

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 567 of 2015**

1. Ramadhar Chauhan, aged about 52 years, S/o. Harishchandra Chauhan,
2. Smt. Maheshiya Bai, aged about 35 years, W/o. Dhruv Singh Chauhan,
Both R/o. Village Parsada (Tifara), Tahsil and District – Bilaspur (C.G.)
3. Smt. Ganeshiya Bai, aged about 43 years, W/o. Lakhan Singh Chauhan, R/o. Village-Tifara, Tahsil and District – Bilaspur (C.G.)
4. Smt. Durga Bai, aged about 31 years, W/o. Mannu Lal Chauhan, R/o. Village-Chamarin, Tahsil and District – Bemetara (C.G.)

----Appellants**Versus**

1. Smt. Lalita Bai, aged about 62 years, W/o. Late Harishchandra Chauhan,
2. Santosh Kumar, aged about 21 years, S/o. Late Harishchandra Chauhan,
Both R/o. Village-Parsada (Tifara), Tahsil and District – Bilaspur (C.G.)
3. State of Chhattisgarh, Through : The Collector, Bilaspur, Tahsil and District – Bilaspur (C.G.)

----Respondents

 For Appellant : Mr. Kalyan Kalamkar, Advocate

For Respondents No.1 & 2: Mr. Chandrabhushan Kesharwani, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****08/03/2016**

Heard on admission.

1. This is an appeal against the judgment and decree dated 17.08.2015, passed by the District Judge, Bilaspur, District Bilaspur, in Civil Appeal No.40-A/2015, whereby the judgment and decree dated 19.01.2015, passed in Civil Suit No.50A/2013, passed by IVth Civil Judge, Class-II, Bilaspur, was affirmed.

2. The appeal is by the plaintiffs against the concurrent finding of fact by both the Courts Below.
3. Brief facts of this case as pleaded by the plaintiffs are that a suit was filed by the plaintiffs namely Ramadhar Chauhan, Smt. Maheshiya Bai, Smt. Ganeshiya Bai and Smt. Durga Bai claiming that they are son and daughters of Harishchandra Chauhan. It was contended that Harishchandra Chauhan as a Malgujar acquired the land at village-Parsada and by an order dated 31.03.2011, passed in revenue case No.2/2011 and Harishchandra Chauhan was granted ownership of such land. It was pleaded that Harishchandra Chauhan performed three marriages during his life time. The first wife was Suwasin Bai and the plaintiff No.1 and 3 Ramadhar & Ganeshiya Bai, were born out of such wedlock. The second wife was Fulbai and out of such wedlock, plaintiff No.2, namely Smt. Maheshiya Bai, further plaintiff No.4, Durga Bai, were born and the defendant No.1, Smt. Lalita Bai was the third wife of Harishchandra Chauhan. It was stated that defendant No.1, Smt. Lalita Bai got her name mutated by forgery in the revenue records and tried to sale such land and thereby deprived the plaintiffs of their right. Consequently suit for declaration and injunction was filed.
4. The defendants in reply to the plaint averments contended that suit property was presently recorded in the name of the defendant No.1 i.e. Smt. Lalita Bai and the plaintiffs do not have any right or title for such land. It was further stated that suit land was earlier Malgujari land, which was acquired by Harishchandra Chauhan. It was pleaded that after the death of Harishchandra Chauhan, defendant

No.1, Smt. Lalita was appointed as Kotwar by following due procedure of law, therefore, she is in possession of the suit property.

5. After evaluating the pleadings and the evidence, the Trial Court dismissed the suit as the plaintiffs have failed to prove the right over such property, which was further affirmed by the First Appellate Court. Hence, this second appeal.
6. Learned counsel for the appellants would submit that on admission made by the defendant that property being of Harishchandra Chauhan, no further evidence would be required and the finding of both the Courts below are bad, therefore, he submits that the appeal be admitted for hearing.
7. Perused the judgments and the decree, pleadings and the evidence.
8. At para-2 of the plaint, the plaintiffs have specifically contended that by order of Tahsildar dated 31.03.2011, in a revenue case No.2/2011, Harischandra Chauhan was conferred with the ownership right of the property. Though such averments have been made but reading the case file do not disclose that any ownership right was established. Further reading the evidence would show that no documents have been placed on record to show that land in question was conferred in ownership right to the Harishchandra in the year 2011. The document Ex.P/1 and Ex.P/2, which is record of right of 1939-40 records the name of one Ganeshram and the possession was recorded one of Bahorik, S/o. Madho Chauhan. There is no documents on record, to show the fact that benefit has

accrued to the plaintiffs by Ex.P/1 and Ex.P/2. As against this, the documents Ex.P/4, which records the name of Smt. Lalita, the defendant No.1 in respect of the land shows that she has been granted ownership right and in the remarks column it also records that in revenue case No.2/2011, by an order dated 31.03.2011, Smt. Lalita has been granted ownership right of such land. Therefore, by reading the entire documents, Ex.P/4 nothing goes to suggest, which would show that land was recorded in the name of Harishchandra. Instead, the document, Ex.P/4 filed by the plaintiffs goes to show that land was recorded in the name of Lalita. Consequently, the plaintiffs have failed to prove any right or title over the land in question. Therefore, the finding arrived at by both the Courts below are finding of fact which do not call for any interference. In a result no substantial question of law arises for consideration in this second appeal.

9. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE