

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 339 of 2016**

1. 1 (a) Halke (Dead) Through Lrs. Gambhir Sai & Others Wd/o Late Bagarsai, (Dead), Caste- Kanwar, R/o Village- Chandraura, P. S. Chandraura, District- Surajpur (Chhattisgarh).
1. (b) Gambhir Sai Aged about 50 Years S/o Late Bagarsai, Caste- Kanwar, R/o Village- Chandraura, P. S. Chandraura, District- Surajpur (Chhattisgarh).
1. (c) Tapeswar Aged about 45 Years S/o Late Bagarsai, Caste- Kanwar, R/o Village- Chandraura, P. S. Chandraura, District- Surajpur (Chhattisgarh).
2. Sagar (Dead), S/o Harivansh, Through- Lrs.
2 . (a) Sunderi Aged about 80 Years Wd/o Sagarsai, Caste- Kanwar, R/o Mahua Para, Chandraura, Tahsil- Pratappur, District- Surajpur (Chhattisgarh)
2 . (b) Jirjodhan Aged about 50 Years S/o Late Sagarsai, Caste- Kanwar, R/o Mahua Para, Chandraura, Tahsil- Pratappur, District- Surajpur (Chhattisgarh)
3. Tapunath S/o Late Nansai, Aged About 40 Years Caste- Kanwar, R/o Village- Chandraura, P. S. Chandraura, District- Surajpur (Chhattisgarh)
4. Fulmeet @ Sudhiya Wd/o Nansai, Aged About 60 Years Caste- Kanwar, R/o Village- Chandraura, P. S. Chandraura, District- Surajpur (Chhattisgarh)

---- Appellants**Versus**

1. Sukhmen, W/o Late Krishna, Aged About 40 Years Caste- Gond, R/o Village- Chandraura, Mahua Para, Chandraura, Tahsil- Pratappur, District- Surajpur (Chhattisgarh)
2. State Of Chhattisgarh, Through- The Collector, Surajpur (Chhattisgarh), (Defendants)

---- Respondents

For Appellants	:	Shri D.N.Prajapati, Advocate
For Respondent No.2	:	Shri R.K.Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****04/04/2017**

Heard on admission.

2. This is plaintiffs' second appeal filed under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) passed by the Additional District Judge, Pratappur, Dist. Surajpur (C.G.) in Civil Appeal No. 11-A/2014, by which, the appellate Court, while affirming the judgment and decree dated 26.08.2014 passed by the Civil Judge, Class-1, Pratappur in Civil Suit No.94-A/2011, has dismissed the appeal.

3. The undisputed facts of the case are that the plaintiffs/appellants instituted a suit for declaration of title and injunction by submitting, inter alia, that the defendant – Sukhmen is not the legally wedded wife of late Krishna, and therefore, she is not entitled to claim any share with regard to the ancestral property, which they inherited after death of Harivansh, the predecessor in interest.

4. The defendant No.1 has contested the aforesaid claim and pleaded specifically that she is the legally wedded wife of late Krishna and as such that she is also one of the heirs like plaintiffs, and therefore, entitled to inherit the property in question with regard to the share which her husband was entitled to.

5. After considering the evidence led by the parties, the trial Court by its judgment and decree dated 26.08.2014, while considering issues No.4 & 5, has come to the conclusion that defendant Sukhmen is not the concubine and she is the legally wedded wife of late Krishna. Consequently, the trial Court has dismissed the plaintiffs' claim.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiffs by observing that the plaintiffs have failed to establish the fact that defendant Sukhmen is the concubine and not the legally wedded wife of late Krishna.

7. Shri D.N.Prajapati, learned counsel for the appellants submits that both the Courts below have erred in holding that the defendant Sukhmen is the legally wedded wife of late Krishna without proper appreciating the evidence of the parties, and therefore, the concurrent finding as recorded by the Courts below is liable to be set aside.

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

9. The plaintiffs' entire claim was made on the ground that Sukhmen, the defendant No.1, is not the legally wedded wife of late Krishna and in fact she was residing with him as his concubine, and therefore, she is not entitled to claim any share with regard to the property in question. However, from perusal of the record and in view of the evidence led by the parties, it is clear that defendant No.1 Sukhmen is the legally wedded wife of late Krishna and, the Courts below have concurrently held that she is the legally wedded wife of Krishna. This finding is purely a finding of fact and the said findings, even otherwise, cannot be said to be a perverse finding.

10. In view of the aforesaid discussion, I find no question of law, much less, the substantial question of law involved in this appeal. This appeal, being devoid of merit, is accordingly dismissed at admission stage itself.

11. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge