

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.165 of 2017**

(Arising out of judgment/order dated 23.02.2017 in Civil Appeal No. 38A/2016 of the learned Additional District Judge, Dhamtari)

1. Keja Bai Wd/o Late Mohan, Aged About 68 Years Caste Baya (Mahar), R/o Village Limtara, Post Sambalpur, Tahsil & District Dhamtari, Chhattisgarh
2. Arjun S/o Late Mohan, Aged About 57 Years Caste Baya (Mahar), R/o Village Limtara, Post Sambalpur, Tahsil & District Dhamtari, Chhattisgarh
3. Ram Vimal S/o Late Mohan, Aged About 48 Years Caste Baya (Mahar), Present In Parwal, Hariyana, R/o Village Limtara, Post Sambalpur, Tahsil & District Dhamtari, Chhattisgarh
4. Bhim S/o Late Mohan, Aged About 50 Years Caste Baya (Mahar), R/o Village Limtara, Post Sambalpur, Tahsil & District Dhamtari, Chhattisgarh
5. Sharda D/o Late Shri Pachkaud, Aged About 68 Years Caste Baya (Mahar), R/o Village Belaudi, Tahsil Gunderdehi, District Balod, Chhattisgarh(Defendants)

---- Appellants**Versus**

1. Satbhama D/o Shri Pachkaud Aged About 65 Years (Wife Of Bharat), Caste Baya (Mahar), R/o Village Dongi Tarai, Post Achoud, Tahsil Gunderdehi, P.S. Ranchirayi, District Balod, Chhattisgarh
2. Sat Bai D/o Shri Pachkaud, Aged About 57 Years (Wife Of Keshkumar), Caste Baya (Mahar), R/o Village Belhari, Post Belhari, Tahsil Patan, District Durg, Chhattisgarh(Plaintiffs)
3. State Of Chhattisgarh, Through The Collector, District Dhamtari, Chhattisgarh(Defendant)

---- Respondents

For Appellants	:	Shri Somnath Verma, Adv.
For Respondent No.4	:	Smt. Shobha Kashyap, Deputy G.A.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****25/10/2017**

1. This is defendants' second 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 23.02.2017 passed by the Additional District Judge, Dhamtari in Civil Appeal No.38-A/2016, by which, the lower appellate Court, while affirming the judgment and decree dated 20.09.2016 passed by the 1st Civil Judge, Class-1, Dhamtari, in Civil Suit No. 134-A/2013, has dismissed the appeal.

2. The undisputed facts of the case are that the plaintiffs Satbhama and Satbai instituted a suit by claiming 2/4th share in the suit property, which was originally held by their father Pachkod and also for declaration of title, injunction and for separate possession. It is pleaded further in the plaint that their father Pachkod has expired in the year 1957, and therefore, they are entitled to claim 2/4th share with regard to the suit property left by their father Pachkod. It is pleaded further that when they have demanded partition, it was refused by the defendants by saying that their names are not recorded in the revenue papers, and therefore, the plaintiffs are constrained to file the suit in the instant nature, instituted on 03.05.2013

3. The defendants have contested the aforesaid claim of the plaintiffs by submitting, inter alia, that the father Pachkod has not expired in the year 1957 and, in fact, he has expired in the year 1954, much prior to enforcement of Hindu Succession Act, 1956 (henceforth, the Act of 1956), therefore, the plaintiffs are not entitled to claim any share in the suit property, as claimed by them.

4. The trial Court, after considering the evidence of the parties, particularly the documentary evidence, i.e., Ex.P.1 and Ex.D.1, has come to the conclusion that the father Pachkod has expired on 12.07.1957. In consequence, the trial Court has decreed the suit.

5. Being aggrieved, the defendants have preferred an appeal under Section 96 of the Code of 1908. The lower appellate Court, in turn, has also considered both these documents (Ex.P.1 & Ex.D.1) and came to the conclusion that Pachkod has expired in the year 1957, much after the enforcement of the Act of 1956. As a consequence, the lower appellate Court has dismissed the appeal while affirming the finding of the trial Court.

6. Aggrieved therewith, the defendants have preferred this appeal. Shri Somnath Verma, learned counsel for the appellants/defendants submits that the judgment and decree, as passed by the Courts below, are apparently contrary to

law. He submits further that the Ex.D.1 shows very specifically that said Pachkod has not expired in between the year 1955 to 1965. He, therefore, submits that this document was not considered properly by the Courts below, and thereby arrived at a wrong conclusion that Pachkod has expired in 1957. He, therefore, submits that the judgment and decree as passed by the Courts below holding that the father Pachkod has expired in 1957 deserve to be set aside.

7. I have heard learned counsel for the appellants and perused the entire record carefully.

8. The plaintiffs' suit was instituted on the ground that since Pachkod has expired in the year 1957, therefore, they are entitled to claim 2/4th share in the suit property left by their father Pachkod. Under such circumstances, the initial burden was upon the plaintiffs to prove the said fact that their father has expired in the year 1957. In order to establish the said fact, the plaintiffs have produced the deed of Adhikar Abhilekh for the year 1954-55, marked as Ex.P.1. Perusal of the said document would show that said Pachkod had expired on 12.07.1957. The said fact could not have been rebutted by the defendants by producing any cogent and reliable evidence in this regard. The trial Court as well as the lower appellate Court, while considering the documentary evidence, particularly, Ex.P.1 (Adhikar Abhilekh for the year 1954-55) and the document Ex.D.1, have come to the conclusion very specifically that Pachkod has expired in 1957, much after the enforcement of the Act of 1956. The said finding is a pure finding of fact based upon due and proper appreciation of the evidence led by the parties. Therefore, the same cannot be held to be a perverse one. The findings so recorded are, therefore, deserve to be and are hereby affirmed.

9. In view of the foregoing discussion, I do not find any question of law, much less, substantial question of law, which arises for determination of 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