

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.115 of 2014**

1. Ramvriksha, S/o Rupan Aged About 24 Years R/o Sapna, Tah. And P.S. Ambikapur, Distt. Surguja C.G.
2. Nandu S/o Rupan Aged About 40 Years R/o Sapna, Tah. And P.S. Ambikapur, Distt. Surguja C.G.
3. Chandu S/o Rupan Aged About 35 Years R/o Sapna, Tah. And P.S. Ambikapur, Distt. Surguja C.G.
4. Somari W/o Rupan Aged About 60 Years R/o Sapna, Tah. And P.S. Ambikapur, Distt. Surguja C.G.

---- Appellants**Versus**

1. Mohit Ram, S/o Late Sudhan Aged About 65 Years R/o Sapna, Tah. And P.S. Ambikapur, Distt. Surguja C.G.
2. Bhukhal S/o Late Sudhan Aged About 60 Years R/o Sapna, Tah. And P.S. Ambikapur, Distt. Surguja C.G.
3. Sukhmania D/o Late Tengra Aged About 45 Years R/o Kanthi, P.S. Darima, Tah. Ambikapur, Distt. Surguja C.G.
4. State Of Chhattisgarh Thru- Collector, Surguja, Ambikapur, P.S. And Tah. Ambikapur, Distt. Surguja C.G.

-----Respondents

For Appellants:	Shri Manoj Paranjpe, Advocate.
For Respondent No.4/State:	Shri RK. Jaiswal, Panel Lawyer.

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

08.03.2017

1. This is Plaintiffs' Second Appeal under Section 100 of the Code of Civil Procedure, 1908 questioning the judgment and decree dated 31.1.2014 passed by the 2nd Additional District Judge, Ambikapur passed in Civil Appeal No.48-A/2011 by which the lower Appellate Court, while reversing the findings of the trial Court dated 24.4.2009, has dismissed the Plaintiffs' claim for declaration of title and injunction.
2. Briefly stated, the undisputed facts of the case are that the Plaintiffs

being the nephews of one Tengara, have instituted a suit for declaration of title and injunction claiming with regard to the property described in Plaint Schedule-B. It is pleaded in the Plaint that Defendant No.3 Sukhmania is not the daughter of Tengara and pleaded further that she is the daughter of one Shivbalak and therefore, they (Plaintiffs) alone are entitled to inherit the property of their uncle Tengara along with their other uncles i.e. Mohitram and Bhukhal. It is pleaded further in the Plaint that when the Sub-Divisional Officer while reversing the order of Naib Tahsildar, has recorded the name of Defendant No.3 Sukhmania, therefore, they have been constrained in filing the instant suit for declaration of title and injunction

3. In support, the Plaintiffs have examined Nandu, one of the Plaintiffs and two of their witnesses in order to establish the fact that Sukhmania, the Defendant No.3, is not the daughter of Tengara and is the daughter of one Shivbalak, while Defendants have examined Sukhmania as DW-1 and Mohitram as DW-2.

4. The trial Court by examining the evidence led by the parties, has come to the conclusion that Sukhmania, the Defendant No.3 is not the daughter of Tengara and in consequence, decreed the Plaintiffs' claim entitling their ownership, along with their uncle, with regard to property described in Plaint Schedule-B.

5. The aforesaid finding of the Trial Court has been reversed by the lower Appellate Court in an Appeal preferred by the Defendants. The appellate Court, after examining the evidence led by the parties, has come to the conclusion that the Plaintiffs have failed to establish the fact that Defendant No.3 Sukhmania is the daughter of one Shivbalak as pleaded by them and observed further that said Sukhmania is the daughter of Tengara. As a

consequence, the findings recorded by the trial Court is reversed by dismissing the Plaintiffs' claim for declaration of title and injunction.

6. Being aggrieved by the aforesaid findings of the Appellate Court, the Plaintiffs have preferred this Second Appeal. Shri Paranjpe, learned Counsel for the Appellants has submitted that the findings as recorded by the lower Appellate Court without meeting the specific findings recorded by the trial Court is apparently contrary to law. He further submits that the 1st appellate Court has not performed its duty though it was the bounden duty of the 1st appellate Court, being the final Court of fact, to record the specific finding while reversing the findings of the trial Court.

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

8. The Plaintiffs' entire case has been based upon the premises that Defendant No.3 – Sukhmania is not the daughter of Tengara and in fact she is the daughter of one Shivbalak. I have examined the entire record in order to ascertain the said fact as to whether Sukhmania is the daughter of Shivbalak or not or whether she is the daughter of Tengara or not. However, none of the Plaintiffs' witnesses have stated anywhere that Defendant No.3 Sukhmania is the daughter of Shivbalak or she is not the daughter of Tengara by placing any cogent evidence. The burden is heavily upon the Plaintiffs to establish this fact in order to get the entitlement with regard to the property described in Plaintiff Schedule-B.

9. From perusal of the entire record, vis-a-vis, the evidence, it is evident that the Plaintiffs have failed completely to establish the fact that Sukhmania (Defendant No.3) is the daughter of Shivbalak as pleaded by them. Since the Plaintiffs have failed to establish with regard to this material fact and therefore,

the findings as recorded by the lower Appellate Court that Defendant No.3 Sukhmania is the daughter of Tengara deserves to be and are hereby affirmed.

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

Sd/-

(Sanjay Agrawal)
JUDGE

Priya