

15/2401 ①

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
(CHHATTISGARH)

SECOND APPEAL No.

Single Bench
/2006

APPELLANTS

Defendants

1. Lalit Kumar aged about 35 years
S/o Shri Dev Singh
2. Dev Singh aged about 70 years, S/
o Prabhu
3. Kanchan Bai aged about 65 years
W/o Dev Singh
4. Rahimat Bai aged about 30 years
All by Caste Halba, R/o village
Lohattar, Tahsil Bhanupratappur Distt.
Uttar Bastar Kanker

VERSUS

RESPONDENTS

1. Smt. Chandrabati aged about 48
years
2. Smt. Tulsi Bai aged about 45 years
Both D/o Ramprasad by caste Halba R/
o village Lohattar, Tahsil
Bhanupratappur Distt. Uttar Bastar
Kanker
3. The State of Chhattisgarh through
Collector, Kanker

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SECOND APPEAL UNDER SECTION 100 OF THE CODE OF
CIVIL PROCEDURE 1908



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HIGH COURT OF CHHATTISGARH, BILASPUR

S.A No.77 of 2006

Lalit Kumar And Others

---- Appellants

Versus

Smt.Chandrabati And Others

-----Respondents

For Appellant:	Shri Parag Kotecha, Advocate.
For Respondents N.1 & 2:	Shri VG Tamaskar, Advocate.
For Respondent No.3/State:	Shri Vijay Bahadur Singh, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

05.07.2017

1. This is the Defendant's Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 by questioning the judgment and decree dated 17.10.2005 passed by the 1st Additional District Judge, Kanker, Distt. Kanker in Civil Appeal No1-A/2005 by which the lower appellate Court, while affirming the judgment and decree dated 27.11.2004 passed by the 1st Civil Judge, Class-1, Bhanupratappur in Civil Suit No.6-A/2000, has dismissed the Appeal.
2. The undisputed facts of the case are that the Plaintiffs instituted a suit for declaration of title and injunction by submitting *inter alia* that the suit property situated at village Lohattar described in Plaint Schedule-A is recorded in the joint name of their father namely Ram Prasad along with his brothers namely Ram Bharose and Dev Singh. According to the Plaintiffs, Ram Bharose expired on 16.8.1985 issueless and therefore, after the death of Ram Bharose, the Plaintiffs are entitled to inherit the suit property which is described in Plaint Schedule-A in equal share along with the Defendants. It is

pleaded further that Defendant No.1-Lalit Kumar has obtained the revenue papers mutated in his name on the ground that he is the son of Ram Bharose and the said revenue record was mutated without their knowledge. It is pleaded further that another suit property situated at village Sonadai described in Plaint Schedule-B is the self-acquired property of their father Ram Prasad who acquired the said property by purchasing the same from one Abdul Rashid and therefore, they alone are entitled to inherit the said property of Schedule-B after the death of their father Ram Prasad. It is pleaded further that Defendant No.1-Lalit Kumar has demanded illegally the suit property from them in the year 2000, therefore they have been constrained to file the Suit in the instant nature instituted on 28.6.2000.

3. The Defendants have contested the aforesaid claim by submitting *inter alia* that the suit property described in Plaint Schedule-A is recorded only in the name of Ram Bharose and pleaded further that Lalit Kumar although the son of Dev Singh but was adopted by his uncle Ram Bharose, therefore, being an adopted son, he alone is entitled to inherit the property left by Ram Bharose. It is contested further on the ground that under their Halba caste community, the Plaintiffs being daughters, would not be entitled to inherit father's property. The Defendants have contested further on the ground that the suit as framed and instituted is apparently barred by time.

4. In support, the Plaintiffs have examined as many as 4 witnesses while the Defendants have examined 3 witnesses.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the suit property described in Plaint Schedule-A is recorded jointly in the name of Ram Prasad, Ram Bharose and Dev Singh and is not in the name of Ram Bharose alone as stated by the Defendants. The

trial Court has held further that another suit property which was situated at village Sonadai (Schedule-B) was a self-acquired property of their father Ram Prasad. It held further that Lalit Kumar, Defendant No.1 is not the adopted son of Ram Bharose and that by observing further that the suit was filed well within the period of limitation, has ultimately decreed the suit as claimed by the Plaintiffs.

6. The aforesaid finding of the trial Court has been affirmed further in an Appeal preferred by the Defendants.

7. Being aggrieved, the Defendants have preferred this Appeal. Shri Parag Kotecha, learned Counsel for the Appellants submits that the judgment and decree as passed by the Courts below is apparently contrary to law. He submits that the Plaintiffs have admitted in their evidence that after the death of their father, the daughters under their Halba caste community, would inherit only in the absence of son. While ignoring this material piece of evidence, the trial Court has erred in holding that the daughters are entitled to inherit the property left by their predecessor in interest namely Ram Prasad and Ram Bharose. He submits further that the finding with regard to the adoption of Defendant No.1-Lalit Kumar is also not sustainable in view of the evidence led by the Defendant's witnesses. Lastly, he submits that the suit was wholly barred by time and therefore, the Courts below ought to have dismissed the suit in its entirety on the point of limitation. He therefore submits that the judgment and decree as passed by the Courts below are not sustainable and deserves to be set aside.

8. I have heard learned Counsel for the Appellant and perused the entire record carefully.

9. Undisputedly, the parties belong to Halba caste and are governed by

their own law and the Hindu Succession Act, 1956 is not applicable to them. It is true that Plaintiff witness No.1-Tulsi has admitted in paragraph-4 of her statement that in Halba caste, daughters have no right to inherit the property when sons are there. But, if we examine the entire evidence of this witness, then it would lead to an irresistible conclusion that she has also stated that daughters are also entitled to inherit the property after the death of their father in their Halba caste community. Defendant No.2-Bisahu has also admitted the said fact particularly at paragraph-4 of his evidence that daughters are also entitled to inherit the property in their Halba caste community. While examining the evidence as led by the parties, the trial Court as well as the lower appellate Court both have concurrently come to the conclusion that in Halba caste community, daughters are also entitled to inherit the property left by their predecessor in interest. Consequently, I do not find any infirmity as far as this point is concerned and therefore, I affirm the said finding and hold that daughters are entitled to inherit the property in their Halba caste community.

10. As far as the question with regard to the adoption of Defendant No.1 – Lalit Kumar by his uncle Ram Bharose is concerned, it is clear from perusal of the evidence of both the parties that Defendant No.1-Lalit Kumar has failed completely to establish this fact that he was ever adopted by said Ram Bharose. In view of this fact based on proper appreciation of the evidence of both the parties, Defendant No.1-Lalit Kumar cannot be held to be the adopted son of Ram Bharose and would inherit the property left by him, who expired on 16.8.1985 issueless. This finding is also based upon the proper appreciation of the evidence. Therefore, I affirm the same as well.

11. As far as the question of limitation is concerned, it is settled principles of law that the question of limitation is the mixed question of law and facts



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and since the Courts below have already arrived at a conclusion that the suit is instituted well within time, therefore, under such circumstances, it is not permissible at this stage to disturb the said finding. Therefore, I affirm the finding of the Courts below in this regard also.

12. In view of above discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to cost

Sd/-

(Sanjay Agrawal)
JUDGE

Priya