

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 47 of 2016**

1. Guniram, S/o. Kartik Ram, aged about 40 years,
2. Onkar, S/o. Kartik Ram, aged about 38 years,
3. Binda Bai, Wd/o. Kartik Ram, aged about 60 years,

No.1 to 3 are resident of Rampur, Tahsil-Mungeli, District- Bilaspur, now – District – Mungeli (C.G.)

4. Premin Bai, W/o. Tilak Ram, aged about 55 years, R/o. Totakapa, Tahsil-Mungeli, District- Bilaspur now District- Mungeli (C.G.)

----Appellants**Versus**

1. Raghunandan, S/o. Nohar Das, aged about 21 years,
2. Anjor Das, S/o. Nohar Das, aged about 19 years,
3. Goverdhan, S/o. Nohar Das, aged about 17 years,
4. Sammat Bai, D/o. Nohar Das, aged about 15 years,

No.3 & 4 are minor, represented through mother Yashoda Bai, W/o. Nohar Das,

5. Yashoda Bai, W/o. Nohar Das, aged about 50 years,

No.1 to 5 are resident of Village-Rampur, Tahsil-Mungeli, District- Bilaspur, now District-Mungeli (C.G.)

6. Chandrakali Bai, W/o. Kamal, aged about 25 years, R/o. Barampur (Khanti), Tahsil-Lormi, District- Bilaspur now District-Mungeli (C.G.)
7. Mohar Bai, W/o. Bhawani, aged about 24 years, R/o. Padav Chowk, Mungeli, Tahsil-Mungeli, District-Bilaspur now District – Mungeli (C.G.)
8. State of Chhattisgarh, through the Collector, Bilaspur, now Mungeli (C.G.)

----Respondents

For Appellants

: Mr. L.C. Dash, Advocate

For State/Respondent No.8

: Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board**

27/04/2016

Heard on admission.

1. This is an appeal against the judgment and decree dated 15.09.2015, passed by Additional District Judge, Mungeli (C.G.), in Civil Appeal 98-A/2011, whereby the judgment and decree dated 05.04.2008, passed in Civil Suit No.19-A/2007, passed by Civil Judge, Class-I, Mungeli (C.G.), 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 legally wedded wife of Nohar Das was one Seva Bai and out of their wedlock, they had one son namely Kartikram and one daughter Premin Bai. The plaintiff No.1, Guniram and plaintiff No.2, Onkar are sons of Kartikram and plaintiff No.3, Binda Bai was the widow of Kartikram. Kartikram had died earlier before filing of the suit. It was pleaded that during the lifetime of Seva Bai she being alive, Nohar Das had kept one Yashoda Bai. Yashoda Bai was not married with Nohar Das as at that time, first wife Seva Bai was alive. It was further pleaded that son and daughters born out of the relation of Nohar Das and Yashoda Bai the defendants, they do not have any right or title over the suit property. It was further pleaded that the land situated at village – Rampur, Tahsil – Mungeli and land situated at village – Tengenagarh are ancestral property of the plaintiffs, wherein the plaintiffs have right from their birth. It was stated that after death of Kartikram, who died in the year 1972, the property devolved on the plaintiffs, Guniram, Onkar and Binda Bai,

who are the legal heirs of Kartikram and the defendants do not have any right or title as they were born out of the relation of Nohar Das and Yashoda Bai, who was not legally wedded wife. Consequently, a suit for declaration was filed.

4. The defendants refuted the averments and stated that Yashoda Bai was married to Nohar Das according to the custom of *Chudi* and before the marriage of Nohar Das with Yashoda Bai, Nohar Das was separated from his first wife, Seva Bai. It was further stated that apart from the suit property shown in the plaint of village-Rampur and Tenganagarh certain other properties were also situated at village-Tengnagarh, which was in the name of Nohar Das and after partition those lands were given to Kartikram by Nohar Das, who was elder son thereby the entire properties were partitioned. It was further stated that out of wedlock of Seva Bai and Nohar Das, Kartik and Premin Bai were born and Kartik having died, a separation was affected with Seva Bai and Nohar Das was married with Yashoda Bai. It was further pleaded that Yashoda Bai had four sons therefore, land of Rampur which was much more than that of Tengnagarh was given to the defendants and partition having been affected, the plaintiffs are also in possession of their respective share of land. Similarly separate averments are made by defendant No.3 to 5 i.e. Goverdhan, Sammat Bai and Yashoda Bai.
5. After evaluating the pleadings and the evidence, the Trial Court dismissed the suit, which was further assailed in appeal before the

Appellate Court and the Appellate Court also affirmed the finding of fact by the Trial Court. Hence, this second appeal.

6. Learned counsel for the appellants submits that Yashoda Bai was never married to Nohar Das and marriage could not have been taken place for the reason that at the time of marriage of Nohar Das with Yashoda Bai, the first wife, Seva Bai was alive. In a result, the child born out of the relation with Yashoda Bai, they will not get any right or title over the property of Nohar Das. He would further submit that mutation of name made in the revenue records of the defendants would not entitle them to cloth with title. Therefore, submits that the finding of both the Courts below are perverse, therefore, the appeal be admitted for hearing.
7. Heard the counsel for the appellants.
8. Perused the judgment and the decree, pleadings and the evidence.
9. The plaintiff No.1, Guniram examined himself as P.W.-1 apart from the witness Horiram and Dasaru as P.W.-2 and P.W.-3. The defendant, Yashoda Bai examined herself as D.W.-1 and apart from her, Ghasiram and Pardesiram were examined as D.W.-2 and D.W.-3. The defendants have placed on record the documents Ex.D/1 to Ex.D/17, but no document has been exhibited by the plaintiffs. The defendants contended that because of family settlement, the land situated at village-Rampur had fallen into share of the defendants. The witness P.W.-1, Guniram in his cross-examination had admitted the fact that the house situated at Rampur is in occupation of the defendants. Similar statement has been made by P.W.-2, Horiram that defendants reside at village-

Rampur and the house wherein they reside belonged to Nohar Das and they are in possession of the said house. Similar statement is made by P.W.-3, Dasru that defendants are in possession of the house at Village-Rampur and it is admitted that the said house was given to them by Nohar Das.

10. Apart from the plaintiffs' evidence, it is the similar case of the defendant, Yashoda Bai that the lands at Rampur are in possession of the defendants and during the lifetime of Nohar Das he had given 4.49 acres of land of village Tengenagarh to the plaintiffs, wherein they are in possession. Therefore, by evaluating the plaintiffs' evidence, it is proved that the house and land at village- Rampur was given to the defendants while the properties of village – Tengenagarh was given to the plaintiffs as partition was affected.
11. The plaintiffs though had stated that suit property are ancestral property but in order to prove this fact, nothing has been placed on record to hold that how such property can be claimed to be ancestral property. As per the evidence of the plaintiffs, the defendants are in possession of the property of village- Rampur and the plaintiffs are in possession of the property of Village-Tengenagarh. So in absence of any documentary evidence it can not be held that the properties so claimed was a ancestral one, therefore, finding of the Court below are correct without any fault.
12. With respect to the relation of Nohar Das with Yashoda Bai, Horilal (P.W.-2) has stated that after the death of Kartik Ram, Nohar Das kept Yashoda Bai as wife and the defendants are the sons and

daughters of Yashoda Bai and Nohar Das. Dasru (P.W.-3) has also stated the same facts and it was also admitted that Yashoda Bai was married according to the custom of *Chudi*. Horilal (P.W.-2) also admitted the fact of marriage by custom of *Chudi* prevails in Satnami and therefore, the evidence, which is on record goes to prove that Nohar Das according the custom prevailing in the Satnami community had married Yashoda Bai and the custom as has been stated appears to have been existed.

13. Therefore, perusal of the document and evaluating the entire evidence and the facts, this Court is of the opinion that 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.
14. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE