

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 447 of 2005**

1. Santosh Kumar Sahu S/o Mohit Ram Sahu, Aged About 30 Years
R/o Bhadarapara, Balco, Korba, Tahsil & District Korba,
Chhattisgarh
2. Kamlesh Kumar Sahu S/o Mohit Ram Sahu, Aged About 24 Years
R/o Bhadarapara, Balco, Korba, Tahsil & District Korba,
Chhattisgarh

---- Appellants**Versus**

1. Chamara Das S/o Sukrit Das, Aged About 44 Years R/o Village
Dondro, Tahsil & District Korba, Chhattisgarh
2. Shani Das S/o Sukrit Das, Aged About 39 Years R/o Village Dondro,
Tahsil & District Korba, Chhattisgarh
3. Bundkunwer Wd/o Sukrit Das, Aged About 66 Years R/o Village
Dondro, Tahsil & District Korba, Chhattisgarh
4. Aadam Das S/o Kabil Das, Aged About 46 Years R/o Village
Dondro, Tahsil & District Korba, Chhattisgarh
5. Dharam Das S/o Kabil Das, Aged About 38 Years R/o Village
Dondro, Tahsil & District Korba, Chhattisgarh
6. Naval Das S/o Kabil Das, Aged About 33 Years R/o Village Dondro,
Tahsil & District Korba, Chhattisgarh
7. Dhanmatbai Wd/o Kabil Das, Aged About 66 Years R/o Village
Dondro, Tahsil & District Korba, Chhattisgarh
8. State Of Chhattisgarh, Through Collector, Korba, Tahsil And District
Korba, Chhattisgarh

---- Respondents

For Appellants:	Shri Awadh Tripathi with Shri Vivek Kumar tripathi, Advocate.
For Respondent No. 8/State:	Shri R. K. Jaiswal, PL

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

02.08.2017

1. Heard on Admission.
2. This is Defendants' Second Appeal preferred under Section 100 of

the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908) against the judgment and decree dated 21.03.2005 passed by the Additional District Judge, Korba(C.G.) in Civil Appeal No. 5-A/2004, by which, the lower appellate Court, while reversing the judgment and decree dated 07.07.2000 passed by the 1st Civil Judge, Class-II, Korba, in Civil Suit No.9-A/1997, has allowed the Appeal.

3. The undisputed facts of the case are that the Plaintiffs instituted a suit for declaration of title and injunction by submitting, inter alia, that they are the heirs of Charandas, who was the real brother of Shanichardas. It is pleaded that said Shanichardas has expired issueless as he was unmarried. It is pleaded further that Defendant No. 1 – Manikdas, without any authority, has approached the Revenue Authorities for recording his name in revenue papers after the death of Shanichardas by projecting himself as his son. In the said revenue proceeding the Tehsildar has passed the order on 31.12.1996 by recording his name. Therefore, the Plaintiffs have been constrained in filing the suit in the instant nature for declaration of title and injunction.

4. The Defendant No. 1 has contested the aforesaid claim by stating that he is the son of said Shanichardas as he was born from the wedlock with one Patautinbai. It is contested further on the ground that the Revenue Authorities have come to the conclusion that he is the son of Shanichardas, and therefore, his name was rightly recorded in the revenue papers.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that Manikdas is the son of said Shanichardas. As a consequence, the trial Court has dismissed the Plaintiffs' claim.

6. Being aggrieved by the aforesaid finding of the trial Court, the Plaintiffs have preferred an appeal as per the provisions prescribed under Section 96 of the Code of 1908. The appellate Court, in turn, after examining the evidence led by the parties extensively has come to the conclusion that Patautinbai was not the wife of Shanichardas and held further that Manikdas was not the son of Shanichardas. In consequence, the appellate Court reversed the finding of the trial Court and decreed the Plaintiffs' claim.

7. Being aggrieved, the Defendant No. 1 has preferred this appeal. Shri Awadh Tripathi learned counsel for the appellant submits that the judgement and decree as passed by the lower appellate court while reversing the finding of the trial Court is apparently contrary to law. He submits that the fact as to whether Manikdas was the son of Shanichardas or not was required to be established by the Plaintiff. He submits further that the Plaintiffs have failed to establish the said fact, therefore, the trial Court has rightly come to the conclusion that Manikdas is the son of Shanichardas. Lastly, he submits that without meeting the reasonings of the trial Court the lower appellate Court has come to the conclusion that Manikdas is not the son of Shanichardas, and therefore, the said finding deserves to be set aside.

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

9. The only question which involves in this appeal is whether Manikdas was the son of Shanichardas or not. Although the trial Court has come to the conclusion that Manikdas is son of Shanichardas and, accordingly the trial Court has dismissed the claim, but this fact was

extensively examined by the lower appellate Court while examining all the materials available on record and then only came to the conclusion that Manikdas is not the son of Shanichardas. This finding is purely a finding of fact and does not require to be interfered with while reappreciating the evidence adduced by the parties, particularly, when it was based upon due and proper appreciation of the evidence of the parties by the lower appellate Court. The finding so arrived, therefore, cannot be held to be a perverse finding.

10. Consequently, I do not find any substance in this appeal involving question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits and substance is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE