

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 204 of 2013

1. Ramratan S/o Awadh Ram Aged About 44 Years R/o Rampur, Tah. Kartala, P.S. Kartala, Distt. Korba C.G.
2. Awadh Ram S/o Late Jogiram Aged About 67 Years R/o Rampur, Tah. Kartala, P.S. Kartala, Distt. Korba C.G.

---- Petitioners

Versus

1. Dukhani Bai & Ors S/o Sukhdeo Aged About 51 Years R/o Rampur, Present R/o Village- Barkonha, P.O. Rampur, Tah. Kartala, Distt. Korba C.G.
2. State Of Chhattisgarh Thru- Collector, Korba C.G.

---- Respondents

For Petitioner.	: Mr. Mirza Kaiser Baig, Advocate.
For Respondent/State.	: Ms. M. Aasha, Panel Lawyer.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/10/2015

Heard on admission.

(1) This is defendants' second appeal directed against the impugned judgment and decree dated 11.03.2013 passed by The Additional District Judge, Korba in Civil Appeal No. 56-A/12.

(2) Plaintiff – Dukhni Bai filed a suit seeking a decree of declaration and permanent injunction and also possession, on the pleadings *inter alia* that she is the daughter of late Hetram having been born out of his wedlock with Kendi Bai and on the basis of registered will deed dated 14.09.2004 she is entitled to succeed to the property in

dispute. The trial Court dismissed the suit. Being aggrieved by the judgment & decree of the trial Court, first appeal was preferred by plaintiff – Dukhni Bai. The first appellate Court, upon appreciation of oral and documentary evidence available on record, recorded a finding that plaintiff – Dukhni Bai is the daughter of late Hetram and by virtue of registered will deed dated 14.09.2014, she was entitled to succeed to the property in dispute and partly allowed the appeal of the plaintiff.

(3) This second appeal has been preferred by the defendants against the impugned judgment & decree of learned lower appellate Court on the ground that learned lower appellate Court was not justified in recording a finding that plaintiff – Dukhani Bai was the daughter of late Hetram.

(4) Learned counsel for the appellants argued that the above finding recorded by the first appellate Court suffers from gross illegality as while recording this finding, a categorical admission of plaintiff in her statement recorded before the Tahsildar in revenue proceedings (Ex.D-1), has not been properly appreciated. Except this, no other ground has been urged to assail legality and validity of impugned judgment and decree.

(5) In order to come to the conclusion that plaintiff Dukhni Bai was the daughter of late Hateram, first appellate Court has not only relied upon the evidence of Dukhni Bai herself (PW-1), but also the evidence of Kendi Bai (PW- 2), who was admittedly married to late Hateram. There are two sets of evidence led by both the parties. However, on the issue that Kendi Bai was first married to late Hetram has not been disputed by any of the parties and in the evidence led by both the parties, this the marriage is beyond the dispute. On the basis of evidence of Kendi Bai, mother of plaintiff, the first appellate Court has granted decree in favour of the plaintiff Dukhni Bai by recording a finding that she is the daughter of late Hateram.

(6) Plaintiff – Dukhni Bai, in her statement recorded before the Tahsildar, has categorically stated and asserted that she was the daughter of late Hateram. Therefore, the finding as to whether Dukhni Bai was the daughter of late Hateram is essentially a finding of fact based on material available on records. The First Appellate Court, below after appreciating the entire evidence available on record, rightly reached to the conclusion that Dukhni Bai is the daughter of late Hetram, particularly taking into

consideration the statement of mother of plaintiff Kendi Bai (PW-2), therefore, I do not find that there is any substantial question of law involved in the appeal so as to entertain this second appeal.

(7) Accordingly, the second appeal deserves to be and is hereby dismissed at admission stage itself. No order as to costs.

(8) A decree be drawn accordingly.

Sd/-

Manindra Mohan Shrivastava

Judge

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