

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.533 of 2016**

Fulmati W/o Late Besahu, Aged About 56 Years R/o Village Jori, Thana Dhourpur, Tahsil Lundra, Civil And Revenue District Surguja, Chhattisgarh(Plaintiff No.1)

---- Appellant**Versus**

1. Devanti W/o Naindas, Aged About 31 Years R/o Village Jori, Thana Dhourpur, Tahsil Lundra, Civil And Revenue District Surguja, Chhattisgarh(Defendant No.1)

2. Rajmaniya D/o Late Besahu, Aged About 36 Years R/o Village Jori, Thana Dhourpur, Tahsil Lundra, Civil And Revenue District Surguja, Chhattisgarh(Plaintiff No.2)

3. The State Of Chhattisgarh, Through: The Collector, Surguja, Civil And Revenue District Surguja, Chhattisgarh(Defendant No.2)

-----Respondents

For Petitioner:

Shri Punit Ruparel, Advocate.

For Respondent No.3/State:

Shri Vijay Bahadur Singh, Panel Lawyer.

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

07.03.2017

1. This is the Plaintiff's Second Appeal filed under Section 100 of the Code of the Civil Procedure against the judgment and decree dated 2.9.2016 passed by the 1st Additional District Judge, Ambikapur, Surguja (CG) in Civil Appeal No.36-A/2015 by which the lower Appellate Court, while affirming the judgment and decree of the trial Court, has dismissed the Plaintiff's Appeal.

2. Briefly stated, the undisputed facts of the case are that the Plaintiff has instituted a suit for declaration of title and injunction by submitting *inter alia* that Defendant No.1- Devanti is not the wife of her deceased/son Motilal and therefore, she is not entitled to any right with regard to the property in question

left by her husband namely Besahu. The Defendant No.1 has contested the claim and pleaded very specifically that she was the wife of deceased Motilal and as such her interest is involved in the property in question left by her husband's father Besahu.

3. Based upon the above rival pleadings, the Trial Court has framed the specific issue No.1 that “whether Defendant No.1 Devanti is the legally wedded wife of said Motilal or not ?”

4. While entertaining the aforesaid issue the trial Court has considered the entire evidence led by the parties and then came to the conclusion that Defendant No.1-Devanti was the legally wedded wife of said Motilal. In consequence, the Plaintiff's claim for exclusive right over the property in question was refused by its judgment and decree dated 31.07.2015.

5. The aforesaid finding of the Trial Court has been affirmed by the lower Appellate Court in an Appeal preferred by the Plaintiff where the lower Appellate Court has also come to the conclusion that Defendant No.1 Devanti was the wife of Motilal, i.e. the Plaintiff's deceased son and accordingly, the Appeal preferred by the Plaintiff was dismissed.

6. Being aggrieved by the aforesaid findings of the Appellate Court, the Plaintiff has preferred this Second Appeal. Shri Punit Ruparel, learned Counsel for the Appellant has submitted that after the death of Motilal, Defendant No.1-Devanti has entered into a second marriage with one Naindas and therefore, she is not entitled to claim anything with regard to the property left by the father of her husband.

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

8. The Plaintiff's case instituted mainly on the premises that Defendant

No.1-Devanti is not the wife of her deceased son Motilal, therefore, she alone is the exclusive owner of the property in question left by her husband Besahu. It is nowhere pleaded in her claim that her (Defendant No.1) right, if any, has extinguished on account of her entering into second marriage with one Naindas. Therefore, contention of Shri Ruparel is noted to be rejected.

9. From perusal of the record, it is evident that after considering the material evidence led by the parties, the Courts below have come to a definite conclusion that Defendant No.1-Devanti is the legally wedded wife of Plaintiff's deceased son Motilal. This is the pure findings of fact.

10. In view of the foregoing discussions, I find that no question of law, much less, the substantial question of law in this Appeal for consideration. Consequently, the Appeal being devoid of merit is hereby dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE