

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 309 OF 2017**

Sushila D/o Ramlakhan Lodhi, W/o Kumbhlal Lodhi, Aged About 40 (Now 43 Years), R/o Village Mandala, Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh

---- Appellant**Versus**

1. Ramlakhan S/o Dukalu Lodhi, Aged About 62 (Now 65 Years)
 2. Gayatri Bai W/o Ramlakhan Lodhi, Aged About 57 years (Now 60 Years)
 3. Manmohan S/o Ramlakhan Lodhi, Aged About 37 (Now 40 Years)
- No. 1 to 3 are R/o Village Gadadih, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
4. Premwati D/o Shri Ramlakhan Lodhi, W/o Shri Bedram Lodhi, Aged About 34 (Now 37 Years), R/o Village Pipariya, Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh
 5. Nainbati D/o Shri Ramlakhan Lodhi, W/o Shri Kumbhlal Lodhi, Aged About 32 (Now 35 Years), R/o Vikrampur, Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh
 6. State Of Chhattisgarh, through Collector, Rajnandgaon, District Rajnandgaon, Chhattisgarh

---- Respondents

For Appellant	:	Mr. R.N. Jha, Advocate
For Respondent No.6/State	:	Ms. Shobha Kashyap, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Judgment On Board****21/07/2017**

1. This is plaintiff's second appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter called as 'CPC') against the judgment and decree dated 15.2.2017 passed by the Additional District Judge, Khairagarh, District Rajnandgaon (C.G.) in Civil Appeal No.19-A of 2014, by which, the lower appellate Court while affirming the judgment and decree dated 24.3.2014 passed by the Civil Judge Class-II, Chhuikhadan, District Rajnandgaon (CG) in Civil Suit No.20-A of 2012, has dismissed the appeal.

2. The undisputed facts of the case, are that, the plaintiff Sushila Bai instituted a suit for declaration of title, partition and also for separate possession by claiming 1/5th share with regard to the property in question described in plaint Schedule A, B & C. It is pleaded that her father's, father namely Dukalu had partitioned the property held by him during his lifetime and the said suit property had come in share of defendant No.1, i.e., her father, namely, Ramlakhan. It is pleaded further that she is the daughter of her father's first wife namely, Kaju Bai and being a co-owner entitled to inherit the equal share of 1/5th along with other co-sharers with regard to the suit property. It is pleaded further that her father had remarried with one Gayatri Bai after the death of her mother and obtained the revenue papers in his name. It is pleaded further that when she demanded the partition from her father, it was refused by him, giving rise to an instant action, instituted on 3.8.2012.

3. The defendants have contested the aforesaid claim stating very specifically that the suit property is not the property held by said Dukalu and therefore, the claim as made by the plaintiff is not at all sustainable.

4. In support, the plaintiff has examined herself, while the defendants have examined as many as two witnesses.

5. The trial Court after considering the evidence led by the parties and that by examining the documentary evidence, has come to the conclusion that though the plaintiff Sushila Bai is the daughter of defendant No.1 Ramlakhan, but has failed to establish the fact that the property in question was the property belonging to her grand-father Dukalu. As a consequence, trial Court has refused to grant the relief as claimed by the plaintiff.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiff Sushila Bai.

7. Being aggrieved, the plaintiffs have preferred this appeal. Mr. R.N. Jha, learned counsel for the appellant submits that the judgment and decree as passed by the trial Court holding that the property in question is not belonging to her grand-father Dukalu is apparently contrary to law. He further submits that without considering the evidence of the plaintiff in its proper manner, the findings as recorded by both the Courts below deserves to be set aside.

8. I have heard learned counsel for the appellant and perused the entire records carefully.

9. The plaintiff Sushila Bai instituted a suit mainly on the ground that the property in question described in plaint Schedule A, B & C belongs to her grand-father Dukalu. The acquisition of the property that whether it belongs to Dukalu or not was seriously disputed by the defendants. In such circumstances, the burden was heavily upon the plaintiff to establish the fact that the suit property was originally held by Dukalu. However, the plaintiff has completely failed to establish the said fact that it belongs to her grant-father. The trial Court as well as the lower appellate Court after considering the evidence of both the parties, have arrived at a conclusion that the property in question did not belong to her grand-father Dukalu. The said finding is a pure finding of fact based on due and proper appreciation of evidence of the parties. Therefore, the same deserves to be and is hereby affirmed.

10. In view of the aforesaid circumstances, I do not find any question of law, much less the substantial question of law which arise for determination in this appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge