2026:CGHC:1817

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 116 of 2005

Judgment reserved on 06/01/2026

Judgment delivered on 13/01/2026

[redacted]

Appellant

Versus

1 – [redacted]

2 - [redacted]

[redacted]

5 - State Of Chhattisgarh Through Collector Durg (C.G.)

Respondents

For Appellant(s) : Mr. Manoj Paranjpe, Senior Advocate along with Ms. Shivangi Agrawal, Advocate

For Resp. No. 1 & 2 : Mr. Virendra Soni along with Mr. Ankush Soni, Advocates

For State/Resp. No. 5: Mr. Santosh Soni, Govt. Advocate

Hon'ble Shri Bibhu Datta Guru, Judge

C A V Judgment

1. The present Second Appeal has been filed by the appellant/defendant No.1 under Section 100 of the Code of Civil Procedure, 1908, assailing the judgment and decree dated 29.01.2005 passed by the learned Additional District Judge, Balod, in Civil Appeal No. 54-A/2002 ([redacted]), whereby the judgment and decree dated 13.09.2002 passed by the learned Civil Judge, Class-I, Balod, in Civil Suit No. 40-A/1988 ([redacted]) has been reversed. For the sake of convenience, the parties are referred to as per their status before the Trial Court.

2. The instant appeal was admitted by this Court on 05.04.2005 on the following substantial question of law:

"Whether the lower Appellate Court was not justified in holding that [redacted] *was legally wedded wife of* [redacted] *and the finding in this regard is perverse?"*

3. (a) The facts of the case are that [redacted] (died) was the owner of 2.47 hectares of agricultural land situated at Village Dhameli. The first wife of [redacted], namely [redacted] expired, and at that time defendant No.1, [redacted] (appellant herein), who is the daughter of [redacted] and [redacted], was about five years of age. After the death of his first wife, [redacted], about 37 years prior to the institution of the suit, in accordance with the prevailing customary practice (Chudi marriage), brought [redacted], a widow, as his wife from her parental home at Village Birwad. At that time, the plaintiffs, namely [redacted] and [redacted], aged about five years and two years respectively, were living with their mother [redacted]. It was noted that [redacted] brought [redacted] along with the plaintiffs to his house, maintained them, brought them up, and solemnized their marriages. Subsequently, [redacted] died on 29.12.1987, whereafter his widow [redacted] and daughter of first wife [redacted] namely; [redacted] (defendant No.1) succeeded to his estate. Subsequently, [redacted] died on 03.02.1988. After her death, except for the plaintiffs and defendant No.1, there remained no other legal heirs of [redacted]. It was also noticed that after the death of [redacted] and [redacted], the names of the plaintiffs and defendant No.1 were recorded in the revenue records in respect of the suit land. However, defendant No.1 objected to the said entry by

contending that the plaintiffs were the children of [redacted] from her previous husband and, therefore, had no right, title or interest in the property of [redacted]. Consequently, the plaintiffs instituted the civil suit seeking declaration of title to half share, partition, and delivery of possession over the suit land.

(b) Defendant No.1 filed the written statement, wherein it was pleaded that the plaintiffs were neither the daughters of [redacted] nor ever resided in the house of [redacted], and that no marriage ever took place between [redacted] and [redacted]. It was further pleaded that [redacted] was earlier married to [redacted], whom she deserted, and thereafter lived at Village Birchad. According to the defendant, [redacted] subsequently went with [redacted], where she gave birth to [redacted] and [redacted], and thereafter allegedly eloped from the house of [redacted] and went with one [redacted] of Rajnandgaon, from whose cohabitation the plaintiffs were allegedly born. On these grounds, defendant No.1 claimed exclusive title over the suit land and sought dismissal of the suit.

(c) On the basis of the pleadings of both the parties, the learned Trial Court framed the issues. After recording the evidence of both sides and upon hearing the final arguments, the learned Trial Court came to the conclusion that the appellants/plaintiffs failed to prove their claim and, accordingly, dismissed the suit.

(d) Being aggrieved by the said judgment and decree, the plaintiffs have preferred the first appeal before the learned First Appellate Court. After hearing the parties, it was held by the First Appellate Court that [redacted] had duly gone to Village Birchad and, in accordance with the prevailing social customs and the "Chudi" form of marriage, solemnized his marriage with [redacted], and that a customary community feast was also given in the village. It was further found that [redacted] continuously lived with [redacted] as his wife till his death and that she died in the house of [redacted] itself.

(e) In view of the aforesaid circumstances, the learned First Appellate Court observed that the said facts stood fully proved from the evidence of the plaintiff and the witnesses examined on her behalf and that [redacted] was the legally married wife of late [redacted].

4. After recording a categorical finding that the marriage between [redacted] and [redacted] was legal and valid, and that the plaintiffs are the children of [redacted], the learned First Appellate Court held that the plaintiffs are entitled to succeed to the property through their mother [redacted], and that defendant No.1 is also entitled to an equal share in the said property. Considering all the aforesaid circumstances, the learned First Appellate Court held that the claim of the plaintiffs deserved to be allowed. Hence, this Second Appeal by the defendants.

5. (i) Learned counsel for the appellant/defendant contended that the

learned First Appellate Court committed a serious error in law and fact in holding that [redacted] was the legally wedded wife of [redacted] and that the plaintiffs are entitled to succeed to his property; such a finding is perverse, contrary to the evidence on record, and ignores material contradictions in the testimony of the plaintiffs and their witnesses. It has been submitted that the Trial Court, after carefully evaluating the pleadings and evidence of both sides, had rightly concluded that the plaintiffs failed to establish that [redacted] had any valid marriage with [redacted]

6. (ii) Learned Counsel further pointed out that the First Appellate Court overlooked crucial facts, including [redacted]'s prior marriage to Arjun and her children therefrom, evidence suggesting that she never cohabited as wife with [redacted] for a legally recognized period, and testimony of independent witnesses indicating that the plaintiffs were not brought up in [redacted]'s household and that the customary "Chudi" ritual cited was insufficient to constitute a valid marriage under the provisions of the Hindu Marriage Act, 1955 (for short 'the Act, 1955'). It was further urged that the recorded revenue entries alone cannot create substantive property rights when no legal marriage exists, and by holding the marriage valid, the First Appellate Court effectively converted an unproven customary arrangement into a legal entitlement, thereby extinguishing the complete claim of the defendant in the property. As such, the judgment of the First Appellate court is perverse,

illegal and unsustainable, which requires interference of this Court.

7. *Per Contra,* learned counsel for the respondent Nos. 1 & 2/plaintiffs while supporting the impugned judgment, oppose the submission of learned counsel for the appellant and submit that the First Appellate Court has rightly found that [redacted] was the legally wedded wife of the [redacted] and the plaintiffs have equal right over the property of the [redacted] as of defendant.

8. I have heard learned counsel for the parties and perused the pleadings, impugned judgment and the material available on record.

9. The substantial question of law framed in the present Second Appeal pertains to the legality and validity of the finding recorded by the learned First Appellate Court holding that [redacted] was the legally wedded wife of late [redacted]. This finding forms the very foundation for granting succession rights to the plaintiffs. Consequently, the correctness of this conclusion requires careful scrutiny, particularly within the limited scope of Section 100 of the Code of Civil Procedure, 1908.

10. It is well settled that ordinarily, a finding of fact recorded by a First Appellate Court is considered final and binding. However, interference in a Second Appeal is permissible where the impugned finding is based on misreading of evidence, ignores material evidence, or is arrived at by applying incorrect legal principles.

11. On meticulous examination of the evidence on record, particularly the testimony of PW-1 [redacted] (plaintiff No.1), it becomes evident that the very foundation of the plaintiffs' case is seriously undermined. PW-1, in her cross-examination at para 7, categorically admitted that at the time when [redacted] allegedly performed the "Chudi" marriage with her mother [redacted], the first husband of [redacted] was alive. This admission directly contradicts the claim of a valid subsequent marriage of [redacted] with [redacted]. Furthermore, PW-1 admitted that she had no knowledge of any divorce or customary dissolution of her mother's prior marriage. The plaintiffs have failed to produce any documentary or oral evidence to establish that the first marriage of [redacted] had been legally or customarily dissolved prior to the alleged marriage with [redacted]

12. The law on this point is clear. Under Sections 5(i) and 11 of the Act, 1955, a marriage contracted during the subsistence of an earlier valid marriage is void ab initio. Even in cases where a subsequent marriage is claimed to have occurred according to a customary practice, the burden is on the party asserting such custom to specifically plead and strictly prove that the custom permits remarriage during the lifetime of the first spouse. In the present case, no such evidence has been placed on record.

13. It would be apt to quote the provisions of Sections 5(i) & 11 of the Act, 1955 for ready reference :

> **5. Conditions for a Hindu marriage.--** A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely;--
>
> (i) neither party has a spouse living at the time of the marriage;
>
> xxx xxx xxx
>
> **11. Void marriages.--**Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

14. The Supreme Court, in ***Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav & Anr.*****, (1988) 1 SCC 530**, while examining the status of a Hindu woman marrying a Hindu male having a living spouse, has categorically held that for appreciating the validity of such a marriage, the provisions of the Act, 1955 must prevail. Interpreting Sections 5(i) and 11 of the Act, the Supreme Court observed that a lawful Hindu marriage necessarily requires that neither party should have a spouse living at the time of the marriage, and that a marriage solemnised in contravention of this condition is null and void. The Supreme Court further rejected the contention that such a marriage could be recognised on the basis of prior Hindu law or custom, holding that by virtue of the overriding effect of Section 4 of the Act, no aid can be taken of any custom or usage inconsistent with the provisions of the Act. It was

further clarified that such marriages do not fall under Section 12 of the Act, as marriages covered by Section 11 are *void ipso jure*, that is, void from the very inception, and are required to be ignored as not existing in law at all, even without a prior decree of nullity. The Supreme Court ultimately held that the marriage of a woman with a man having a living spouse is a complete nullity in the eyes of law and does not confer any legal status upon her. It is an admitted fact that at the time of alleged customary marriage of Chudi Pratha with [redacted], the earlier husband of [redacted] was alive.

15. Mere assertion of a "Chudi" marriage or evidence of cohabitation cannot convert a marriage, which is otherwise void under law, into a valid one. The uncontroverted admission of PW-1 that the first husband of [redacted] was alive at the relevant time when she allegedly performed customary marriage by following the Chudi Pratha with [redacted] is decisive. In view of the conditions enumerated in Sections 5 (i) & 11 of the Act, 1955, it is held that since the first husband of [redacted] was alive, according to PW1 [redacted] when she allegedly performed the subsequent customary marriage of Chudi Pratha with the father of the Defendant namely [redacted], the said subsequent marriage is not acceptable under the eyes of law and the same is a void marriage.

16. The Supreme Court in the matter of ***Ratnagiri nagar Parishad v. Gangaram Narayan Ambekar and Others***, reported in ***(2020) 7 SCC 275*** held thus:

"18. Be that as it may, on a fair reading of the

judgment of the trial court, it is manifest that the trial court had opined that the plaintiffs failed to substantiate the case set out in the plaint regarding the actionable nuisance. The trial court justly analysed the evidence of the plaintiffs in the first place to answer the controversy before it. The first appellate court, however, after adverting to the oral and documentary evidence produced by the parties, proceeded to first find fault with the evidence of the defendants to answer the controversy in favour of the plaintiffs. The first appellate court committed palpable error in not keeping in mind that the initial burden of proof was on the plaintiffs to substantiate their cause for actionable nuisance, which they had failed to discharge. In such a case, the weakness in the defence cannot be the basis to grant relief to the plaintiffs and to shift the burden on the defendants, as the case may be. Thus understood, the findings and conclusions reached by the first appellate court will be of no avail to the plaintiffs."

17. The Delhi High Court in the matter of ***Sushma v. Rattan Deep and Anr.*** reported in ***2025 SCC OnLine Del 8663*** held thus at para 17:-

"17. One of the ways to prove the custom is reference to any text or interpretation of Hindu Law or uses for long period of time. Once the Court is called upon to declare that there exists a custom which is contrary to the codified law, the burden of proof is heavy upon the party asserting custom……."

18. It is incumbent on a party setting up a custom to allege and prove the custom on which he relies and it is not any theory of custom or deductions from other customs which can be made a rule of decision but only any custom applicable to the parties concerned that can be the rule of decision in a particular case.

19. In view of the aforesaid well settled law to prove the customary marriage is heavily lies upon the parties who is asserting the custom, however, in the case in hand, the First Appellate Court without appreciating the well settled law and by committing palpable error in not keeping in mind that the initial burden of proof was on the plaintiff to substantiate their cause, which they had failed to discharge, shifted the burden upon the defendant.

20. The learned First Appellate Court has overlooked these crucial admissions and proceeded to uphold the validity of the marriage of [redacted]& [redacted] merely on the basis of revenue entries and general statements regarding customary marriage. It is well settled that revenue records, being primarily administrative or fiscal in nature, cannot confer title or override substantive provisions of Hindu law governing marriage and succession.

21. Moreover, the learned First Appellate Court has failed to appreciate the material contradictions and inconsistencies in the plaintiffs' own evidence. The inconsistencies relate to the prior marital status of [redacted]

[redacted], her place of residence at relevant times, and the upbringing and parentage of the plaintiffs. These discrepancies, along with the absence of evidence regarding dissolution of the prior marriage, raise serious doubts regarding the claim of continuous cohabitation of [redacted] with [redacted] as his lawful wife.

22. The Trial Court, after a detailed and careful appreciation of oral and documentary evidence, had rightly concluded that the plaintiffs failed to prove a valid marital relationship between [redacted] and [redacted] Consequently, the plaintiffs also failed to establish any legal right to succeed to the property of [redacted]. The reversal of this finding by the learned First Appellate Court, without addressing the legal consequences arising from the subsistence of the prior marriage and the absence of proof regarding its dissolution, amounts to a clear misapplication of settled principles of Hindu law.

23. It is also important to emphasize that the First Appellate Court has relied primarily upon general statements regarding customary practice and revenue records, without recording any specific finding about the existence, recognition, and legal validity of such customary marriage in the community. Mere reference to a customary practice, without proof of its continuity, certainty, and acceptance, cannot confer the status of a legally valid marriage under Hindu law.

24. In view of the above, this Court finds that the finding recorded by the

learned First Appellate Court holding that [redacted] was the legally wedded wife of [redacted] is perverse. The conclusion is based on conjecture and surmise, contrary to the evidence on record, and ignores critical legal and factual aspects, including the admitted subsistence of the prior marriage of [redacted].

25. Accordingly, the substantial question of law framed in this Second Appeal is answered in favour of the appellant/defedant and against the respondents/plaintiffs.

26. Resultantly, the Second Appeal is allowed. The judgment and decree dated 29.01.2005 passed by the learned Additional District Judge, Balod, in Civil Appeal No. 54-A/2002 are hereby set aside. The judgment and decree dated 13.09.2002 passed by the learned Civil Judge, Class-I, Balod, in Civil Suit No. 40-A/1988 is hereby affirmed.

27. In the facts and circumstances of the case, there shall be no order as to costs.

28. Decree be drawn accordingly.

Sd/-

(BIBHU DATTA GURU)
JUDGE

Rahul/Gowri

HEAD NOTE

Marriage in contravention of S. 5 (i) of the Hindu Marriage Act, 1955 is *void ab initio* u/S 11. The necessary condition for a lawful marriage as laid down u/S 5 (i) is that neither party should have a spouse living at the time of marriage. Such marriage cannot be justified on the ground that the same was recognized by custom or usage.