are likely to know of the existence of the custom are to be taken into account by the court.

[See: ***Abdul Hussein Khan v. Bibi Sona Dero***, 1917 SCC OnLine PC 68, ***Aliyathammuda Beethathebiyyappura Pookoya v. Pattakal Cheriyakoya***, (2019) 16 SCC 1; ***Salekh Chand v. Satya Gupta***, (2008) 13 SCC 119; Gokal ***Chand v. Parvin Kumari***, (1952) 1 SCC 713; ***Ujagar Singh v. Jeo***, 1959 SCC OnLine SC 195; ***Darshan Singh v. Ram Pal Singh***, 1992 Supp (1) SCC 191]

7. Having considered the principles enumerated above, we now turn our attention to the evidence on record. Below is a summary of the evidence led by the parties:

8. As noted above, the present case is one of unanimity amongst the courts below. The plaintiff's case according to them merits dismissal. What is the scope

available to this Court under Article 136 of the Constitution is discussed in the following judgments:

8.1 A three-judge Bench of this Court in ***Srinivas Ram Kumar v. Mahabir Prasad***, 1951 SCC 136 held:

> "9. ... When the courts below have given concurrent findings on pure questions of fact, this Court would not ordinarily interfere with these findings and review the evidence for the third time unless there are exceptional circumstances justifying departure from this normal practice. The position may undoubtedly be different if the inference is one of law from facts admitted and proved or where the finding of fact is materially affected by violation of any rule of law or procedure.
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> 10. The practice adopted by this Court is similar to what has always been acted upon by the Judicial Committee. To quote the words of Lord Thankerton in Bibhabati Devi v. Ramendra Narayan Roy [Bibhabati Devi v. Ramendra Narayan Roy, (1945-46) 73 IA 246 : (1946-47) 51 CWN 98 : 1946 SCC OnLine PC 30] , "it is not by any means a cast-iron practice"; there may occur cases of unusual nature which might constrain us to interfere with the concurrent findings of fact to avoid miscarriage of justice. ..."
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> (emphasis supplied)

8.2 ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217** reiterated in **Sushma v. Nitin Ganapati Rangole, 2024 SCC OnLine SC 2584:**

> **"5.** … Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established : (*1*) that the finding is based on no evidence or (*2*) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (*3*) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (*4*) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. ...."
>
> (emphasis supplied)

8.3 ***Mithilesh Kumari v. Prem Behari Khare*, (1989) 2 SCC 95**

> **"5.** The first question, therefore, is whether or not to interfere with the concurrent findings of fact of the learned courts below. It has been said in a series of decisions that ordinarily this Court in an appeal will not interfere with a finding of fact which is not shown to be perverse or based on no evidence, (*Babu* v. *Dy. Director* [(1981) 4 SCC 246 : AIR 1982 SC 756]), but will interfere if material circumstances are ignored by the High Court. *Prasad* v. *Govindaswami Mudaliar* [(1982) 1 SCC

185 : AIR 1982 SC 84] . In *Dhanjibhai Ramjibhai* v. *State of Gujarat* [(1985) 2 SCC 5 : 1985 SCC (L&S) 379 : AIR 1985 SC 603] it was observed that where a finding of fact has been rendered by a learned Single Judge of the High Court as a court of first instance and thereafter affirmed in appeal by an appellate bench of that High Court, this Court should be reluctant to interfere with the finding unless there is very strong reason to do so. There is no reason why this should not apply to cases where the first appellate court was the district court. It was noted in *Ganga Bishan* v. *Jai Narain* [(1986) 1 SCC 75 : AIR 1986 SC 441] , that ordinarily this Court, under Article 136 of the Constitution, would be averse to interfere with concurrent findings of fact recorded by the High Court and the trial court. But where there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship this Court could not decline to interfere merely on the ground that findings in question are findings on fact. So also in *Uday Chand Dull* v. *Saibal Sen* [1987 Supp SCC 506 : AIR 1988 SC 367] , it was said that in an appeal by special leave under Article 136of the Constitution of India where there are concurrent findings of the courts below this Court is not called upon to reconsider the entire evidence in detail to ascertain whether the findings are justified. In *Ram Singh* v. *Ajay Chawla* [(1988) 1 SCC 364 : AIR 1988 SC 514] , where the concurrent finding was that the appellants were in unauthorised occupation of premises of which the respondents were the owners this Court did not interfere with the concurrent finding of fact."

(emphasis supplied)

8.4 In ***Ramachandran v. Vijayan***, 2024 SCC OnLine SC 3384 this court reiterated the grounds on which interference with concurrent findings of fact in civil matters is justified:

"**55.** It is evident from the above that findings with respect to schedule properties in item No. 2 are concurrent. This Court has reiterated many times[10] that concurrent findings of fact are not to be generally interfered with unless special circumstances are shown warranting such interference. The scenarios in which exercise of power under Article 136 of the Constitution of India would be proper, non-exhaustively, can be culled out as thus:

55.1 Interference in concurrent findings has been termed justified if the finding -

a) recorded does not emanate from the pleadings;

b) is foreign to or entirely divorced from the evidence on record;

c) is reached on the basis of the evidence which is irrelevant or extraneous and material evidence is ignored affecting its sanctity;

d) runs contrary to any provision of law;

e) is such that a reasonable judicial mind could not have arrived at it and/or the same is arbitrary;

f) arrived at is perverse and the soundness of reason is compromised.

55.2 Apart from the above-mentioned scenarios, a Court would also be justified in interfering with findings concurrent in nature if it is of the view that they cause undue hardship to the parties.
55.3 Additionally, when the findings are such that the conscience of the court is shocked, interference would be called for.
56. While the above are some contexts in which the Court may exercise its plenary power, the following overarching principles should always be considered prior to delving into such exercise:
56.1 The power has to be used sparingly and only when grave injustice is being caused to the parties of the dispute;
56.2 The burden of proof to show that concurrent findings are unjust, warranting interference by this Court is on the appellant.
56.3 Interference would not be warranted merely because in a given set of facts, a view different from the one which stands taken by the courts below, is possible.
56.4 It is not within the realm of practicality that all possibilities be mapped out, as to when invocation of this power would be felicitous. The court has to take such a call having employed its wisdom, reason and judicial thought."

9. In order to satisfy the circumstances described in the judgments, let us take a bird's eye view of the testimony on record. Primarily, the testimonies revolve around following six issues:

Whether partition took place between Sukhu's branch and Ledura/Bhola?	
PW 1	***Chief:*** The partition did not take place between my father and others. No partition has ever taken place between me and my both uncles. ***Cross:*** The partition did not take place in family.
PW 2	***Chief:*** The partition of landed property did not take place between Dungru, Ledra, Bhola because I never knew about partition. Sukhu, Buranga Charo, Ledra all were residing joint. The partition did not take place in them.
PW 3	***Chief:*** There did not take place partition between Ledura, Bhola and Sukhu regarding land nor any partition had taken place in between Sukhu and Ledura Bhola at any point of time.
PW 4	***Chief:*** No partition had taken place between Ledra, and Bhola.
DW 1	***Chief:*** After death of bhola Ledura had done partition of my land. ***Cross:*** In Udaon case there does not happen share/ partition in between father and son. I do not know as in happening of partition of partition between father and daughter, how much would be kept by father and how much would be kept by daughter.
DW 2	***Chief:*** The partition between Ledura -Bhola and Sukhu had taken place earlier from measurement. Oral partition had taken place between Ledura-Bhola and Sukhu. ***Cross:*** The partition had taken place 5 years before from measurement.

	In Udaon Caste, no partition takes place between father and son in the lifetime of father.
DW 3	***Chief:*** It was Sukhu who had separated Dungru from other two brothers before measurement. ***Cross:*** Daughter has no share. But partition can take place between father-daughter.
DW 4	***Chief:*** Partition had not taken place in between both (Bhola and Ledura). ***Cross:*** I had not seen being partition of any land between Ledura and Sukhu. When partition had taken place, I had not seen. There was not done partition between Ledora and Budhen. Ledora has written land to Bhuden
Whether daughters get any right/share in Udaon caste property?	
PW 1	***Chief:*** We belong to Udaon caste. In Udaon caste there is no right vested in women over landed property. The daughter also does not have any right over landed property. The women who do not have son, she has only right of maintenance.
PW 2	***Chief:*** Udaon resides in my village. I know their customs and usages. In udaon caste women do not get any right. The women who does not have son she has only right maintenance, but she does not get right over of landed property. The Udaon caste person who has only daughter, then his landed property on death would be received to his heir. If there is no heir then if that Udaon has two-three brothers then son of his brother will get. If Udaon dies having been separate from brother even then son of his brother will get right. If during his lifetime he writes land to his daughter, even then his daughter will not get right.
PW 3	***Chief:*** In Udake caste there does not arise any right in favor of women. The daughter of this caste does not have any right, she does not get any share.
PW 4	***Chief:*** In Udaon caste women has no title. In Udaon caste daughter has no title. The daughter does not get share. Which Udaon person has only daughter and there is nobody in family then who will get land on death of that Udaon, I cannot say about this.
PW 5	***Chief:*** In Dadatmafi the daughter does not get any share.
DW 1	***Cross:*** In Udaon caste, sons gets share in landed property of father without getting written. In Udaon caste daughter does not get share without getting executed deed/without getting written. This is not true as in Udaon caste the daughter does not have any right, therefore I did not get any right from lease.
DW 2	***Cross:*** If Udaon has only one daughter and there is brother, nephew then on death of that Udaon, if land is not written in favor of daughter, then brother/nephew would get title. If in two Udaon brothers one Udaon has died, who has only one daughter, then in such situation the title of brother who has died, will not devolve to his other brother, rather it will go to his daughter. In Udaon caste if title is not written to daughter, then that daughter will not get share. There is no need of writing land in favour of son from father. He automatically gets right/title.
DW 3	***Cross:*** If landed property was not written to Budhen Punai, even then title would have arisen because she there was daughter existing. Daughter has no share. But partition can take place between father-daughter. As much as father would like to give same according to his wish and part from this I know custom/ usage. In partition between two brother both will get equal share. Father gives to his

	daughter according to his wishes and also does not give, this is also called gift. There is difference between gift and share. Daughter and brother would have equal share, as many as daughters, all will get share.
DW 4	***Chief:*** In our caste landed property is given to daughter and son in law. I do not know as daughter does not have any right over the land o father or uncle. ***Cross:*** It is true that I want that let my daughter should get right. It is not true that the land was got written to daughter secretly.
Whether son-in-law/gherdamad gets rights in property?	
PW 1	***Cross:*** I know Jamatoli Shivram village. There are situated my ancestral land. My share there is alone. My father was earning over above land. I do not know as he got that landed property from his father in law. Ledura and Bhola did not have any right and share in landed property of Jamatoli Shivram.
DW 1	***Chief:*** In Udaon caste the house in law has title in landed property of father of daughter means in landed property of father in law. Sukhu has also found land in Shivraj Jafroli in the capacity of house in law (gherdamad). Cross: Punai gives vote. In voter list his name is written this. This is not true that Punai resides in house of his father.
DW 2	***Chief:*** Father of Sukhu had gone to Shivram Jamatoli as gherdamad. He was residing there. He had got land- agricultural land from father in law. He was earning from the same. Ledura was not having his any child. He had entrusted Punai as his gherdamad. In Udaon caste who separates from brother and keeps gherdamad, then gherdamad gets title according to his caste. Dungru Budhu father of Sukhu had got title because of keeping gherdamad in Shivraj. ***Cross:***Dungru had got land of Jamatoli by/in writing because he was gherdamad. The gherdamad also becomes like son, if agricultural land is written to him.
DW 3	***Chief:*** The person who having been separated from Udaon caste, resides alone, he can keep daughter and son in law. He can keep gher damad, who will get right of son. ***Cross:*** The Ghardamad also has share in landed property of father. It is not necessary that first of all after keeping for some days, then marriage is performed and he is made gherdamad. After Roka performing marriage, he is kept for some days in house only then one becomes Gherdamad. After performing marriage, gherdamad goes to house o his father sometime and even he is not being taken. After marriage Budhen was taken by Punai for some days in house of his father for how many days and had kept her, I cannot say. I was not present on the day of marriage of Budhen.
DW 4	***Chief:*** He (Ledura) had brought Munai by making gharjugua. Damru, father of Sukhu, had gone having been as son in law (ghardamad) in village Shivram. In our caste landed property is given to daughter and son in law. ***Cross:*** Punai was not living in my house before marriage. He was brought after marriage. Marriage of Punai was solemnised by Ledora. It is not true that Punai is not my ghar-damad. Punai does not reside in house of his parent regularly.

Who gets the Property of an Issueless Udaon (Nephew or Daughter)?	
PW 2	***Chief:*** The Udaon caste person who has only daughter, then his landed property on death would be received to his heir. If there is no heir then if that Udaon has two-three brothers then son of his brother will get. If Udaon dies having been separate from brother even then son of his brother will get right.
PW 3	***Chief:*** In Udake caste, if there is no son and has died, then share will be of Sukhu.
DW 1	***Cross:*** If any Udaon dies issueless and he has brother-nephew then both means nephew and niece would get share in his land.
DW 2	***Cross:*** If any person belonging to Udaon caste is issueless and he has nephew and niece then on death of that Udaon, the nephew would get title.
DW 3	***Cross:*** If two Udaon are living jointly. One brother dies leaving behind one daughter and second is alive, and he is issueless then daughter and brother both would have title/right. If one Udaon is issueless and he has brother-nephew, on his death, nephew will have right.
DW 4	***Cross:*** Sukhu is my nephew-son. I do not have any son who took birth from me. I do not know as if there is no son then it is nephew who becomes owner of landed property. I do not know as daughter does not have any right over the land o father or uncle. If anyone dies issueless then his nephew would not get his land.
Who became entitled to the property after the deaths of Bhola, Ledura and Buranga?	
PW 1	***Chief:*** On death of Buranga Charo. I became owner of landed property. After death of Ledura and Bhola. I became owner of land.
PW 2	***Chief:*** In family of Dungru, Budhu, Ledura and Bhola there is yet remaining only Sukhu. The heir of their landed property situated in Chechepat is presently Sukhu.
PW 3	***Chief:*** After death of all, Sukhu became entitled for all lands.
PW 4	***Chief:*** Sukhu is entitled for land of Ledra, Bhola and Dungru.
DW 1	***Cross:*** The lease deed was executed in my favor therefore, I got title, otherwise I would not have got title. When marriage was performed, prior to this, it was settled that share of my father would be written to me. My husband has share in landed property of his father.
DW 2	Punai does not resides in house of his father. He continuously resides in in-laws house. Gherdamad also gets his share in ancestral property. The gherdamad is made only by father. Pity is not made.
DW 3	***Cross:*** If landed property was not written to Budhen Punai, even then title would have arisen because she there was daughter existing.
DW 4	***Chief:*** Ledura had written his land to Budhen after that he died. Sukhu has no right in land of Ledora and Bhola. ***Cross:*** It is not true that after death of Bhola and Ledura, Sukhu became entitled got their entire lands. In between Bhola & Ledora on, on death of Bhola, entire land went to Ledora. If same was not written then land of Ledora might go to Sukhu.
Whether the lease deed was validly executed or secretly obtained?	
PW 1	***Chief:*** The case has been filed only in order to break lease. After death of Ledura I came to know about lease. In Udaon caste no one can write land without permission. The lease deed has been got prepared secretly. ***Cross:*** The lease was executed regarding Pakardon, Pakarchora of Chechepat…I used to pay land revenue of Rs. 5/- of my land in Chechepat.

	I do not know as in block there has been done mutation in name of Budhen, after getting written the lease deed. I do not know as the receipts are separately issued in name of Budhen.
PW 4	***Chief:*** The registry of lease has been got done by Budhen, the case is regarding same. The case is for what purpose, regarding which land, I do not know.
DW 1	***Cross:*** Ledura was sick at the time of getting written lease. Ledura had died in Baishakh or Jeth. The lease deed was got written in falgun month. The lease deed was executed in my favour therefore, I got title, otherwise I would not have got title. Ledura has written land to me, whether permission was taken for that or not, this I do not know. Udaon can write his land also without permission It is not true that we got executed lease deed secretly by concealing from Sukhu. It is true that Sukhu does not have any title therefore I have got written lease.
DW 2	***Cross:*** It is not true that Budhen is (illegible) daughter and she does not get any title from getting written lease. It is not true that in order to grab title of Sukhu, Budhen has got written lease in her favour. It is not true that Sukhu is not bound from lease.
DW 3	***Cross:*** I cannot remember as how many years before from death of Ledura, Budhen had got written lease. Approximately it would have got written 2 years before. Ledura had died 2-4 years before about four years before. I do not know as 2-4 months before from death of Ledura, lease was written.
DW 4	***Chief:*** Ledura had written land to Budhen after that he died. He had written his lands. ***Cross:*** It is not true that the land was got written to daughter secretly.

10. Now our conclusions based one each issue and the respective testimony of the parties, are as follows:

10.1 Whether partition took place between Sukhu's branch and Ledura/Bhola?

Almost all witnesses appear to agree that no partition took place. There was no partition between any of the members of grandfather Sukhu's family that could be established by evidence. Only one witness that is DW-4 says that Ledura had 'written land to Bhuden'. Where the authority comes from, for him to do so? Whether the customs governing the parties permit this, what extent of land was given and what part thereof was retained, none of these aspects have been touched upon, much less elaborated. As such, this cannot be held to be proved.

10.2 Whether daughters get any right/share in Udaon caste property?

On this point, plaintiff's witnesses agree that a daughter does not get a share in property under any circumstance. Defendant witnesses however are internally inconsistent. Two of them say that a daughter can get a share if done so through a written instrument, one says that daughter does not get a share and the last one says she is not aware. In this situation, given that the plaintiff's statements withstand cross examination, they have to be accepted. Hence, as proven, daughters do not get any right or share in the property.

10.3 Whether son-in-law/gherdamad gets rights in property?

It appears from all the testimonies that the custom of a son-in-law(*ghardamad*) acquiring a right in the property of his father-in-law is proved.

10.4 Who gets the Property of an Issueless Udaon (Nephew or Daughter)?

Once again, defendant witnesses are inconsistent. DW-1 says both nephew and niece will get property, DW-2 and 3 says nephew will get it and DW-4 says nephew will not get it. The two witnesses of the plaintiff that do allege that a nephew will get the property appear to be doing so in the specific facts of the case. Although PW-2 speaks generally in terms of the Udaon caste, obviously a custom cannot be said to be established on the basis of testimony of one witness (strictly not falling within the ambit and scope of S.48 of the Evidence Act) since the point of view to prove a custom is long and continuous usage.

10.5 Who became entitled to the property after the deaths of Bhola, Ledura and Buranga?

The plaintiff's witnesses are *ad-idem* that the plaintiff would be entitled to the property and continuing the trend, defence witnesses are again inconsistent. DW1 claims ownership, DW-2 on the one hand says that *ghardamad* has a share in property and on the other *ghardamad* can be made only by father. DW-3 says that Punai would have gotten the title even if it was not done through a written statement because he was Budhen's husband. DW-4 in her chief examination says that plaintiff has no right but in cross acknowledges the possibility of plaintiff's entitlement. It is a matter of record that as on date, Punai is deceased. There are no other descendants through the males in the family. SC Roy, the scholar whose book on this community has often been relied on by this court as also the High Court, says that in such situations, the nearest male agnate becomes entitled. So, on that count, the plaintiff will succeed.

10.6 Whether the lease deed was validly executed or secretly obtained?

All witnesses apart from DW-4, who deposed on this issue use the word 'lease'. However, the Civil Court calls this deed a partition deed. It is rather difficult for us to say, at this stage whether it was a lease deed or a partition deed. Fortuitously, be it either, the end result is no different. It is well established that lease deeds do not confer title. It is also well established that a partition can be affected only amongst people who have shares between them. In this case, only Ledura had shares and as such there was no question of there being a 'partition' between Ledura and Budhen. That being the position, the document itself becomes irrelevant as to title and the issue as to whether it was executed in open or in secret pales into insignificance.

11. We notice that in Para 11 of the judgment, the Trial Court, relying upon SC Roy's book, has held as under:

> "11. Shri Sarat Chandra Roy in his book the Oraon of Chotanagpur has mentioned in pages 375 and 376 about the custom of ghardamad ship prevalent amongst the Oraons according to him "a Oraon owner of lands who has no sons may have recourse to either to contravenes to make a show of continuing his family after death. He may either adopt a son to himself or take into his house a prospective sone in law. If the adopted son belongs to his owns clan and Khunt, and has been adopted on the other agnates of the owner agreeing in the presence of the purchase to for go in his favour their claims to inheritance, such adopted son acquires the full right of a son otherwise he is only entitled to inherit the Rajhas lands of the adoptive father. A ghar dijoa son-in-law (adopted as such before marriage) can, in no case, inherit the bhuinhari land of his deceased father-in-law,although the Rajhas land, by reason probably of the small value that can be attached to them and in consideration of the Labour ex-ended by the ghardijoa over them, go to him, unless the deceased has left a brother or a brother's son who joint in mess and property with the deceased at the time of his death. On page 348 it has been mentioned if there be no male issue or adopted son, but only a ghardamad duly adopted into the house as a perspective son-in-law by the last male owner or even by his widow a son married to a daughter of a deceased and living in the house the Rajhas lands left by the deceased male owner shall on the death of the widow go the such ghardamad, and bhiunhari land shall go to the nearest male agnate or agnates."
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> (emphasis supplied)

The conclusion drawn thereafter is in para 18 which is

> "As stated earlier the plaintiff or his witnesses have not denied that the defendant no.2 is a ghardamad of Ledura Oraon of the widw of Bhoula Oraon, The defendants contention that the ghardamand may be adopted even after marriage and, for acquisition of status of a ghardamad is not prospective son-in-law has not been refuted by the p;laintiff under these circumstance find and hold that defendant no.2 Punai Oraon has been adopted and kept as ghardamand by Ledura Oraon or the widow of Bhoula Oraon. This issue is therefore, decided against the plaintiff and favour of the defendants."
>
> (emphasis supplied)

This is the finding that was confirmed by the First Appellate Court. Be that as it may, we are of the considered view, having perused the aforesaid section of the book that the Civil Court misdirected itself since, by its own version the words used are that there is no male issue or adopted son but only a *ghardamad* duly adopted into the house by the last male owner or even his widow. In this situation,

it is not borne from record that Bhola, that is father of Budhain had any role to play or for that matter that even DW-4 had explicitly adopted him. The consistent position is that Ledura who is the uncle in law had adopted Punai. It is nowhere established that an uncle-in-law can adopt his niece's husband as his *ghardamad* within the prevalent customary law. Further, the alleged partition was between Budhain and Ledura with the necessary consequence that Ledura's portion went to Punai, but since Punai was actually the ghardamad of Bhola and not Ledura, is this even possible and permissible.

The High Court even though framed the issue did not answer the same simply because there were concurrent findings. Ordinarily, once a substantial question is framed, the parties have to be heard and issue decided accordingly. If it was only the concurrent nature of findings that weighed with the High Court and nothing further, then there was no reason to formulate that question.

12. We found that the High Court observed that since it is not established that there is bar against adoption by uncle-in-law, no adverse inference can be drawn. Well, as we have discussed above, those who allege a custom must be the one to prove it. Merely observing that the opposite to what has been alleged is not clearly stated, cannot be stated to be sufficient. To say the least, that is not the appropriate answer to a substantial question of law within the meaning of Section 100 CPC.

13. Taking a cumulative view of the matter, we are of the considered view that in the present facts the customs as alleged, apart from the *ghardamad's* eligibility to get property of his father-in-law could not be proved. The decision made by us places reliance on well-established and acknowledged sources of the law as it prevails in this community which, at the cost of repetition, postulates that in the absence of a *ghardamad* or any other male heir directly related to the land owner i.e. the male members of the family, the nearest male agnate will have the right in the property. Hence, the judgments of the courts below are set aside. Plaintiff's suit is decreed. All necessary consequences to follow.

14. The appeal is allowed. Costs are to be borne by the parties themselves. Pending application(s), if any, shall stand disposed of.

.....……..……..J.
(**SANJAY KAROL)**

.....……..……..J,
(**NONGMEIKAPAM KOTISWAR SINGH**)

New Delhi
July 9, 2026