

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 202 of 2015

Vanshgopal, Aged About 48 Years, Caste-Kenwat, S/o Bhupat, R/o Baraur, Tahsil-Marwahi, District-Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Kaushilya, Aged About 51 Years, Caste-Kenwat, daughter of Bhupat R/o Baraur, Tahsil- Marwahi, District- Bilaspur, Chhattisgarh
2. State Of Chhattisgarh Through The Collector, Bilaspur, Chhattisgarh

---- Respondents

For appellant - Shri B.P. Singh, Advocate.
For respondent/State – Shri Anil S. Pandey, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

15/02/2016

1. The appeal is against the judgement and decree dated 12th January, 2015 passed by the Additional District Judge, Pendra Road, District Bilaspur in Civil Appeal No.7-A/11 and by this order the judgement and decree passed in Civil Suit No.32-A/2009 by the Civil Judge, Class-II Marwahi dated 8/10/2010 has been affirmed.
2. As per the case of the plaintiff Kaushilya, she is the sister of Vanshgopal the appellant herein. They are governed by the Hindu law. Father of the plaintiff and defendant Vanshgopal died earlier to death of Devidin their grandfather. Devidin had land bearing khasra 5 admeasuring 11.10 acres at village Barour PC No.06 RI Circle Marwahi, Tahsil Marwahi District Bilaspur which was shown in Schedule-A of the plaint. It was case of the plaintiff that she was illiterate lady and taking advantage of that the defendant No.1 the brother has recorded exclusive name of the Vanshgopal in respect of the entire land against which appeal was filed which was dismissed before the Revenue Authorities and name of defendant was mutated on 17/01/1982. Against that appeal was filed

before SDO Pendra Road which was also dismissed. Subsequently, defendant No.1 out of 11.10 acres sold out the land admeasuring 5.08 acres in favour of Rottam Lal without consent and knowledge of the plaintiff despite the fact that plaintiff is owner of half portion of such land. Therefore, it was pleaded that plaintiff is entitled to get land shown in Schedule-B of the plaint to the extent of the share shown in the property. It was further pleaded that plaintiff be given 5.55 acres of land of Scheduled-B property which is remaining. Defendant contended that the suit land was recorded exclusively in the name of the defendant after death of Devidin. It was further pleaded that according to custom prevailing i.e. Chudi custom, at the time of marriage she relinquished her part of the share in respect of the land in favour of the defendant/appellant the brother. It was further stated that therefore the brother became exclusive owner of the land. Both the court below after evaluating the evidence and pleading, decreed the suit in favour of the plaintiff/respondent the sister and directed to give her half part of proportionate property according to her share. Against such finding this appeal.

3. Learned counsel for the appellant vehemently contended that during the sale of the land in favour of Rottam Lal and others the husband of the plaintiff was very much present and with the consent of the plaintiff, the land were sold and the amount was also paid to the plaintiffs. It is further contended that both the court below has ignored such fact that sale deed so executed bears signature of the husband of the plaintiff Kaushilya which goes to prove the fact that she was consenting party to the sale deed and thereby consideration was also received. He further submits that considering these mutation proceedings were drawn and initially by mutation proceeding name of the brother/defendant was mutated by the revenue authorities which was subject of challenge before the SDO and

that was also affirmed, therefore the suit was also barred by time.

4. Perused the documents, evidence and the pleading. This fact is not in dispute that the plaintiff and the defendant they are the sister and brother. Suit was filed by the sister for her part of the share. This fact is also not in dispute by evidence that the property was recorded in the name of Devidin. Bhupat the father of plaintiff, and defendant died before Devidin. Land belong to Devidin has been proved by B-1 Kistbandi Khatuani Ex.P-1, Khasra Panchshala Ex.P-2 and Ex.P-3.

5. Plaintiff Kaushilya the sister had contended that after death of Devidin property devolved on sister and brother equally as the daughters were also entitled for the same right and share of property. Though it is contended that daughter do not get any right over the property by the defendant but this custom has not been established and even otherwise in admission of the parties exists that parties are governed by Hindu Succession Act. Defendant's witness also admitted that fact that they follow Hindu rituals. Oral evidence which has been adduced by the defendant that at the time of marriage of the sister i.e. plaintiff, land were given to the plaintiff thereby part of the land were relinquished has not been established and what are the number of such land and what are the boundary it is completely vague. Therefore, this fact has not been established at the time of marriage plaintiff had relinquished her right over the certain part of the property of the land. No registered document and relinquishment deed has been placed on record whereby it can be established that plaintiff has relinquished her part of the land. Consequently, presumption would follow after death of Devidin property will devolve according to Section 6 of the Hindu Succession Act, 1956 whereby daughter have been given right by amendment in the year 2005. Suit was filed in this case in the year 2007. As such it is rightly held by

both the court below that after death of Devidin, plaintiff and the defendant being sole and surviving owner being brother and sister, the property would devolve on them.

6. Admittedly, out of 11.10 acres part of the property has been sold by the defendant alone in favour of Rattom Lal and the remaining property has been described in Schedule-B of the plaint. Perused the judgement and decree. The court below has held that in the remaining part of land after sale, which remains, daughter would get right to the extent of half of 11.10 acres which was actually holding at the time of devolution and passed a decree to the extent of half of the share of 11.10 acres which is shown in Schedule-B. Therefore, taking into fact and evidence no substantial question of law arises for consideration in this second appeal and no perversity is found in the order of both the court below itself.

7. Accordingly, the second appeal is dismissed at the motion stage.

Sd/-

(Goutam Bhaduri)

JUDGE