IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 16th OF MARCH, 2026

CIVIL REVISION No. 257 of 2026

MUNNI BAI

Versus

PHOOLMAT PAV AND OTHERS

Appearance:

Shri Surdeep Khampariya - Advocate for the petitioner.
Shri Kishori Lal Pandey-Advocate for the respondent No.1.
Shri Vijay Kumar Soni- Advocate for the respondent No. 7.
Shri Takmeel Nasir- Advocate for the respondent No. 4.
Shri Rajas Pohankar- & Rajendra Rajak-Advocates for the respondent No. 3.

ORDER

The present revision has been filed challenging the concurrent orders passed by the trial court dated 12.05.2023 and by the appellate court dated 05.04.2023, thereby rejecting the application for succession certificate filed by the present petitioner.

2. The necessary facts for the disposal of present revision are that the present petitioner had filed an application for succession under Section 372 of Indian Succession Act on the assertion that she married the deceased Bhagat Singh (hereinafter referred to as "deceased") in the year 1986, and till his death on 25.01.2013, she co-habited with the deceased who was working in the coal mines. It was stated that earlier the deceased, who was working in the coal mines, had married the respondent No. 1, but there is a tradition of polygamy in the tribe because the parties belong to "Pav" tribe and the provisions of Hindu Marriage Act would not apply to the said tribe,

therefore, the petitioner would get the right to succeed the properties of the deceased. Though in the initial application for succession, the existence of valid marriage with respondent No. 1 was not properly disclosed, but later on, a modified prayer was made before the appellate court and the trial court that since there is a practice of polygamy, therefore both the wives be granted half share each in the dues payable to the deceased and in the deposits of the deceased.

3. The respondent No.1 opposed the application and her case was that she is the sole wedded wife of the deceased and she got married somewhere in the year 1980. She stated that she denied that the deceased ever married the applicant and stated that the respondent No. 1 is the sole eligible person to receive all the dues.

4. In the present case, during course of arguments, the counsel for the petitioner stated that it is not disputed that the deceased had earlier married with the respondent No. 1 and the sole question that would now arise is that whether the second wife would get the share of dues because the parties belong to scheduled tribes and the provisions of Hindu Succession Act would not apply to tribals. Reliance is placed on judgment of co-ordinate Bench in **Shakun Bai Wd/o Somnath Kushram & others Vs. Siya Bai wd/o Somnath and others 1999(2) M.P.L.J 307**.

5. *Per contra*, the petition was vehemently opposed by the counsel for the respondents on the ground that the respondent is a very old lady and her husband expired in the year 2013, but on account of pendency of this dispute, she has been unable to get any benefits which were payable

on death of her husband. It is argued that in the service record, the respondent No. 1 has been disclosed to be the wife by the deceased and the petitioner's case has no legs to stand. Though practice of polygamy was denied, but even if there is polygamy, her marriage with the deceased is not established.

6. Upon hearing the rival parties and on perusal of the record, it is seen that the respondent No. 1 having married the deceased is not in dispute and as per the petitioner herself, the petitioner's marriage with the deceased was after the marriage of the deceased with the respondent No. 1, but the petitioner submits that there is polygamy and it is valid, because they are tribals.

7. Both the courts below have appreciated the evidence and after appreciation of evidence, they come to the conclusion that no special customs and traditions in the tribe have been proved to infer that the tribe is having a separate tradition of polygamy. The mere oral assertion of a person that the tribe is having tradition of polygamy could not be believed by the trial court. The tribe in question is undisputedly enumerated at serial No. 37 of the State list of Schedule Tribes for the M.P.

8. So far as the judgment of the Coordinate Branch in case of **Shakunbai (supra)** is concerned, in the said judgment, the Coordinate Branch has considered some literature of the social sciences which refers to traditions prevailing in a particular tribe in very old times which would be prior to enactment of Hindu Marriage Act 1955. At that time, even the non-tribal Hindus could have married more than once and therefore the traditions

which were prevailing prior to enactment of Hindu Marriage Act would not have much relevance. What would be of relevance is whether the tribe is Hinduized or not so as to infer that the provisions of Hindu Law could apply to the tribals of that tribe, or not.

9. However, as held by the appellate Court, the petitioner failed to prove any such social traditions before the trial Court that in the tribe to which the parties belong, there is a tradition to enter into second marriage during lifetime of first wife and that polygamy is permitted.

10. In the present case, the first question that arises for determination is whether Hindu Marriage Act, 1956 would not apply to the petitioner and her deceased husband in view of Section 2(2) of Hindu Marriage Act. Heavy reliance was placed on judgement of Coordinate Bench in W.P. No.3494/2015. However, the aforesaid issue has been considered by the Supreme Court in the case of ***Labishwar Manjhi v. Pran Manjhi, (2000) 8 SCC 587***, whereby the Hon'ble Apex Court held that mechanically the provisions of Hindu Law cannot be excluded to Schedule Tribes. It has to be proved that the concerned Tribe has not been "Hinduised" or that its customs and traditions are different from the religions to which Hindu Marriage Act applies i.e. Hindu, Sikh, Jain and Buddhist religions, which have similar sets of societal traditions. The Hon'ble Court held that in the absence of proving different sets of customs and traditions, the Tribals cannot simply seek relaxation from the provisions of the act governed by Hindu Law. The Hon'ble Apex Court ultimately held that Santhals would not be excluded from operation of Hindu Succession Act, because nothing has been proved

that the said Tribe has not been Hinduised. The Hon'ble Apex Court held as under:-

> *"1. Heard learned counsel for the parties.*
> *2. The present appeal is directed against the judgment and order dated 27-1-1986, passed by the High Court whereby the second appeal of the respondent was allowed while the concurrent findings of the two courts below were set aside.*
> *3. The short facts are that the father of Respondents 2 and 3 and husband of Respondent 1 filed a suit against the appellant for declaration that they being agnates of the deceased husband, inherited the property according to the custom of the Santhal Tribe where females are excluded from the right of succession. He further challenged the gift made by the widow of the deceased Lakhiram, namely, by Appellant 1 to Appellants 2 and 3. The trial court dismissed the suit by holding that parties have become sufficiently Hinduised and as such the Hindu law of succession would apply and thus the widow will inherit the property of the deceased, consequently the gift made by her to Appellants 2 and 3 is also valid. The appeal filed by the plaintiff-respondent was allowed. In second appeal the High Court remanded the case back to the first appellate court for recording the finding whether the parties were sufficiently Hinduised after setting aside the first appellate court's judgment.*
> *4. After remand the first appellate court held that parties were sufficiently Hinduised and the Hindu law of succession would be applicable and confirmed the judgment of the trial court.*
> *5. The respondent filed second appeal before the High Court challenging the said finding contending that the courts below had committed error in recording the finding that the Hindu Succession Act will apply. However, the High Court allowed the appeal of the respondent by holding that Hindu law as it stood prior to enactment of the Hindu Succession Act, 1955 would apply, hence Appellant 1 inherited the property during her lifetime and on her death it would devolve to the agnates of her husband viz. contesting Respondent 1. Challenging the said finding, the submission on behalf of the appellant is that the High Court committed error in concluding that the parties would be governed by the law as prevailed prior to coming into force of the Hindu Succession Act, 1956. The submission is, once finding is recorded by the first appellate court and confirmed by the High Court that the parties are Hinduised then they would be governed by the law as is applicable to any Hindu and if that be so the Hindu Succession Act, 1956 would be applicable to the parties. Challenging this submission learned counsel for the respondent submits that the parties being tribals by virtue of sub-section (2) of Section 2, the Hindu Succession Act, 1956 would not be applicable. It excludes the members of any Schedule Tribes from application of the said Act to them. Based on this, submission is, even if the parties have Hinduised, the parties being of the Santhal Tribe they are following their customary law of Santhal, hence the Hindu Succession Act would not be applied. Reliance was placed on the decision of the Patna High Court, reported in Satish Chandra Brahama v. Bagram Brahma [(1967) 15 Bihar LJ 323] . This decision dealt with the case of Scheduled Tribes, namely, Uraon. The Court held that the Uraon Tribe is a Scheduled Tribe within the meaning of clause (25) of Article*

366 of the Constitution of India and by virtue of sub-section (2) of Section 2 of the Hindu Succession Act the provision of that Act will not apply to this tribe, consequently Section 14 would also not apply. The said decision further records, the Uraon can change their religion but by changing of the religion alone they do not cease to be Uraon for other purposes. The Court has to base its findings on various other factors such as religious functions, marriages, disposal of the dead bodies by cremation or by burying the dead body etc. which have to be tested before such changing.

6. *The question which arises in the present case is, whether the parties who admittedly belong to the Santhal Tribe are still continuing with their customary tradition or have they after being Hinduised changed their customs to that which is followed by the Hindus. It is in this context when the matter came first before the High Court, the High Court remanded the case for decision in this regard. After remand the first appellate court recorded the finding that most of the names of the families of the parties are Hindu names. Even PW 1 admits in the cross-examination that they perform the pindas at the time of death of any body. Females do not use vermilion on the forehead after the death of their husbands, widows do not wear ornaments. Even PW 2 admits that they perform shradh ceremonies for 10 days after the death and after marriage females used vermilion on their foreheads. The finding of the words is that they are following the customs of the Hindus and not the Santhal customs. In view of such a clear finding it is not possible to hold that sub-section (2) of Section 2 of the Hindu Succession Act excludes the present parties from the application of the said Act. Sub-section (2) only excludes members of any Scheduled Tribe admittedly as per finding recorded in the present case though the parties originally belong to the Santhal Scheduled Tribes they are Hinduised and they are following the Hindu traditions. Hence we have no hesitation to hold that sub-section (2) will not apply to exclude the parties from application of the Hindu Succession Act. The High Court fell into error in recording a finding to the contrary. In view of this, the widow of Lakhiram would become the absolute owner by virtue of Section 14 of the said Act, consequently the gift given by her to Appellants 2 and 3 was a valid gift, hence the suit of Respondent 1 for setting aside the gift deed and inheritance stands dismissed.*

7. *The appeal is allowed. The order dated 27-1-1986 passed by the High Court is set aside. No order as to costs."*

11. As there was no valid divorce between the deceased and the respondent No.1, then even if he married the petitioner, it will be polygamy. In the present case, this Court asked learned counsel for the petitioner during course of hearing that whether the traditions in her community/Tribe do permit polygamy and whether there is any judicial pronouncement or any literature of the said community, which recognizes the practice of bigamy or polygamy in the said community, to which the learned counsel for the

petitioner was not having any answer.

12. In the opinion of this Court, when a member of ST community claims to be excluded from provisions of Hindu Marriage Act, then he would have to prove that in his Tribe there are certain tribal traditions, which are being followed and respected and therefore, the Tribe would be governed by its own traditions. The purpose of Section 2(2) of Hindu Marriage Act, 1956 is to protect the tribal traditions and beliefs. However, it cannot be treated to be a license or tool given to the Tribals to resort to polygamy and to defend polygamy despite there being no tradition in such tribe or there being no practice of polygamy. In some tribes polygamy or even polyandry are being practiced. They can be argued to be protected despite rigours of Hindu Marriage Act 1956, but for that purpose the concerned Tribe would have to prove its own traditions. It has to be proved that such practices are going on in the tribe and are recognized by such tribe. It has to be proved that its societal norms are different from the religions governed by Hindu Marriage Act, i.e. Hindus, Sikhs, Jains and Buddhists. In the present case, nothing has been proved or placed on record that any practice is continuing in the Tribe which permits polygamy/bigamy for the Tribe members, and that their societal norms are any different.

13. In ***Rameshwari Devi v. State of Bihar, (2000) 2 SCC 431*** , the Hon'ble Apex Court held that cohabitation for a long period may give rise to strong presumption of wedlock and in that regard directed payment of family pension to children of the second wife who could not prove her marriage, but existence of children was proved. In the said case, the Supreme Court did not

grant family pension to the second wife, but granted to her children only, despite presuming existence of marriage with the deceased employee.

14. Consequently, by following the law laid down by the Hon'ble Apex Court in the case of ***Labishwar Manjhi (supra)***, the petitioner is not entitled to any relief as no intereference in the impugned orders is warranted.

15. Resultantly, the petition fails and is **dismissed**.

(VIVEK JAIN)
JUDGE

MISHRA