

**(2001) 10 SHI CK 0022**

**In the High Court Of Himachal Pradesh**

**Case No : Regular Second Appeal No. 461 of 1992**

Smt. Sonam Dolma and Others

APPELLANT

Vs

Shri Phunchog Angrup and Others

RESPONDENT

**Date of Decision : 08-10-2001**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100  
Constitution of India, 1950 — Article 342, 366, 366(25)  
Hindu Succession Act, 1956 — Section 2(2)  
Parliament Act, 1966 — Section 20, 28, 5(2)

**Citation : (2003) 3 CivCC 332 : (2002) 1 ShimLC 308**

**Hon'ble Judges : Lokeshwar Singh Pant, J**

**Bench : Single Bench**

**Advocate : Bhupender Gupta and Praneet Gupta, for the Appellant; Ajay Kumar and N.D. Sharma, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

Lokeshwar Singh Pant, J.—This second appeal u/s 100 of the CPC is directed against the judgment and decree dated 26.10.1992 passed by Additional District Judge, Kullu, District Kullu in Civil Appeal No. 1 of 1989 dismissing the appeal of the Appellants Defendants against the judgment and decree dated 22.11.1988 of Senior Sub Judge, Kullu in Civil Suit No. 74 of 1986 whereby the suit of the Respondents-Plaintiffs for setting aside the sale was decreed. Hereinafter the parties are referred to as Plaintiffs" and the Defendants". The facts giving rise to this appeal may briefly be stated:

2. The case of the Plaintiffs in the suit filed against the Defendants was that one Shri Panchhi Ram was owner in possession of the land described in paragraph-1 of the plaint. Panchhi Ram died in the month of September, 1980 and after his death mutation of his estate comprising of the suit property was attested and sanctioned in favour of his widow Defendant No. 1 Smt. Sonam Dolma. It was alleged that Plaintiffs and Defendant No. 1 belong to "Bodh" category of Tribes and are permanent residents of Lahaul and Spiti and as such they are governed

by the tribal custom of District Lahaul and Spiti. It was stated that as per tribal custom governing the parties, the female holder of the property is to hold the property till her life time or till she re-marries or till her death. The Plaintiffs alleged that Panchhi Ram was their real brother and they are entitled to inherit the suit property being reversioners of Panchhi Ram deceased after Defendant No. 1 contracted second marriage on 23.10.1984 with one Sanjeev Kumar and as such she ceased to be the owner of the suit property and the Plaintiffs are, therefore, entitled to recover the possession of the suit property. It was also stated that Defendant No. 1 by fictitious and forged sale deed dated 24.1.1985 sold a part of the suit property for Rs. 40,000 in favour of Defendants No. 2 to 7 and a part of the suit property was sold on 16.10.1985 to Defendant No. 8 for a sale consideration of Rs. 30,000 and as such these sale transactions were void and illegal and in-operative being not binding upon the rights of the Plaintiffs as Defendant No. 1 had no legal necessity to sell the suit property to the vendee. On these premises a suit was filed seeking declaration for setting aside the sale of the property by Defendant No. 1 to other Defendants with consequential relief of possession.

3. Defendant No. 1 in her separate written statement resisted and contested the suit of the Plaintiffs. She denied her marriage with Sanjeev Kumar. She stated that the suit property was a self acquired property of Panchhi Ram and pleaded that the Plaintiffs have no locus standi to challenge the sale transaction inter alia, also took up the plea of valuation of the suit. On merits, it has been stated that Panchhi Ram was "Bodh" but he was "Lohar", (Black-smith) and she was the only surviving heir to succeed the suit property after the death of Panchhi Ram. She pleaded that her fathers of Panchhi Ram had gone to Lahaul to work as "Lohars" and worked there as such, but they were not governed by the tribal custom of that area. However, the relationship between the Plaintiffs and Panchhi Ram has not been denied. She supported the genuineness of the sale transactions and further pleaded that she had to repay the debts of her late husband and to meet her daily needs of life and that she had to spend on the ritual rites of her husband, thus, she had to sell the property for legal necessity with utmost reluctance.

4. Defendants Nos. 2 to 8 in their joint written statement took up preliminary objections that Defendant No. 1 has not re-married but she is still widow of Panchhi Ram and also questioned the locus standi of the Plaintiffs to file the suit. They have specifically pleaded that the Plaintiffs are not the real brOrs. of Panchhi Ram and, therefore, they are not entitled to inherit the suit property. They stated that before they purchased the suit property from Defendant No. 1 vendor, they made proper inquiries about the genuine requirements and legal necessity of the vendor and also her clear title over the suit property. It has been stated by them that since the Plaintiffs were exerting their influence over Defendant No. 1 and were threatening to forcibly oust her from the suit property with an ulterior motive to grab the same, Defendant No. 1 was under heavy restraint and fear of her life and she also was in need of money to purchase a

plot at Kullu for residential complex and in those circumstances, Defendant No. 1 bonafidely sold the suit property. They prayed for the dismissal of the suit.

5. In their replication to the written statements of the Defendants, the Plaintiffs re-asserted and re-affirmed their pleadings made in the plaint and denied the claim of the Defendants made in their respective written statements.

6. On the controversial pleadings of the parties, the learned trial Court framed the following issues:

1. Whether the Plaintiffs and Defendant No. 1 belong to Bodh and were permanent residents of District Lahaul-Spiti? OPP.

2. In case issue No. 1 is proved, whether Plaintiff and Defendant No. 1 are governed by tribal custom of District Lahaul Spiti? If so, what that custom is and its effect? OPP.

3. Whether Smt. Sonam Dolma has remarried and as such, Plaintiffs are entitled to inherit the suit property being reversionary of Panchhi Ram, as alleged? OPP.

4. Whether Defendant No. 1 sold the suit property to pay all the debts of her husband, as alleged? OPD

5. Whether this sale made by Defendant No. 1 was bona fide and valid and for consideration, as alleged?OPD

6. Whether Plaintiff has to locus standi to file the suit? OPD

7. Whether the suit has not been properly valued for purposes of Court fee and jurisdiction? OPD

8. Relief.

7. The parties went to trial on the above said issues and led their oral and documentary evidence. The trial Court upon consideration of the material on record answered issue Nos. 1 to 3 in affirmative and issue Nos. 4 to 7 in negative. Consequently the suit of the Plaintiffs was decreed.

8. Being aggrieved and dis-satisfied by the judgments and decree of the trial Court, the Defendants carried the matter in appeal before the First Appellate Court. The learned First Appellate Court on re-assessment and re-appreciation of the oral and documentary evidence on record adduced by the parties, found the judgment and decree of the trial Court sustainable and accordingly, dismissed the appeal. Now, the Defendants have filed this second appeal which came to be admitted by this Court on 5th January, 1993 on the following substantial questions of law:

1. Whether the tribal customs of Kullu Sub Division is applicable only to the tribal communities or to other persons who are not members of the said tribal community?

2. Whether Hindu Succession Act, 1956 abrogate custom which is inconsistent with the provisions of Hindu Succession Act?
  3. Whether under the tribal custom of Lahaul Spiti re-marriage of a widow prohibits the succession to the Estate?
  4. What are the essential conditions for proving the re-marriage of widow?
  5. Whether the documents which have not been produced from proper custody can be admitted into evidence or relied upon for proving the factum of re-marriage?
  6. Whether Lohar (Black Smith) is a Schedule Tribe as defined under the Constitution of India and State of Himachal Pradesh Act, 1970?
  7. Whether in the absence of any specific pleadings and proof of custom any reliance can be placed on the same by the Courts below to decree the suit of the Plaintiffs?
  8. Whether reversioner's suit claiming a decree of possession is maintainable during the life time of a widow?
  9. What is the nature and effect of the widow Estate after the coming into force of the Hindu Succession Act, 1956?
  10. Whether the courts in a reversionary suit are required to consider the effect of transfers made by widow for legal necessity?
9. I have heard learned Counsel for the parties. The sole question involves for consideration in the present case was whether "Lohar" is a scheduled tribe in District Lahaul and Spiti and as such governed by tribal custom of the area and also whether such custom is inconsistent with the provisions of Hindu Succession Act, 1956.
10. Mr. Bhupender Gupta, learned Senior Counsel contended that both the courts below have gravely erred in observing that Panchhi Ram was "Bodh" and was professing avocation of "Lohar" and as such he belonged to scheduled tribe of Lahaul and Spiti governed by the custom. He submitted that "Bodh" and "Lohar" are two different communities and "Lohar" being schedule caste is not governed by such custom nor specific custom was pleaded by the Plaintiffs in their plaint. The learned Senior Counsel brought to my notice certain paragraphs of the Gazetteer of Lahaul and Spiti, 1975 to urge that "Lohar" who migrated from District Kullu to District Lahaul and Spiti for undertaking his profession is not governed by the custom of Lahaul and Spiti as in the present case Panchhi Ram migrated from Kullu to Lahaul and Spiti for his avocation and as such the custom of Lahaul and Spiti will not apply to him. He submitted that according to the Gazetteer of Lahaul and Spiti "Bodh" and "Shangla" are tribes and "Lohars" as such are not notified as scheduled tribe and it was the case of the Plaintiffs themselves that the Plaintiffs and their brother Panchhi Ram and Defendant No. 1 are Lohars and not "Bodhs" and, therefore, both the courts below have

wrongly held that the Plaintiffs and Defendant No. 1 are governed by the custom of Lahaul and Spiti and the judgments and decree of the courts below deserve to be set aside on this ground. He contended that the Plaintiffs also failed to prove the factum of re-marriage of Defendant No. 1 with Sanjeev Kumar and the documents of the marriage placed on record were not produced from the lawful custody and no reliance could have been placed on the said documents. Mr. Gupta, learned Senior Counsel next contended that the suit property was purchased by Panchhi Ram at Kullu from his own independent saving and me tribal custom of Lahaul and Spiti District will not apply to that property and Defendant No. 1 being widow of Panchhi Ram inherited his estate and she was competent to sell a part of the suit property to other Defendants for legal necessity as she was to clear the debts of her late husband and also to meet his ritual rights and her own day today expenses.

11. Per Contra, Mr. Ajay Kumar, learned Counsel appearing on behalf of the Plaintiffs contended that both the courts below have concurrently found that Plaintiffs and Defendant No. 1 are governed by custom of the area of Lahaul and Spiti in the matter of inheritance based upon cogent and reliable oral and documentary evidence. He stated that there is not an iota of evidence on record to show that Panchhi Ram migrated from Kullu to Lahaul and Spiti for undertaking his profession and the provisions of Hindu Succession Act will not apply in the present case as Plaintiffs and Defendant No. 1 are members of Scheduled Tribe. He also contended that Defendant No. 1 during her life time is entitled to possession of the suit property and after her re-marriage or death, as the case may be, the property would revert back to the Plaintiffs as reversioners of Panchhi Ram and Defendant No. 1 was not competent to dispose of a part of the suit property by making sale transactions and both the courts below have rightly held that the sale transactions made by Defendant No. 1 in favour of Defendants No. 2 to 8 were illegal, null and void. He also contended that this Court will not be inclined to re-appraise and re-examine the evidence in this appeal as both the courts below have concurrently held that Plaintiffs and Defendant No. 1 are governed by tribal custom of Lahaul and Spiti and also that Defendant No. 1 has re-married and that she could not make the sale of the part of the suit property in favour of the vendees as she inherited the suit property as not under the Hindu Succession Act but she possessed it for her life time only. Both the learned Counsel relied upon decisions of the Supreme Court and some High Courts in support of their claim and counter claim which shall be referred to hereinafter at an appropriate stage.

12. Out of three Plaintiffs, Plaintiff No. 1 Phunchog Angrup appeared as PW 1 and deposed that he and Defendant No. 1 belong to "Bodh" tribe of the Lahaul and Spiti Districts and for inheritance and succession they are governed by the local custom of that area. He stated that his brother Panchhi Ram deceased was not in debts at the time of his death and the property in Lahaul and Spiti and Kullu was joint of all the Plaintiffs and Panchhi Ram. He also stated that the local custom of the tribal area governs them even if they lived out of their tribal District. The

disputed property was purchased by all the brOrs. jointly and his brother Panchhi Ram was Lohar and used to earn about Rs. 2,000 per month. Defendant No. 1 never told the Plaintiffs that Panchhi Ram at the time of his death was in debts nor the sale consideration was utilized by her for the purpose of legal necessity. He categorically stated that Defendant No. 1 has now married to one Sanjeev Kumar who is residing in the house comprised in the suit property. He placed on record marriage documents (Exts. P-1 and P-2) establishing the fact of Defendant No. 1 marrying Sanjeev Kumar. In cross-examination he admitted that the plaintiffs, Panchhi Ram and Defendant No. 1 are "Lohar" by caste and Panchhi Ram was working as "Lohar" at Kullu. They had decided to marry the Defendant No. 1 after death of Panchhi Ram to their brother Defendant No. 3 Chhering Tandup, but she in the meantime has re-married Sanjeev Kumar not according to the customary ceremony of the area but by exchanging writings. The suit property was purchased by Panchhi Ram in the year 1979-80 and prior its purchase Panchhi Ram used to live at Dobhi in winter and in Lahaul in summer. PW-2 Angrup Karpa corroborated the testimony of PW-1. He categorically stated that the plaintiffs, their brother Panchhi Ram and Defendant No. 1 belong to "Bodh" tribe of District Lahaul and Spiti. According to tribal custom of Lahaul in the matter of alienation of property after the death of Vperson, the property devolves in accordance with the custom of the area and not according to the Hindu Succession Act. This witness was a member of Tribal Council during the time of Punjab Government before the merger of Lahaul and Spiti areas in Himachal Pradesh. He was also Sarpanch for nine years of Kothi Gumrang Panchayat. According to their custom the female members are entitled only for maintenance till they re-marry. He also deposed that Defendant No. 1 married one Bihari boy by the name of Sanjeev Kumar. He also belongs to "Bodh" tribe. Similar is the version of PW-3 Moti Ram, PW-4 Tashi Angrup, Chowkidar of Gundhla Kothi in District Lahaul and Spiti deposed that he is conversant about the custom regarding alienation and succession of property in the tribal area of Lahaul and Spiti. He deposed that according to the custom of the area the widow and daughter(s) of the deceased do not inherit the property after the death of the male members and they are only entitled to get maintenance till their life time and married daughters do not get anything after their marriage nor widows get anything after their re-marriage.

13. PW-5 H.C. Shashtri, Advocate who personally knows Defendant No. 1, deposed that after the death of Panchhi Ram, Defendant No. 1 married one Sanjeev Kumar. Panchhi Ram was "Lohar" by profession. PW-6 Ram Dass God brother of Defendant No. 1 also testified that after the death of Panchhi Ram, Defendant No. 1 married Sanjeev Kumar by executing marriage deeds which were handed over to him by them at Manali and later on he handed over those deeds to the Plaintiffs.

14. PW 7 Chhering Ram proved the marriage documents Exts. P-1 and P-2 subscribed by him at the instance of the parties. In his cross-examination he denied the suggestion of the Defendants that those documents were prepared by him at

the behest of the Plaintiffs. PW-8 Jeet Ram brother of PW-7 appended his signature as marginal witness to the marriage documents and offered the corroboration of PW-7. PW-9 Yogesh Chand an employee of United Commercial Bank, Kullu stated that Defendant No. 1 and Sanjeev Kumar had deposited Rs. 17,000 in their joint account on 24.1.1984 vide receipt Ext. PW-9/A. Photo copy of the Ledger account of United Commercial Bank, Kullu Branch has been placed on record marked Ext. PW-9/B showing the deposit of the said amount jointly by Defendant No. 1 and Sanjeev Kumar. In addition to the oral evidence, the Plaintiffs placed on record copy of mutation order Exts. P-3 and P- 4 revealing that Defendant No. 1 sold part of the suit property to the vendees-Defendants 2 to 8.

15. In rebuttal, the Defendant in her deposition as DW-1 stated that the suit property was purchased by her late husband Panchhi Ram from his personal earnings. She along with her husband lived together for 30 years in Kullu and they are "Lohars" by caste and do not belong to "the scheduled tribes". According to her, her husband used to tell her that their forefathers might have migrated from Mandi. They followed different customs from that of "Lohars". She stated that her husband was ill for the last about 6-7 years before his death, she obtained loan from Hari Kishan to the tune Rs. 6,000 and Anrup Thakur (since dead) to the tune of Rs. 3,000 and returned the above said two amounts after the sale of some part of land to the vendees. She stated that she has not contracted second marriage with Sanjeev Kumar as alleged by the Plaintiffs. It was also stated by her that she realized Rs. 17,000 from the vendees and spent Rs. 12,000 for purchasing two biswas of land. According to her, her husband had taken the loan of Rs. 23,000 which she re-paid later on besides the said loan amount, she also paid Rs. 3,000 borrowed by her husband from a doctor at Dobhi. She also paid Rs. 5,000 borrowed by her husband from one Dangi and Rs. 2,000 were paid to Rattan Singh Shop-keeper. DW-2 Hari Kishan confirmed that loan of Rs. 6,000 was re-paid by Defendant No. 1 to him for which he issued receipt Ext. D-1, DW-3 Parveen Thakur also admitted that a loan of Rs. 3,000 advanced by his father Anrup Thakur was re-paid by Defendant No. 1. He admitted that he is resident of Lahaul and that the residents of Lahaul are governed by the custom in the matter of marriage and alienation of land etc. Ruldu Ram vendor appeared as DW-2/1 and admitted having purchased a portion of the suit property for Rs. 40,000 and also spent Rs. 2,500 on its registration. According to him Defendant No. 1 and her husband both were "Lohars". DW 2/2 Teer Chand corroborated the version of DW 2/1 about the purchase of a portion of suit property. DW-2/3 Rup Dass, Lamberdar stated that some portion of the suit property was sold to Defendant No. 8 Smt. Prem Dassi by Defendant No. 1 for consideration of Rs. 30,000 and he was witness to the said sale deed. DW-2/4 Moti Ram testified the version of DW-2/3. He also stated that "Lohar" follows law and not custom in the matter of alienation of land etc. DW-2/5 Kishan Chand stated that the Plaintiffs and Defendant No. 1 are not "Bodh" but are "Lohars". DW-2/6 Ram Chand admitted that there are "Lohars". Rajputs and Pandits in

Lahaul. He belongs from the tribal area. According to him Swanglas and Lohars are also living in Lahaul besides Bodh. DW-2/7 Jawala Dass proved on record the power of attorney (Ext. D-1) executed by Defendant No. 8 in his favour. According to him, Defendant No. 8 had purchased a portion of the suit property from Defendant No. 1 for Rs. 30,000. In addition to the oral evidence, the Defendant No. 1 placed on record mutation Exts. D-2, D-4 and D-5. Defendants No. 2 to 8 have not placed and proved on record the sale deeds executed in their favour by Defendant No. 1.

16. The learned First Appellate Court on the basis of the above stated evidence has taken into consideration the definition of Schedule Tribe contained in Article 366 Clause (25) of the Constitution of India. The Indian Parliament Act No. 31 of 1966 provided for the reorganization of the then existing State of Punjab and for matters connected therewith also provided by Section 28. The learned first Appellate Court stated that on and from the appointed day, the Constitution (Schedule Tribe) Order, 1950 shall stand amended as provided in the 10th Schedule. Sub-section (2) provides that on and from the appointed day, the Constitution (Schedule Tribe) (Union Territory) Order, 1951 shall stand amended as directed in the 11th Schedule. Gadies, Swanglas and Bhot or Bodh were defined as Scheduled Tribe in Lahaul and Spiti District By Section 5 of the said Act, from the appointed day, the area of Lahaul and Spiti was added in the Union Territory of Himachal Pradesh. As a result thereof. "Bodh" of Lahaul and Spiti fell within the purview of Scheduled Tribe. I have considered the relevant provisions of the Constitution of India "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the Constitution of India as per definition under Article 366, Clause (25). Article 342 deals with Scheduled Tribes which may be notified by the President by Public Notification. Section 20 (The) State of Himachal Pradesh Act, 1970 prescribes that on and from the appointed day, the Constitution (Scheduled Castes) Order, 1950, shall stand amended as directed in the Third Schedule. On and from the appointed day, the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 shall stand amended as directed in the Fourth Schedule. Under Part-XIII of the Third Schedule in respect of the State of Himachal Pradesh in Lahaul and Spiti Districts Gadi, 3 Swanglas, Bhot or Bodh are described as Scheduled Tribes. The Plaintiffs have proved on record that they are "Bodh". Defendant No. 1 in her written statement has also admitted that her husband Panchhi Ram was "Bodh". In view of the definition of "Scheduled Tribes" in the Constitution of India and in Schedule Third of the H.P. State Act, 1971, the Plaintiffs and Defendant No. 1 are governed by the definition of "Scheduled Tribes" and "Lohar" is one of the communities of "Scheduled Tribes". In Himachal Pradesh District Gazetteers Lahaul and Spiti by M.D. Mangain State Editor, District Gazetteers, Himachal Pradesh, Bodhs, Shipis and Lohars are described as principal communities in Lahaul. Bodhs have been described as Kanet in the records drawn up at the settlements before 1950-51. The change from Kanet to

Rajput was made during this settlement. It was during 1961 Census that the error was rectified and -4L Bodhs were recorded as such. Bodhs are universal in Bhaga and Chandra valleys. They appear also in Pattan where they are overshadowed by Swangla Brahmans. Shipis are Aryans. They assist Swanglas and Bodhs at marriages and funerals and are given food and clothes on these occasions. Lohars are called Gara in the local language of Keylong and Khoksar villages, Domba in Bhaga and Chandra Valleys and Lohar only in Pattan valley. They have land which was originally given to them by the village people in consideration of their customary service as black-smiths. This allotment of land was called grazing. They are given food for smith's work, and grain at harvest according to the size of the holding of their employer. Shipis and Lohars who are Harijans are not treated as untouchables, " by Bodhs and Swanglas. In Lahaul widow's remarriage is permissible as customary and in Spiti it is otherwise. In a Digest of Customary Law authorized by late Sir W.H. Rattigan, Fifteenth Edition revised by Shri Om Prakash Aggarwal, it has been said by the learned author that in order to apply the initial presumption against the power of alienation laid down by the Full Bench judgment in *Gujar v. Sham Dass* 1887 PR 107, it was not necessary to prove, not merely that the family belongs to an agricultural tribe, but also that its main occupation was agriculture. The test was not merely caste but permanent and hereditary occupation as well. On consideration of the above said position about the status of the Plaintiffs and Defendant No. 1 both the courts below based upon the evidence on record came to the conclusion that the parties are "Bodh" which fell within the category of "Scheduled Tribes" and thus, they are governed by the custom of Lahaul and Spiti for the purpose of marriage, alienation and succession etc. On perusal of the Gazetteers of Lahaul and Spiti, it is clear that there are different community in Lahaul viz. "Bodh", Swangla Shipis and Lohars. The tribes in Lahaul are distributed by race, religion and occupation and differ from each other in all these respects. There is overwhelming evidence on record to conclude that the community of Bodhs, Swanglas and Shipies are governed by customs of Lahaul and Spiti in respect of alienation etc. because Bodhs and Swanglas are "Scheduled Tribes" and both are principally agriculturists. The Plaintiffs have proved on record that they and their brother the husband of Defendant No. 1 are permanent residents of Lahaul and Spiti. I find no cogent -y reason to differ with the findings recorded by both the Courts below holding the Plaintiffs and Defendant No. 1 belonging to "Scheduled Tribe" and therefore e, they are governed by the tribal customs in respect of alienation, marriage and succession etc. of the property. According to the tribal custom, vide answer to question No. 55 as recorded in the Settlement for the year 1949-50, a widow has life interest and cannot alienate the property except only for valid reasons i.e. for payment of her husband's debts or to defray the expenses of her daughter's marriage etc. Question No. 61 deals with the effect of remarriage of widow with respect to estate of her husband. The custom with regard to this aspect is that on the remarriage of the widow, she loses her right qua the estate of her for mer husband and no distinction is made whether the new husband is collateral of the for mer or a stranger. The effect of the remarriage is that the

widow loses her right in the property of her former husband and it will revert back to the collateral of her husband. Sub-section (2) of Section 2 of the Hindu Succession Act, 1956 excludes the application of Hindu Succession Act 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. In view of the exclusion in the Act, the parties in the present proceedings are not governed by the provisions of Hindu Succession Act in respect of succession of the inheritance of the estate of deceased Panchhi Ram by Defendant No. 1. Her right of the property of deceased Panchhi Ram will be governed by the tribal customs of / the area. The ratio of the judgments in Kartari Devi and Ors. v. Tota Ram 1992 (1) Shim. L.C. 402; Smt. Shakuntala v. Smt. Kamla 1998 (1) Shim. L.C. (162) and Sukho and Ors. v. Smt. Punni and Ors. 1998 (1) ShimLC 227; Tek Chand and Anr. v. Mool Raj and Ors. 1997 (2) HLR 306 ; Ramakrushna Mohapatra and Others Vs. Gangadhar Mohapatra and Others, ; Kochan Kani Kunjuraman Kani Vs. Mathevan Kani Sankaran Kani, and Gosaimayum Ongbi Ketuki Devi and Ors. v. Jayantakumar Gosivami and Anr. AIR 1964 Mani 14 in my considered view will be of no help to improve the case of the Defendants as in the present case, as noticed earlier the Plaintiffs have satisfactorily proved that they are governed by the custom of the community to which they and Defendant No. 1 belong and the evidence on this point has been rightly considered by both the courts below.

17. In *Srish Kumar Choudhury Vs. State of Tripura and others*, it has been held that it is not open to the Court to make any addition or subtraction from the Presidential Order passed under Articles 342 and 366(25) of the Constitution of India and that the Court cannot give declaration of social status as a tribe or declare them as Scheduled Tribes in the category of the people of the tribal area as Scheduled Tribe under Scheduled Castes and Scheduled Tribes Orders (Amendment Act) 1976. Thus, the contentions rose on behalf of the Defendants by their learned senior Counsel that both the courts below have wrongly recorded the findings that the Plaintiffs and Defendant No. 1 are governed by tribal custom are unsustainable. The tribal people will carry their custom to the other parts of the State. The Hindu Succession Act will not apply to them.

18. The Plaintiffs have proved on record two documents (Exts. P-1 and P-2) executed by Defendant No. 1 and one Sanjeev Kumar showing that they have contracted marriage on 23.10.1984. The Plaintiffs have proved the second marriage of Defendant No. 1 by oral and documentary evidence placed on record. The oral evidence of the Plaintiffs has also been corroborated by the scribe PW-7 and marginal witness PW-8. Documents Exts. P-1 and P-2 were handed over to PW-1 by PW-6 the God brother of Defendant No. 1. It is undisputed that Defendant No. 1 had inherited the estate of her husband Panchhi Ram as limited owner without right of alienation as per custom. Question No. 26 of the "Riwaj-a-am" does not specify any ceremonies to be performed in case of widow's re-marriage. The relationship of Defendant No. 1 and Sanjeev Kumar further finds corroboration from Bank Account (Ext. PW-9/A) and entry in the relevant register

(Ext. PW-9/B) who has jointly operated their Bank Account in United Commercial Bank, Branch at Kullu. Defendant No. 1 has failed to rebut the oral and documentary evidence of the Plaintiffs about her re-marriage with Sanjeev Kumar. She has not even cared to examine said Sanjeev Kumar to rebut the overwhelming evidence of the Plaintiffs and, therefore e, both the courts below have rightly held that the property of her husband inherited by Defendant No. 1 after her re-marriage with Sanjeev Kumar will revert back to the collateral of her late husband as she had only limited interest in the said property till her life time or re-marriage. The contentions of the learned Senior Counsel for the Defendants that documents (Exts. P-1 and P-2) having been not placed on record from the lawful custody, cannot be accepted in the teeth of the evidence of scribe (PW-7) executed at the instance of Defendant No. 1 and Sanjeev Kumar in the presence of PW-8 marginal witness.

19. Defendant No. 1 has also failed to prove legal necessity. Both the Courts below have not accepted the evidence of DW-2 Had Krishan and DW-3 Praveen Thakur being un-worthy of inspiring confidence. Defendants No. 2 to 8 have neither placed on record the sale deeds which are primary evidence regarding the purchase of the suit property for consideration nor there is any evidence that they are bona fide purchasers of the suit property. Defendant No. 1 deposited Rs. 17,000 in her name and in the name of Sanjeev Kumar in the fixed deposit receipt (Ext. PW 9/A) out of the amount realized by her from the sale of the suit property and as such, her defence that she had sold the suit property for legal necessity viz. returning debts of her late husband or spending the money on his ritual is wholly un-tenable and has been rightly rejected by both the courts below. Both the courts below have returned concurrent findings on all the issues and I do not find any cogent reason warranting interference by this Court in this second appeal. All the contentions of the learned Senior Counsel appearing on behalf of the Plaintiffs are, therefore e, not accepted. The above substantial questions of law are answered in favour of the Plaintiffs and against the Defendants.

20. No other point has been urged before me by the learned Counsel on either side.

21. For the foregoing reasons, I am of the considered view that no exception can possibly be taken to the findings of both the learned Courts below in passing the impugned judgments and decree. I therefore e, find no merit in this second appeal which is dismissed with no order as to costs.

22. Interim stay orders passed in CMP No. 639 of 1992 and CMP No. 676 of 1999 shall stand vacated.