

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 168 /2015

1. Budhram, S/o. Puran @ Parganiha Satnami, Aged About 55 Years, R/o. Thandar, Tehsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
2. Budhwantin Bai, D/o. Puran @ Parganiha Satnami, Aged About 50 Years, R/o. Gabhra, Tehsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
3. Bhudhmarin Bai, D/o. Puran @ Parganiha Satnami, Aged About 48 Years, R/o. Thandar, Tehsil Chhuikhadan, District Rajnandgaon, Chhattisgarh

---- Appellants

Versus

1. Riyamdas, S/o. Gotilal Satnami, Aged About 45 Years, R/o. Village Garra, Tehsil Chhuikhadan, District Rajnandgaon, Chhattisgarh.
2. State of Chhattisgarh, Through the Collector, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellants : Mr. Hemant Kesharwani, Advocate.

For Respondents : Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

08/03/2016

1. The appeal is against the judgment & decree dated 19.01.2015 passed by the Court of Additional District Judge, Khairagarh, in Civil Appeal No.20-A/2011. By such order, the appeal was allowed and the judgment and decree dated 10.10.2011 passed in Civil Suit No.5-A/2010 was set aside.
2. The facts of this case are that a suit was filed by Riyamdas against Budhram, Budhwantin Bai and Budhmarin Bai claiming declaration and permanent injunction. The right was claimed in

respect of the property of one Chhotu. Admittedly, the property belonged to one Jodhi who had two sons namely Gotilal and Chhotu. The plaintiff/respondent- Riyamdas was son of Gotilal. It was the case of the plaintiff that Chhotu, who was uncle of the plaintiff, died issue less. The defendants Budhram, Budhwantin & Budhmarin were son and daughters of one Rajwantin Bai and were born out of the wedlock of her husband Parganiha. At Village Garra, Chhotu had owned 2.5 acres of land which was bearing Khasra No.13/2 and he was in possession. It was the case of the plaintiff that in 1992 without any notice to the plaintiff, name of the defendants were recorded in the land records, which came to the knowledge of the plaintiff on 03.04.2010 and thereby they started disturbing the possession. Consequently, the suit was filed for declaration and permanent injunction.

3. The defendants No.1 to 3 Bhudhram, Budhwantin & Budhmarin contended that they were the adopted son and daughters of Chhotu. It was the case of the defendants that after death of the wife of Chhotu, Rajwantin was married to Chhotu according to the custom and the defendants came along-with their mother Rajwantin Bai and they were brought up by Chhotu, thereby they became the son and daughters of Chhotu and they are entitled for the property left by Chhotu, who died intestate.
4. Learned counsel for the appellants would submit that the order of the appellate Court is bad and he is not able to make any submission on the factual and legal issue and the query made by the Court.
5. Perused the plaint, evidence and the judgments.
6. Admittedly, this is not in dispute that Chhotu and Gotilal both were sons of Jodhi and the plaintiff Riyamdas was son of Gotilal, thereby

the plaintiff was Nephew of Chhotu, who died intestate. As per the evidence of the plaintiff, Rajwanti who was mother of the defendants No.1 to 3 (Budhram, Budhwanti & Budhmarin) was earlier married to one Parganiha and after death of Parganiha, Rajwanti was brought by Chhotu at his home. Thereby admittedly the children, the defendants, were born out of the first wedlock and they were not the son and daughters of Chhotu. The defendants adduced evidence that at the time when Rajwanti joined to the company of Chhotu, the children were brought along with her and thereby they will become the son and daughters, that analogy cannot be accepted as admittedly the defendants were not the son and daughters of Chhotu.

7. As per Section 16 of the Hindu Succession Act, 1956, the property of a female Hindu would devolved as per Section 15 (1) -
 - (a) firstly, upon the sons and daughters;
 - (b) secondly, upon the heirs of the husband;
 - (c) thirdly, upon the mother and father;
8. Further reading of Section 15(2)(b) would reveal that notwithstanding anything contained in sub-section (1) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.
9. Admittedly, the defendants in this case were not son and daughters of the deceased Chhotu and were not heirs of Chhotu. Therefore, as per Section 15(1)(b), Riyamdas being the Nephew and heir of the husband, the property will pass on to the plaintiff.
10. Admittedly, in this case taking the relation of the parties, the defendants were not being the son and daughters of Chhotu they

will not get any property and after death of Rajwantin, the property is devolved on to the son of Gotilal who was brother of Chhotu. Consequently, the finding recorded by the Court below on the basis of *inter se* relation of parties and the devolution cannot be faulted with.

11. In the result, no substantial questions of law arises for consideration in this second appeal. Accordingly, the appeal is dismissed at the motion stage itself.

Ashok

Sd/-
(Goutam Bhaduri)
Judge