

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 247 of 2002**

(Arising out of judgment/order dated 13.03.2002 in Civil Appeal No.45A/96 of the learned 1st Additional District Judge, Ambikapur)

1. Ranjendra Kumar Singh, S/o Sadhucharan, aged 35 years.
2. Satya Dev Prasad Singh S/o Sadhucharan, Age 32 years.
3. Nonai Bai W/o late Sadhucharan, age 60 years.

All residents of village – Sur, Tah. & P.S. Sitapur, Distt. - Surguja (C.G.)

---- Appellants/plaintiffs

Versus

1. Homeshwar Nath, S/o Kewalram Caste Kanwar, age about 65 years, Occupation – Agriculture, R/o village – Sur, P.S. & Tah. Sitapur, Distt. Surguja (C.G.)
2. The State of Chhattisgarh, through District Collector Surguja

---- Respondents/Defendants

For Appellants	:	Shri Sushil Dubey, learned Advocate
For Respondent No.2/State	:	Shri R.K.Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****10/11/2017**

1. Heard on admission.
2. This is the plaintiffs' appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 13.03.2002 in Civil Appeal No. 45--A/96 passed by the 1st Additional District Judge, Ambikapur, District Surguja, by which, the lower appellate Court, while affirming the judgment and decree dated 13.10.95 passed by the 3rd Civil Judge, Class-2, Ambikapur in Civil Suit No.5-A/94, has dismissed the appeal.
3. The undisputed facts of the case are that the plaintiff Sadhucharan Singh (since deceased represented by his legal representatives) instituted a suit claiming

declaration of title with regard to half share in the property in question bearing Kh.No.1573 admeasuring 9.95 acres and Kh.No.1570 admeasuring 2.34 acres situated at village Sur, Tahsil and District Surguja. It is pleaded in the plaint that the suit property was originally held by his uncle, namely Harsai Ram as a *Gotiyai* land and after his death, it was given to his father, namely, Kewal Ram by appointing him as a *Gotia*. It is pleaded further that in 1993, defendant No.1 Homeshwar claimed his ownership exclusively with regard to the said property, therefore, the plaintiff has been constrained to file the suit in the instant nature.

4. The defendant No.1 Homeshwar has contested the aforesaid claim and stated that the suit property is his self-acquired property and denied very specifically that his father Kewal Ram has been appointed as a *Gotia* by the Surguja State with regard to the said property. It is contested further on the ground that the suit property was settled in his name on 24.10.1951, and therefore, the claim as made by the plaintiff is liable to be dismissed.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the plaintiff has failed to produce the appointment order, by which, it could be presumed that Kewal Ram was appointed as a *Gotia* by the Surguja State. It held further that the suit as framed is barred by time and accordingly, the suit was dismissed.

6. The aforesaid judgment and decree of the trial Court has been further affirmed further by the lower appellate Court in an appeal preferred by the plaintiffs, vide its impugned judgment and decree, dated 13.03.2002.

7. Being aggrieved, the plaintiffs have preferred this appeal. Shri Sushil Dubey, learned counsel for the appellants/plaintiffs submits that the judgment and decree as passed by the Courts below by holding that his father Kewal Ram has not been appointed as a *Gotia* by the Surguja State is apparently contrary to law. He submits further that without examining material documentary evidence like Ex.P.2 to Ex.P.6, which shows very specifically that after the death of Harsai Ram, the entire taxes were paid by the said Kewal Ram. Without considering these material documentary evidence, the Courts below have committed illegality by holding that Kewal Ram was not appointed as a *Gotia* by the Surguja State and erred further in holding that the suit as framed is barred by time. He, therefore, submits that the judgment and decree be set aside.

8. I have heard learned counsel for the appellant and perused the entire record carefully.

9. The plaintiffs' entire case is essentially based on the ground that the suit property bearing Kh.No. 1573 admeasuring 9.95 acres and Kh.No.1570 admeasuring 2.34 acres was given to his father Kewal Ram by appointing him as a *Gotia* by the Surguja State. In such circumstances, the burden was heavily upon the plaintiff to establish the said fact that his father Kewal Ram was appointed as a *Gotia* by the said Surguja State. However, perusal of the entire record would show that no appointment letter or order as such was produced by the plaintiff in order to establish the said fact. Besides, the plaintiff Sadhucharan himself has admitted in his evidence at para – 13 that the appointment letter is available to him and he will submit the same. In spite of that, it was not produced before the Courts below. In such circumstances, it cannot be held that the plaintiffs' father Kewal Ram was appointed as such. After considering all the material facts, the Courts below have rightly come to the conclusion that the plaintiffs' father Kewal Ram was not appointed as such. The findings so recorded by the Courts below are based upon due and proper appreciation of the evidence led by the parties, therefore, it cannot be held to a perverse one. Consequently, the findings so recorded by the Courts below deserve to be and are hereby affirmed.

10. In view of the foregoing discussion, I do not find any question of law, much less, substantial question of law, which arise for determination in this appeal. Accordingly, this appeal, being devoid of merit, is hereby dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge