

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 10638/2025

Manni Devi Daughter of Panchu, Wife of Ramprasad, aged about 60 Years, Resident of Peepli Wali Dhani, Ward No. 23, Kasba Chaksu, At Present Village Mundiya, Tehsil Newai, District Tonk, Raj.

----Petitioner

Versus

1. Rama Devi Wife of Late Shri Panchu, Resident of Peepli Wali Dhani, Ward No. 23, Kasba Chaksu, District Jaipur.
2. Bhuli Devi Wife of Shri Gangaram, Resident of Peepli Wali Dhani, Ward No. 23, Kasba Chaksu, District Jaipur.
3. State of Rajasthan, Through Tehsildar, Tehsil Chaksu, District Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Prahlad Sharma, Adv. Mr. Khem Singh, Adv. Mr. Ram Prasad Sharma, Adv. Mr. Lakhan Sharma, Adv.
For Respondent(s)	:	Mr. Bajrang Lal Choudhary, Adv.

JUSTICE ANOOP KUMAR DHAND
Order

22/07/2025

Reportable

For convenience of exposition, this order is divided in the following parts: -

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The Challenge :-

1. By way of filing this writ petition, a challenge has been made to the impugned order dated 09.06.2025 passed by the Board of Revenue (for short, 'the Board') whereby the revision petition submitted by the respondents under Section 230 of the Rajasthan Tenancy Act, 1955 (for short, 'the Act of 1955') was allowed, which was preferred against the impugned order dated 24.07.2023 passed by the Sub Division Officer, Chaksu (for short, 'the SDO'), whereby the application submitted by the respondent under Order 7 Rule 11 CPC for rejection of the plaint was dismissed and the order dated 24.07.2023 has been quashed and set aside.

Submissions by the petitioner:-

2. Counsel for the petitioner submits that the petitioner belongs to Meena Community and is a daughter of Ram Prasad. Counsel submits that the petitioner was the only child of her father having no brother. Her father executed a gift deed in favour of the defendant-respondent No. 2. Counsel submits that the petitioner challenged the validity of the said gift deed dated 12.03.2018 by way of filing a Civil Suit before the Court of Additional District Judge No.11, Jaipur Metro-I (Headquarter Sanganer), wherein an application was submitted by the respondent under Order 7 Rule 11 CPC seeking rejection of the suit on the technical count that in the absence of a prior declaration in favour of the petitioner, the Civil Suit with regard to cancellation of gift deed, is not maintainable. Counsel submits that the said application submitted by the respondent was allowed by the Civil Court vide order dated 27.03.2023 granting liberty to the petitioner to seek a declaration



of her Khatedari Rights from the competent Revenue Court. Counsel submits that pursuant thereto, the petitioner instituted a suit for declaration of her rights in the ancestral property before the Court of SDO. However, during pendency of the said suit, the respondent submitted an application under Order 7 Rule 11 CPC seeking rejection of the plaint in the light of the provisions contained under Section 2(2) of the Hindu Succession Act, 1956 (for short, 'the Act of 1956) on the ground that the provisions of the Act of 1956 are not applicable to the members of Scheduled Tribes, as defined under Clause (25) of Article 366 of the Constitution of India, unless a notification to this effect is issued by the Central Government in the Official Gazette. The said application submitted by the respondent was also rejected by the SDO vide impugned order dated 24.07.2023, against which the respondents submitted a revision petition before the Board of Revenue, which was allowed vide impugned judgment dated 09.06.2025 wherein it has been held by the Board that since, the petitioner is a member of the Scheduled Tribe (Meena Community) having no brothers, did not possess any right of succession in the ancestral property. Accordingly, the application filed under Order 7 Rule 11 CPC by the respondent before the SDO was allowed and the plaint submitted by the petitioner was rejected vide order dated 09.06.2025. Counsel submits that the controversy involved in this petition has already been set at rest not once but twice and so also by the Hon'ble Apex Court recently in the case of **Tirth Kumar and Ors. Vs. Dadu Ram and Ors.** while deciding Civil Appeal No. 13516/2024 vide order dated 19.12.2024. Counsel submits that a similar view was again taken by the Hon'ble Apex

Court in the successive judgment titled as **Ram Charan and Ors. Vs. Sukhram and Ors.** while deciding Civil Appeal No. 9537/2025 vide order dated 17.07.2025. Counsel submits that it has been held by the Hon'ble Apex Court that no discrimination can be caused against the daughters belonging to Schedule Tribes Category and such discrimination is in violation of the Article 15 of the Constitution of India and, therefore, the suit seeking declaration of khatedari rights in the ancestral property, submitted by the petitioner before the SDO was maintainable, which has been erroneously rejected by the Board. Hence, the interference of this Court is warranted.

Submissions by the respondents:-

3. Per contra, counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that Section 2(2) of the Act of 1956 expressly bars the application of the Hindu Succession Act upon the members of Scheduled Tribes. Counsel submits that all the facts were well appreciated by the Board, while allowing the revision petition submitted by the respondents. Counsel submits that this Court in the case of **Gulam Vs. the Board of Revenue and Ors.** reported in **AIR 2006 Rajasthan 162**, has categorically held that daughters belonging to the Schedule Tribes do not fall within the ambit of Section 2 of the Act of 1956. Counsel submits that even in the case of **Kamla Neti (Dead) Vs. the Special Land Acquisition Officer and Ors.**, reported in **2023(3) SCC 328** it has been held by the Hon'ble Apex Court that unless a separate notification is issued by the Central Government in the Official Gazette, female members of Schedule Tribes are not entitled to claim succession

rights in the ancestral property. Counsel submits that the validity of the provisions of Section 2(2) of the Act of 1956 were challenged before the Hon'ble Apex Court in the case of **Ahmedabad Women Action Group (AWAG) and Ors. Vs. Union of India**, reported in **1997(3) SCC 523**, wherein the Hon'ble Apex Court held the above provisions to be intra vires and not ultra vires and the petition submitted by the Ahmedabad Women Action Group was rejected. Hence, counsel submits that the Board has not committed any error in accepting the application submitted by the respondents under Order 7 Rule 11 CPC and the suit submitted by the petitioner was rightly rejected. Hence, interference of this Court is not warranted.

Analysis, Discussions and Findings:-

4. Heard and considered the submissions made at Bar and perused the material available on record.
5. Perusal of the record reveals that the land in question is an ancestral land of the petitioner, who belongs to Schedule Tribe i.e. Meena Community. This fact is not in dispute that the petitioner is the sole child of her father, who executed a gift deed in favour of the respondent No.2 in respect of the subject land on 12.03.2018. It appears that aggrieved by the aforesaid execution of gift deed in favour of the respondent No.2, the petitioner approached the Civil Court for cancellation of the same where objection was taken by the respondent regarding maintainability of the suit on a technical count that unless the petitioner first obtains a declaration of her Khatidari Rights from the competent Revenue Court, the Civil Suit would not be maintainable. Consequently, under such circumstances, the petitioner submitted a suit for

declaration of Khatedari Rights before the Revenue Court i.e. SDO, Chaksu seeking multiple reliefs. Thereafter, the respondents submitted an application under Order 7 Rule 11 CPC for rejection of the plaint on technical count that the provisions of the Hindu Succession Act, 1956 do not apply to the female members of the Schedule Tribes and that was the precise reason for which the application submitted by the respondent was rejected by the SDO vide order dated 24.07.2023. Aggrieved by the aforesaid order, the respondents approached the Board of Revenue by way of filing a revision petition and the same was allowed solely on the basis that the petitioner being a daughter, belonging to Scheduled Tribe Category, is not entitled to claim her share/succession rights in the ancestral property, under the bar contained under Section 2(2) of the Hindu Succession Act, 1956.

6. The issue involved in this petition is no more res integra in the light of the judgment of the Hon'ble Apex Court in the case of **Tirth Kumar** (Supra) wherein the earlier view expressed by the Hon'ble Apex Court in the case of **Kamla Neti** (Supra) regarding the above provisions has been held to be causing discrimination against the females belonging to the Scheduled Tribe Category. The Hon'ble Apex Court has taken note of the fact that the provisions contained under Section 2(2) of the Act of 1956 are required to be looked into by the State Government inasmuch as a direction was issued by the Hon'ble Apex Court in the case of **Kamla Neti** (Supra), which deals with the provisions of the Hindu Succession Act, to bring suitable amendments so as to ensure right of equality, guaranteed under the Articles 15 and 21 of the Constitution of India, are not infringed. The view taken in the case

of **Trith Kumar** (Supra) was further reiterated in the successive judgment in the case of **Ram Charan** (supra) and it has been held in para 3, 12, 13, 27 and 28 as under:-

“3. The short question involved in this appeal is whether a tribal woman (or her legal heirs) would be entitled to an equal share in her ancestral property or not. One would think that in this day and age, where great strides have been made in realizing the constitutional goal of equality, this Court would not need to intervene for equality between the successors of a common ancestor and the same should be a given, irrespective of their biological differences, but it is not so.

12. At the outset of our consideration, it is clarified that the question of the parties having adopted Hindu customs and way of life is no longer in play. That apart, we may also notice 8 2024 SCC OnLine SC 3810 Section 2(2) of the Hindu Succession Act, 1956, which unequivocally excludes from its application, Scheduled Tribes. It reads :

“Section 2(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.”

13. Since the Hindu Law has no application, the next possibility to be considered is that of the application of the custom. For the application of a custom to be shown, it has to be proved, but it was not in the present case. In fact, the Courts below proceeded, in our view, with an assumption in mind and that

assumption was misplaced. The point of inception regarding the discussion of customs was at the exclusion stage, meaning thereby that they assumed there to be an exclusionary custom in a place where the daughters would not be entitled to any inheritance and expected the appellant-plaintiffs to prove otherwise. An alternate scenario was also possible where not exclusion, but inclusion could have been presumed and the defendants then could have been asked to show that women were not entitled to inherit property. This patriarchal predisposition appears to be an inference from Hindu law, which has no place in the present case.

27. Similarly, we are of the view that, unless otherwise prescribed in law, denying the female heir a right in the property only exacerbates gender division and discrimination, which the law should ensure to weed out.

28. Granted that no such custom of female succession could be established by the appellant-plaintiffs, but nonetheless it is also equally true that a custom to the contrary also could not be shown in the slightest, much less proved. That being the case, denying Dhaiya her share in her father's property, when the custom is silent, would violate her right to equality vis-à-vis her brothers or those of her legal heirs vis-à-vis their cousin"

7. Keeping in view the mandate laid down by the Hon'ble Apex Court in the case of **Tirth Kumar** (supra) and **Ram Charan** (supra), this Court finds no valid reason to take a different view. Consequently, the impugned judgment passed by the Board is not

sustainable in the eyes of law and the same is liable to be and is hereby quashed and set aside.

Conclusion:-

8. The present writ petition stands allowed and the application submitted by the respondents under Order 7 Rule 11 CPC stands rejected. The SDO is directed to adjudicate the suit on its merits, on the basis of the evidence led by both the sides, without being influenced by any observations made by this Court in the present order. It is also expected from the SDO to make all possible endeavours to decide the pending suit, expeditiously as early as possible, preferably within a period of two years from the date of receipt of the certified copy of this order, since the suit pertains to the year 2018.

9. Stay application and all pending application (s), if any, also stand disposed of.

A Way Forward:-

10. Before parting with this order, it would be gainful to observe that even in the case of **Kamla Neti** (Supra), the Hon'ble Apex Court has made recommendation and suggestion to the Central Government to look into the pathways to secure the right of survivorship to female tribals and it has been held in para 7.1 as under:-

"7.1 Before parting, we may observe that there may not be any justification to deny the right of survivorship so far as the female member of the Tribal is concerned. When the daughter belonging to the non-tribal is entitled to the equal share in the property of the father, there is no reason to deny such right to the daughter of the Tribal community. Female tribal is entitled to parity with male tribal in intestate succession. To deny the equal right to the daughter belonging to the tribal even after a period

of 70 years of the Constitution of India under which right to equality is guaranteed, it is high time for the Central Government to look into the matter and if required, to amend the provisions of the Hindu Succession Act by which the Hindu Succession Act is not made applicable to the members of the Scheduled Tribe.”

11. The 21st century has seen a global rise in women empowerment movements. The Universal Declaration of Human Rights, established in 1948, reaffirms the belief in the fundamental rights and equal dignity of all individuals, emphasizing freedom without any form of discrimination, including based on sex.

12. In the contemporary epoch, the discourse surrounding women’s empowerment and gender equality has transcended from mere rhetoric to a dynamic movement that has gained momentum across the globe. Women empowerment, at its core, refers to the process of enabling women to exercise their rights, make autonomous decisions and partake fully in the socio-political, economic and cultural spheres of life. It is a multi-dimensional concept that encompasses the dismantling of structural impediments that stifle women’s potential and promotion of policies that enable their holistic growth. The global rise in gender equality reflects a paradigm shift towards recognizing women as equal stakeholders in the pursuit of prosperity, peace and sustainable development.

13. In response to these principles, the Indian Constitution, adopted in 1950, enshrines several fundamental rights that aim to protect and promote gender equality. The framers of the Constitution were acutely aware of the historical discrimination

faced by women and thus, laid down provisions to ensure their upliftment. A comprehensive reading of Articles 14, 15, 16 and 21 of the Constitution of India clearly indicates that no laws can be created or enforced so as to cause discrimination against women. Though aspirational at the time of their drafting, such laws have paved the way for transformative changes in womens' rights over the decades. The legislature has enacted numerous laws aimed at achieving gender equality, fulfilling both international obligations and constitutional mandates.

14. Article 14 under Constitution of India, guarantees the Right to Equality for Women, while Article 15(1) specifically prohibits discrimination based on sex. Furthermore, Article 15(3) allows for positive and affirmative action to benefit women. Article 16 ensures equal opportunities in public employment and forbids discrimination on various grounds including sex. Our obligation to reject practices that undermine women's dignity is elevated to a fundamental duty under Article 51-A. The Directive Principles of State Policy (Part IV of the Indian Constitution), although non-justiciable (i.e., they are not enforceable in a Court of law), provides essential guidelines to the government in promoting social and economic equality and further provides direction to the State to protect women human rights, including equal pay for equal work, health rights and maternity benefits. The 73rd and 74th Constitutional Amendments Act, enacted in the year 1993, marked a significant advancement in women participation in governance by providing 33% reservation for women at various levels.

15. Throughout history, women have played a vital role in nation-building, yet they have often faced barriers to equal



participation in socio-economic activities. Gender bias has impacted many aspects of their lives. To address this, the Constitution of India takes significant steps to ensure gender justice as a fundamental principle. The Preamble promises justice—social, economic, and political—along with equality of status and opportunity and fraternity that upholds individual dignity. It explicitly recognizes women as a distinct group and prohibits all forms of discrimination against them, paving the way for equal opportunities in education, employment and advancement.

16. Article 15 of the Constitution of India prohibits discrimination against citizens based on religion, race, caste, sex or place of birth. Meaning thereby that there cannot be any discrimination between two individuals on the basis of caste. When daughters belonging to non-Scheduled Tribe communities are entitled to equal share in their father's property, there is no reason & justification for denying the same right to the daughters of Scheduled Tribe community. Female Tribal is entitled to parity with Male Tribal in the matters of intestate succession. However, the provisions contained under Section 2(2) of the Act of 1956 are operating as rider/barrier in the way of Female Tribal from asserting their rights in their father's property.

17. To deny equal rights to the daughters belonging to the Tribal communities, even after more than seven decades of independence, is manifestly unjustified. Hence, it is the right time and high time for the Union of India to revisit the provisions contained under Section 2(2) of the Act of 1956, and if deemed necessary, the provisions of the Act of 1956 be amended to



safeguard and promote the rights of Female Members of the Scheduled Tribe community.

18. This Court hopes and trusts that the Central Government will look into the matter and take appropriate decision in the light of the direction issued by the Hon'ble Supreme Court in the case of **Kamla Neti** (Supra), and will further take appropriate steps by taking into consideration the fundamental right of equality, personal liberty, non-discrimination, etc. guaranteed under Articles 14, 15 and 21 of the Constitution of India in favour of Tribal Females.

(ANOOP KUMAR DHAND),J