



**\*IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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% Dated: 29.04.2020

**+W.P.No.5825 of 2020**

Between:

# Chittapuli @ Duvvi Jhansi Bai, W/o.Duvvi Narendra,  
Scheduled Tribe – Bagatha, Aged 31 years,  
Presently working as Child Development Project Officer,  
ICDS Ranasthalam Project,  
Women Development and Child Welfare Department,  
Srikakulam, Residing at Door No.58-24-44/1,  
Jayaprakash Nagar, Butchirajupalem,  
NAD Kotha Road, Visakhapatnam.

**... PETITIONER**

**AND**

\$ 1. Union Government Represented by its Secretary,  
Ministry of Tribal Affairs, National Portal Secretariat,  
3<sup>rd</sup> Floor, National Informatics Centre, A-Block,  
CGO Complex, Lodhi Road, New Delhi – 110 003.

2. Union Government Represented by its Secretary,  
Ministry of Home Affairs, National Portal Secretariat,  
3<sup>rd</sup> Floor, National Informatics Centre, A-Block,  
CGO Complex, Lodhi Road, New Delhi – 110 003.

3. State of Andhra Pradesh,  
Represented by its Principal Secretary to Government,  
Social Welfare and Tribal Welfare Department,  
3<sup>rd</sup> Block, 1<sup>st</sup> Floor, A.P. Secretariat Office,  
Velagapudi, Amaravathi, Guntur District.

4. Duvvi Narendra, S/o.late Duvvi Surya Narayana,  
Hindu (Yadava), Aged 39 years, Business,  
Resident of SF-1, City Villa Apartments, J.R. Nagar,  
Near Anjaneya Swamy Temple, New Venkojipalem,  
Visakhapatnam – 530 013.

**... RESPONDENTS**

! Counsel for petitioner : Mr. N.H.Akbar

^Counsel for Respondent No.1 : Asst. Solicitor General of India

^Counsel for Respondents 2&3 : GP for Social Welfare

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>HEAD NOTE:

? Cases referred:

1. AIR 2001 SC 939
2. AIR 1966 SC 1119
3. (2000) 8 SCC 587

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****WRIT PETITION No.5825 of 2020****ORDER:**

The petitioner belongs to a Schedule Tribe called Bagatha, which is a tribe notified under Article 342 of the Constitution of India. She had married the 4<sup>th</sup> respondent, who is not a member of a Schedule Tribe and is a Hindu, on 15.05.2010, according to Hindu customs and rites. This marriage was also registered before the Registrar for Marriages, Visakhapatnam, on 02.02.2012 under the Hindu Marriage Act, 1955 (for short, "the Act"). Later, disputes arose between the petitioner and her husband. When the petitioner sought to file a petition for dissolution of the marriage under the Act of 1955, she was advised that Section 2(2) of the Act precluded her from invoking the jurisdiction of the Family Court under the said Act. She was also informed that the Hon'ble Supreme Court in the case of **Surajmani Stella Kujur vs. Durga Charan Hansdah**<sup>1</sup>, had held that members of the schedule tribes notified under Article 342 of the Constitution would not be entitled to approach the Court under the Act of 1955. She was also furnished with a Judgment dated 27.09.2018 of the Family Court-cum-V Additional District Judge, Visakhapatnam, in O.P.No.1738 of 2015, wherein a petition filed by a member of a schedule tribe against her husband who is also a member of schedule tribe had been rejected on the ground of Section 2(2) of the Act.

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<sup>1</sup> AIR 2001 SC 939



2. In the light of the aforesaid Judgments and legal advice given to her, the petitioner has now approached this Court for a direction to respondent Nos.1 to 3 to issue a notification in the official gazette directing the members of any Schedule Tribe to prefer applications before the specified Court of law having jurisdiction to dissolve such marriages including her marriage. She also sought a direction to the Judge, Family Court, Visakhapatnam, to permit her to file a petition under Section 7(1)(A) of the Family Courts Act to dissolve the marriage performed between her and the 4<sup>th</sup> respondent. Any notification, of the nature sought by the Petitioner, would be in the nature of delegated legislation and the same cannot be directed to be issued as that would fall foul of the principle of separation of powers. As such the first prayer cannot be granted. However, there is merit in the second contention in the prayer.

3. The petitioner before the Hon'ble Supreme Court in **Surajmani Stella Kujur's case** (cited 1 supra) sought to file a complaint against her husband under Section 494 of the Indian Penal Code, on the ground that her husband had contracted a second marriage during the subsistence of the marriage between her and her husband. The contention of the petitioner therein was that their tribal customs mandate monogamy as a rule and as such, solemnisation of a second marriage by the husband of the petitioner would make the second marriage void and the husband of the petitioner would be liable for prosecution. The Hon'ble Supreme Court, after going into the pleadings, evidence



and proofs placed before the Court, had held that since none of the pleadings or evidence made out such an alleged custom and in view of the fact that both the petitioner and her husband are members of a tribe notified under Section 343 of the Constitution, no case would be made out against the husband of the petitioner therein. However, the Hon'ble Supreme Court recorded that the petitioner was at liberty to get her right established by way of civil proceedings in a competent Court of jurisdiction. The Hon'ble Supreme Court, while considering the aforesaid issue, had recorded the concession given by the petitioner that the parties to the petition are two Tribals, who otherwise profess Hinduism, but their marriage, being outside the purview of the Act of 1955 in the light of Section 2(2) of the Act, would be governed by the Santal customs and usage. In these circumstances, it may not be appropriate to draw a conclusion that the ratio in this Judgment is to the effect that Tribals who profess Hinduism are outside the purview of the Act of 1955.

4. The Hindu Marriage Act was enacted in the year 1955. Section 2 of the Act sets out the application of the Act as follows:

Section 2. Application of Act. —

(1) This Act applies—

a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,



- b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation. —The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

- a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
- c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in subsection (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.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.



5. While giving a very expansive application to the term “Hindu”, the Act does not define as who exactly would be a Hindu. This would be because it would be extremely difficult to define who would be a “Hindu”. A Constitution bench of the Hon’ble Supreme Court, in **Sastri Yagnapurushadji and others vs. Muldas Brudaras Vaishya and another**<sup>2</sup>, considered the question of who would be a Hindu and observed :

**39.** Whilst we are dealing with this broad and comprehensive aspect of Hindu religion, it may be permissible to enquire what, according to this religion, is the ultimate goal of humanity? It is the release and freedom from the unceasing cycle of births and rebirths; Moksha or Nirvana, which is the ultimate aim of Hindu religion and philosophy, represents the state of absolute absorption and assimilation of the individual soul with the infinite. What are the means to attain this end? On this vital issue, there is great divergence of views; some emphasise the importance of Gyan or knowledge, while others extol the virtues of Bhakti or devotion; and yet others insist upon the paramount importance of the performance of duties with a heart full of devotion and mind inspired by true knowledge. In this sphere again, there is diversity of opinion, though all are agreed about the ultimate goal. Therefore, it would be inappropriate to apply the traditional tests in determining the extent of the jurisdiction of Hindu religion. It can be safely described as a way of life based on certain basic concepts to which we have already referred.

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<sup>2</sup> AIR 1966 SC 1119



**40.** Tilak faced this complex and difficult problem of defining or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory. Said Tilak: "Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion". (1). This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee: "When we pass from the plane of social practice to the plane of intellectual outlook, Hinduism too comes out well by comparison with the religions and ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary" [The Present-Day Experiment in Western Civilisation by Toynbee, pp 48-49] .

**41.** The Constitution-makers were fully conscious of this broad and comprehensive character of Hindu religion; and so, while guaranteeing the fundamental right to freedom of religion, Explanation II to Article 25 has made it clear that in sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

**42.** Consistently with this constitutional provision, the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoptions and Maintenance Act, 1956



have extended the application of these Acts to all persons who can be regarded as Hindus in this broad and comprehensive sense. Section 2 of the Hindu Marriage Act, for instance, provides that this Act applies—

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj.

(b) to any person who is a Buddhist, Jaina, or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

The same provision is made in the other three Acts to which we have just referred.

6. In those circumstances, the legislature chose to define a Hindu as any person domiciled in India, except those persons who are Muslim, Christian, Parsi or Jew by religion and those who specifically claim and can prove that they do not follow or are governed by Hindu law or its customs. This exception was also extended to members of schedule tribes, notified under Article 342 of the Constitution, as members of such schedule tribes would be following their own customs and traditions which may not be in line with Hindu beliefs and practices. It would appear that these two exceptions have been made to protect those persons, who are not governed by custom, usage or general principles of Hindu Law, even though they are being included as Hindus under the Act.





7. In the case of **Labishwar Manjhi vs. Pran Manjhi And Others**<sup>3</sup>, the Hon'ble Supreme Court considered Section 2 of the Hindu Succession Act, 1956 which is similar, as far as the relevant parts of the provision are concerned, to Section 2 of the Act. In this case, the question that came up before the Hon'ble Supreme Court was whether parties belonging to the Santhal Tribe, by virtue of having become Hinduised and changed their custom to that which is followed by Hindus, are entitled to the benefit of Section 14 of the Hindu Succession Act, 1956.

8. The Hon'ble Supreme Court after considering the said issue held as follows:

“6. The question which arises in the present case is, whether the parties who admittedly belong to Santhal tribe are still continuing with their customary tradition or have they after being Hinduised changed their customs to that what 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 findings, that most of the names of their families of the parties are Hindu names. Even P.W. 1 admits in the cross examination that they perform the pindas at the time of death of anybody. Females do not use vermilion on the forehead after the death of their husbands, widows do not wear ornaments. Even P.W. 2 admits that they

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<sup>3</sup> (2000) 8 SCC 587



perform Shradh ceremonies for 10 days after the death and after marriage, females use vermilion on their foreheads. The finding is that they are following the customs of the Hindus and not of the Santhal's. In view of such a clear finding, it is not possible to hold that Sub-section 2 of Section 2 of 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 Tribe 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 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 appellant Nos. 2 and 3 were valid gift, hence the suit of respondent No. 1 for setting aside the gift deed and inheritance stand dismissed”.

9. In the light of the above, members of a tribe notified under Section 342 of the Constitution of India can still seek the benefit of Hindu Succession Act, 1956, or the Act of 1955, when they are Hinduised and are following Hindu traditions.

10. Section 2(2) of the Act 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 Schedule Tribe and as such, he/she is entitled to the benefit of Section 2(2) of the Act. But, when a member of such a notified 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.

11. In the present case, the husband is a non-tribal Hindu, while the wife is a tribal Hindu. Their marriage was performed under the Act. Section 5 of the Act states that marriages under the Act can be solemnized only between two Hindus. In such a case, the Petitioner can certainly contend, subject to proof, that she is a Hindu, following Hindu practices and beliefs and would be entitled to the benefits and remedies available under the Act.

12. Another facet of this case is that the petitioner cannot divorce her husband according to the customs of the tribe to which she belongs, as the husband is not a tribal. Simultaneously, if she is not permitted to divorce the husband under the Act on the ground that sub-section (2) of Section 2 of the Act bars her from initiating any proceedings under the said Act, the Petitioner would have no remedy.



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.

14. Accordingly, the petitioner would be entitled to move an application for dissolution of marriage, under the Hindu Marriage Act, 1955, before the appropriate Civil/ Family Court having jurisdiction.

15. With the above observation, the writ petition is disposed of. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

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**R. RAGHUNANDAN RAO, J.**

29.04.2021

**Note: L.R. copy to be marked.**

**B/o.**

**SDP**



**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

**WRIT PETITION No.5825 of 2020**

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