



2026:CGHC:10933-DB
AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 344 of 2025

*{Arising out of judgment and decree dated 12-8-2025 in Civil Suit
No.11A/2025 of the Judge, Family Court, Bastar at Jagdalpur}*

Judgment reserved on: 18-2-2026

Judgment delivered on: 3-3-2026

Judgment (Full) uploaded on: 3-3-2026

1. Smt. Gudiya Nagesh, D/o Late Jagguram Nagesh, Aged about 40 years, R/o House No.837, Rain Basera Road, Ambedkar Ward, Jagdalpur, Police Station Bodhghat, Jagdalpur, District Bastar, Chhattisgarh.
2. Muniraj Mandavi, S/o Brijlal Mandavi, Aged about 40 years, House No.118, Kankali Para, Ward No.4, Kanker, Police Station Kanker, District Kanker, Chhattisgarh.

(Applicants)
... Appellants

For Appellants	: Mr. Ishan Verma, Advocate.
<i>Amicus Curiae</i>	: Mr. Manoj Paranjpe, Senior Advocate with Mr. Kabeer Kalwani, Advocate.

Division Bench: -
Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Kumar Verma, JJ.

C.A.V. Judgment

Sanjay K. Agrawal, J.

1. Invoking the jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984, the appellants herein i.e. wife & husband have preferred this appeal questioning legality, validity and correctness of the impugned judgment & decree dated 12-8-2025

passed by the Judge, Family Court, Bastar at Jagdalpur in Civil Suit No.11A/2025, by which their application for dissolution of marriage filed under Section 13B of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955') seeking divorce on the basis of mutual consent, has been rejected finding no merit.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

2.1) Appellant No.1 herein/wife belongs to Scheduled Caste, whereas appellant No.2 herein/husband belongs to Scheduled Tribe. It is their case that their marriage was solemnized on 15-4-2009 and they were blessed with a son namely, Jaynil Mandavi on 28-12-2011 who is residing with wife i.e. appellant No.1 and thereafter, they started living separately with effect from 6-4-2014. It is their admitted case in the application filed under Section 13B of the Act of 1955 that marriage between them was performed according to the Hindu customs and ceremonies including performance of *saptpadi* and they are following the custom of Hindus and not of their community. Their statements were also recorded before the Family Court wherein they have specifically stated that their marriage was solemnized as per the custom and traditions of the Hindu community including the custom of *saptpadi* and they are following the Hindu traditions and customs. However, the Family Court by its

impugned judgment rejected the application holding that by virtue of Section 2(2) of the Act of 1955, the said Act is not applicable to the members of Scheduled Tribe and therefore the application under Section 13B seeking divorce on the basis of mutual consent cannot be entertained, which is sought to be challenged by way of this appeal.

3. Mr. Ishan Verma, learned counsel appearing on behalf of the appellants herein/wife & husband, would submit that once the parties, particularly appellant No.2 herein/husband, have stated that they are following the Hindu customs and traditions and their marriage was solemnized according to the Hindu rites and rituals including performance of *saptpadi*, therefore, they have become Hinduised, it was not open to the Family Court to *suo motu* reject the application holding that by virtue of Section 2(2) of the Act of 1955, the provision relating to mutual divorce as contained in Section 13B of the Act of 1955 would not be applicable and as such, the impugned judgment & decree deserve to be set aside.
4. Mr. Manoj Paranjpe, learned Senior Counsel appearing as *amicus curiae*, would submit that as per the admitted case of the parties, marriage of the parties was solemnized in accordance with the rites and customs prevalent in Hindus including performance of *saptpadi*, therefore, it was not open for the Family Court to enter into the dispute of applicability of Section 2(2) of the Act of 1955, as appellant No.2/husband being member of Scheduled Tribe has voluntarily choose to follow the Hindu customs, traditions and rites, and they cannot be kept out of the purview of the provisions contained in the

Act of 1955. He would rely upon the decision of the Supreme Court in the matter of **Labishwar Manjhi v. Pran Manjhi and others**¹ and the decision of the Delhi High Court in the matter of **Ajmera Ramulu v. B Chandrakala**² to buttress his submission. As such, the matter deserves to be relegated to the Family Court for deciding the application under Section 13B of the Act of 1955 afresh on its own merit.

5. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.
6. The short question for consideration is, whether the learned Family Court is justified in holding that Section 13B of the Act of 1955 would not be applicable to the parties, as appellant No.2 belongs to Scheduled Tribe, and thereby the application of the aforesaid provision would be excluded by virtue of the provision contained in Section 2(2) of the Act of 1955?
7. At this stage, it would be appropriate to notice Section 2(2) of the Act of 1955, which states as under: -

“2. Application of Act.—(1) xxx xxx xxx

(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 clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.”

¹ (2000) 8 SCC 587

² 2025 SCC OnLine Del 8248

8. A focused reading of Section 2(2) of the Act of 1955 would show the non-applicability of the Act to the members of any Scheduled Tribe unless the Central Government, by notification in the official Gazette, otherwise directs. Article 366 of the Constitution defines the expression and meaning of the word Scheduled Tribe which says, “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed Article 342 to be Scheduled Tribes for the purpose of the Constitution which is to be further read with the Constitution (Scheduled Tribes) Order, 1950.
9. The word ‘Hindu’ is not defined in any of the statutes. The Supreme Court in **Labishwar Manjhi** (supra) has held that that if the parties are following the Hindu traditions and customs and they are substantially Hinduised, they cannot be relegated to the customary Courts, that too, when they themselves admit that they are following Hindu rites, customs and traditions. It has been observed by their Lordships of the Supreme Court as under: -

“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 shraddh 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.”

10. As such, it appears from the principles of law laid down by the Supreme Court in **Labishwar Manjhi** (supra) that it is well recognised principle of law that members of Scheduled Tribe shall be governed by the Hindu law in the matter of succession and inheritance and when evidence disclose that parties belonging to Scheduled Tribe were following traditions/customs of Hindus, provisions of the Hindu Succession Act would apply to them.
11. It is well-established that the Marriage under Hindu law is not merely a civil contract but a sacred sacrament (*sanskara*), a spiritual, moral, and social union between husband and wife. As such, it is quite apparent that the Marriage, within the framework of Scheduled Tribes, occupies a distinct and autonomous socio-legal space that predates the codification of personal laws such as the Hindu Marriage Act. The jurisprudence surrounding tribal marriage

recognises that tribal communities constitute a distinct social and cultural order, governed by their own customary laws, traditions, and usages, which are preserved under Article 13(3)(a) and protected by Article 342 of the Constitution of India. The exclusion carved out under Section 2(2) of the Act of 1955 expressly acknowledges that the members of Scheduled Tribes shall not be governed by the provisions of the Act unless the Central Government, by notification, otherwise directs {see **Ajmera Ramulu** (supra)}.

12. The Andhra Pradesh High Court in the matter of **Chittapuli v. Union Government Represented by its Secretary and others**³, while dealing with the provision contained in Section 2(2) of the Act of 1955, held as under: -

“**13.** The provisions of Section 2(2) of the Act would have to be interpreted to mean that any member of a notified tribe can refuse to participate in any proceeding under the Act of 1955 on the ground that he/she is a member of a notified tribe and is following tribal customs and is not bound by or following Hindu customs. However, the same cannot bar a member of a notified schedule tribe who is hinduised from invoking the provisions of the Act of 1955, especially when the spouse is a non tribal Hindu.”

13. Similarly, Section 2(2) of the Act of 1955 is a measure of protection and not a measure of exclusion. In a case where the Act is sought to be applied to a member of a notified tribe, it would be open to such a member to object to any such proceeding on the ground that he/she is a member of a notified Scheduled Tribe and as such, he/she is entitled to the benefit of Section 2(2) of the Act {see **Chittapuli** (supra)}. However, when a member of such a notified scheduled

³ AIR 2021 AP 121

tribe voluntarily submits himself or herself to the jurisdiction of the Court under the Act, on the ground that he/she are Hindus who are Hinduised and follow Hindu customs and practices, such member cannot be prohibited or barred, at the threshold, from invoking such a provision. As such, when members of a tribe voluntarily choose to follow Hindu customs, traditions and rites, they cannot be kept out of the purview of the provisions of the Act of 1955.

14. In view of the aforesaid legal position, it is quite vivid that in the instant case, the husband is a tribal Hindu, while the wife is a non-tribal Hindu. Their marriage was solemnized as per the Hindu customs, rites and traditions, and the ceremony of *saptpadi* was also performed which is apparent from the statements before the Court as well as from the pleadings of the parties. As stated above, appellant No.2/husband is a tribal and appellant No.1/wife is a non-tribal, particularly, appellant No.2/husband has voluntarily choose to follow Hindu customs, traditions and rites. They cannot be denied the provisions of the Act of 1955.

15. The Delhi High Court in the matter of **Satprakash Meena v. Alka Meena**⁴ had already held as under: -

“47. The word ‘Hindu’ is not defined in any of the statutes. It is in view of the fact that there is no definition of Hindu, that the Supreme Court has held in *Labishwar Manjhi* (supra) that if members of Tribes are Hinduised, the provisions of the HMA, 1955 would be applicable. The manner in which the marriage has been conducted in the present case and the customs being followed by the parties show that as in the case of Hindus, the marriage is conducted in front of the fire. The Hindu customary marriage involves the ceremony of *Saptapadi* which

4 2021 SCC OnLine Del 3645

has also been performed in the present case. The various other ceremonies, as is clear from the marriage invitation are also as per Hindu customs. If members of a tribe voluntarily choose to follow Hindu customs, traditions and rites they cannot be kept out of the purview of the provisions of the HMA, 1955. Codified statutes and laws provide for various protections to parties against any unregulated practices from being adopted. In this day and age, relegating parties to customary Courts when they themselves admit that they are following Hindu customs and traditions would be antithetical to the purpose behind enacting a statute like the HMA, 1955. The provisions of exclusion for example under Section 2(2) are meant to protect customary practices of recognised Tribes. However, if parties follow Hindu customs and rites, for the purpose of marriage, this Court is inclined to follow the judgment of the Supreme Court in *Labishwar Manjhi* (supra) to hold that the parties are Hinduised and hence the HMA, 1955 would be applicable. Moreover, nothing has been placed before the Court to show that the *Meena* community Tribe has a specialised Court with proper procedures to deal with these issues. In these facts, if the Court has to choose between relegating parties to customary Courts which may or may not provide for proper procedures and safeguards as against codified statutes envisioning adequate safeguards and procedures, this Court is inclined to lean in favour of an interpretation in favour of the latter, especially in view of the binding precedent of the Supreme Court in *Labishwar Manjhi* (supra) which considered an identical exclusion under the HSA, 1956.”

16. Coming finally to the facts of the case, it is quite vivid that as per pleadings of the parties, appellant No.1/wife being non-tribal and appellant No.2/husband being tribal both have performed their marriage according to the Hindu rites and rituals including the performance of *saptpadi* and they have become Hinduised out and out and they had also deposed before the Family Court in affirmation of this fact. Once they have become Hinduised and they are following the Hindu traditions, the principle of law laid down by their Lordships of the Supreme Court in **Labishwar Manjhi** (supra) would apply in full force wherein their Lordships have clearly

held that though the parties originally belong to the Santhal Scheduled Tribes, they are Hinduised and they are following the Hindu traditions, sub-section (2) of Section 2 of the Act of 1955 will not apply to exclude the parties from application of the Hindu Succession Act.

17. As such, in the instant case, though appellant No.2/husband is a Scheduled Tribe governed by his customs, but he has chosen to marry appellant No.1/wife, who is a non-tribal, according to the Hindu rites and customs and also performed the ceremony of *saptpadi* and they have chosen to follow the Hindu customs, traditions and rites, thus they cannot be excluded from the purview of the Act of 1955 and they cannot be relegated to the customary Courts, as the object of Section 2(2) of the Act of 1955 is to protect their own (Scheduled Tribe's) customary laws, traditions, and usages, which are preserved under Article 13(3)(a) read with Article 342 of the Constitution of India. Section 2(2) of the Act of 1955 is a measure of protection and cannot by any stretch of imagination be called as a measure of exclusion from the applicability of the Act of 1955.
18. Since the two appellants herein are following the Hindu traditions and they had performed marriage in accordance with Section 7 of the Act of 1955 by performance of the ceremony of *saptpadi* and they have become Hinduised, their application ought not to have been rejected by the learned Family Court applying Section 2(2) of the Act of 1955. In that view of the matter, their application under Section

13B of the Act of 1955 is very well maintainable before the Family Court and it ought to have been considered on merits.

19. Accordingly, the appeal is allowed and the impugned judgment & decree dated 12-8-2025 passed by the Judge, Family Court, Bastar at Jagdalpur in Civil Suit No.11A/2025 are set aside. The matter is remitted to the Family Court to decide the application under Section 13B of the Act of 1955 on its own merits, expeditiously, in accordance with law.

20. Decree be drawn-up accordingly.

21. Before parting with record, we express our gratitude and appreciation to Mr. Manoj Paranjpe, learned Senior Advocate, who appeared as *amicus curiae* and in short notice, has prepared the case and made submission and written submission as well.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Arvind Kumar Verma)
JUDGE