

OPERATIVE PART OF THE JUDGMENT
(TRANSLATION)

Tandin Bidha vs. Pema Choki
(Judgment No. SC (Hung19-18) dated 27/11/2019)

Decision

- 9.1. Regarding the contentions made by both Appellant-Petitioner Tandin Bidha and Appellant-Respondent Pema Choki that they are married to Late Namgay Wangchuk, Section Kha 1-3 of the Marriage Act requires that whenever a marriage is contracted, a Marriage Certificate shall have to be acquired from a court of law to make such a marriage valid. On the contrary, they have not availed a Marriage certificates. Still in the absence of Marriage Certificate, Section Kha 9-4 of the Marriage Act states that in order to determine the period of their stay together, three witnesses who are not related to the couple can testify before the court on the period of stay together and such determination by witness shall be accepted by the Court. Further, Section GA 6-1 of the Inheritance Act states that notwithstanding a couple having married without obtaining a Marriage Certificate, if such couple has a common kitchen, they shall be deemed to be a joint family. Therefore, the witnesses have presented the statements that Pema Choki and Late Namgay Wangchuk were together from the very beginning of time of their associations with the couple. Moreover, they have a common kitchen. Hence, the Court rules that Pema Choki is a legal wife of Late Namgay Wangchuk.
- 9.2. Tandin Bidha contended that she is second wife of Late Namgay Wangchuk and is accordingly entitled of her shares of properties as per the Marriage Act. The Court in accordance with Section Kha 1-19 of the Marriage Act rules that Tandin Bidha is not found to be a second wife of Late Namgay Wangchuk, since Pema Choki, the first wife of Late Namgay Wangchuk have neither expressed her consent to the subsequent marriage with Tandin Bidha before the Court nor have given her consent in writing. Hence, Tandin Bidha is found to be deprived of getting any shares of properties owned by Pema Choki and Late Namgay Wangchuk.

9.3. The Court finds that Tandin Bidha's objection on Inheritance Agreement dated 16/7/2013 have no legal basis, since she did not make any objection before the Court within 10 days from the date of signing the Inheritance Agreement as provided in Section 36 (h) of the Evidence Act. Further, the Inheritance Agreement was endorsed by Notary Public Office in Thimphu. Therefore, Tandin Bidha cannot make an objection on Inheritance Agreement. Hence, the Court rules that Tandin Bidha is entitled for her shares as per the terms and conditions laid down in the Inheritance Agreement.

9.4. The parties have presented the alleged wills executed by Late Namgay Wangchuk dated 15/11/2007 and 18/09/2000 before the Court and through their own request, the Court sent two wills for forensic examination. The forensic report has shown that a will dated 18/09/2000 to be the genuine will as per the examination of signature of Late Namgay Wangchuk. Therefore, as mentioned above, Tandin Bidha is found to be deprived of getting any shares from properties owned by Pema Choki and Late Namgay Wangchuk. Hence, the Judgment No.(Dangmang-19-22) dated 14/03/2019 of the Larger Bench, High Court is upheld and it shall be enforced in accordance with Section 27 of the Civil and Criminal Procedure Code of Bhutan.

Court Order

In accordance with Section 96 of the Civil and Criminal Procedure Code of Bhutan, the Court granted full opportunity to the parties to make their submissions by way of written depositions, documents on record, and the oral arguments. All their submissions were given most careful consideration. Therefore, the Court orders for the enforcement Inheritance Agreement dated 16/07/2013 and the judgment of the Larger Bench, High Court. In addition, Tandin Bidha's claims over the share of properties of Late Namgay Wangchuk is hereby dismissed on the ground that the Court did not find Tandin Bidha as lawful second wife of Late Namgay Wangchuk. Hence, the Court orders for the enforcement of the Judgment of Larger Bench, High Court.

Non-compliance of orders as enumerated in this judgment from either of the parties may result in finding civil and criminal sanctions in accordance with Sections 104 and 107 of the Civil and Criminal Procedure Code of Bhutan.

Issued under the hand and seal of this Court on the first day of tenth month of earth female pig year corresponding to the twenty seventh day of the eleven month of two thousand and nineteen.

(Tshering Wangchuk)
The Chief Justice of Bhutan

(Rinzin Penjor)
Justice

(Tashi Chhozom)
Justice

(Norbu Tshering)
Justice

2. Dissenting Judgment

In accordance with Section 95 (c) of the Civil and Criminal Procedure Code of Bhutan, 2001 and Dissenting Findings, the reasons of dissent are as follows:

2.1. The edifice of justice must be supported by the pillar of direct, relevant and admissible evidence. A Judge must base his/her decision on the evidence placed before him/her. The Court proceedings should be regulated by evidentiary rules to achieve a fair and just conclusion – the Judgment. The purpose of evidence is to establish and regulate the rules concerning the process of proof during the trials or civil proceedings in Courts, to finally bring the guilty to justice while setting the innocent free.

Therefore, it is imperative to correctly apply direct, relevant and admissible evidence in courts to achieve the aims of justice. Justice must not only be done but be seen to be done through fair trial as enshrined in our laws. The judiciary must work hard towards gaining public faith, trust and confidence in its criminal Justice system as His Majesty the King always commands, by rendering judgments that are fair and perceived to be fair.

The probative value, the sufficiency and the relative completeness of evidence produced before the Courts must be scrutinized and the Court decisions must be based on truth founded on evidence. Thus, the principal responsibility of courts is to conduct proper proceedings so as to hear and consider evidence.

2.2. With respect to objection on Inheritance Agreement, the parties in accordance with Section 36 (h) of the Evidence Act and Section 150.6 of the Civil and Criminal Procedure Code of Bhutan could have objected within 10 days from the date of signing the Agreement. On the contrary, the parties have not made any objections within such stipulated days. Therefore, the Court in accordance with Section 155 of the Civil and Criminal Procedure Code hereby bars to make any objections on Inheritance Agreement. Thus, the Court rules out the contention of Tandin Bidha that she entered into it under duress as provided under Section 36 (f) and Section 33 of the Contract Act. Hence, the Court in accordance with Section 35 of the Evidence Act admits the Inheritance Agreement dated 16/07/2013 executed between the parties to provide the share of inheritance to Tandin Bidha and her two sons namely, Pema Rigden Wangchuk and

Rigsel Jamden Wangchuk and accordingly, the Inheritance Agreement dated 16/07/2013 shall be enforced as per the terms and conditions laid down in the agreement.

2.3. The Court in accordance with Section 35 of the Evidence Act have admitted the Inheritance Agreement dated 16/07/2013, therefore, the Lower Courts have erred by awarding the land measuring 45 decimal, bearing Thram No. PT-964, Plot No. 85 located at Rinchending, Phuentsholing which is beyond the terms of the Inheritance Agreement. Hence, it is ruled that Pema Choki is relieved from the obligation to transfer the abovementioned 45 decimal towards Tandin Bidha.

2.4. In accordance with the Inheritance Agreement dated 16/07/2013, it is stated that Tandin Bidha shall transfer the census of her two sons with her within one year after the date of signing the Agreement, which at the time of executing the Agreement was with their late father Namgay Wangchuk. Hence, the parties shall comply and enforce the terms of the Agreement accordingly.

2.5. The parties requested the District Court for forensic examination of the wills dated 15/11/2007 and 18/09/2000, the Court as per the parties' request sent the will for forensic examination through Royal Bhutan Police. Further, the parties requested again for the forensic examination citing that forensic report dated 18/10/2015 as vague. The subsequent forensic report dated 29/02/2016 stated that a will dated 15/11/2007 presented to the Court by Tandin Bidha does not bear the original signature of Late Namgay Wangchuk and the will dated 18/09/2000 presented to the Court by Pema Choki was ruled as a genuine will bearing the signature of Late Namgay Wangchuk. However, in accordance with Section GA 7-2 of the Inheritance Act states that when drawing up a will prior to the death of the person making it, a full and complete detail of all the immovable properties such as houses, lands and moveable properties such as cattle, their manner of disposal, the proportions in which such properties are to be bequeathed, etc., shall be mentioned and the document so prepared shall be duly signed by the person making the will and the witnesses; and the such a document shall have to be presented before a Court of law. In Cases, where it is not possible to execute such a written will, an oral declaration shall have to be made in the presence of at least two witnesses and the declaration so made shall be written out and signed by the said two witnesses. On the

contrary, a will dated 15/11/2007 presented by Tandin Bidha was neither presented to before a Court nor signed by two witnesses. Hence, it is not a valid will.

Similarly, concerning a will dated 18/09/2000 presented to the Court by Pema Choki, firstly, on the same day, two wills were drawn up, in both the Wills, N.B. Dittal and Karma Dorji were witnesses. However, in one of the will, there is no signature of witness Karma Dorji. Secondly, a will was neither presented before a Court as required under Section GA 7-2 of the Inheritance Act. Further, Section GA 7-10 of the Inheritance Act provides that, if a will has been written by a third person as a script owing to the deceased testator being illiterate, and at the time of drawing up of that will two witnesses present who are not related to the deceased testator, have affixed judicial stamps in accordance with the law and have also put their signatures thereon a witnesses, then such a will shall be accepted as valid. On the contrary, the witness Karma Dorji before the lower court have presented a statement that he signed on a will only after the demise of Late Namgay Wangchuk and witness N.B. Dittal in his statement to the lower court stated that his signature on a will had to be authenticated. Therefore, based on above reasons, a will dated 18/09/2000 presented to the Court by Pema Choki is not a valid will.

Hence, in accordance with Section 111(b) of the Civil and Criminal Procedure Code of Bhutan, the Judgment No.(Dangmang-19-22) dated 14/03/2019 of the Larger Bench, High Court is partially reversed. Issued under the hand and seal of this Court on the first day of tenth month of earth female pig year corresponding to the twenty seventh day of the eleven month of two thousand and nineteen.

(Kuenlay Tshering)

Justice