

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.170 of 2016**

1. Smt. Aangan Bai And Others Wd/o Panchram, Aged About 60 Years R/o Village Rampur, Tehsil And District Bemetara, Chhattisgarh
2. Smt. Bhajiyarin Bai Wd/o Panchram, Aged About 50 Years R/o Village Rampur, Tehsil And District Bemetara, Chhattisgarh
3. Vijay S/o Late Shri Panchrama Satnami, Aged About 35 Years R/o Village Rampur, Tehsil And District Bemetara, Chhattisgarh
4. Santosh S/o Late Shri Panchram Satnami, Aged About 30 Years R/o Village Rampur, Tehsil And District Bemetara, Chhattisgarh
5. Mohan S/o Late Shri Panchram Satnami, Aged About 28 Years R/o Village Rampur, Tehsil And District Bemetara, Chhattisgarh
6. Smt. Saroj Bai W/o Baldau, Aged About 37 Years R/o Village Garra, Tehsil Bemetara, District Bemetara, Chhattisgarh(Defendants)

----Appellants**Versus**

1. Narayan And Others S/o Lateldas Satnami, Aged About 49 Years R/o Village Lawatara, Tehsil And District Bemetara, Chhattisgarh (Lrs Of Smt. Sawana)
2. Smt. Nirmala D/o Puhupdas Satnami, Aged About 46 Years R/o Village Kesla, Tehsil Nawagarh, District Bemetara, Chhattisgarh (Lrs Of Smt. Sawana)(Plaintiffs No. 1 & 2)
3. The State Of Chhattisgarh, Through Collector Bemetara, District Bemetara, Chhattisgarh(Defendant)

-----Respondents

For Appellants:	Shri PP Sahu, Advocate.
For Respondents No.1 & 2:	Shri RS. Patel, Advocate.
For Respondent No.3/State:	Shri Vijay Bahadur Singh, Panel Lawyer.

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

07.04.2017

1. Heard on admission.
2. This is the Defendants' Second Appeal under 100 of the Code of the Civil Procedure, 1908 against the judgment and decree dated 24.2.2016 passed by the District Judge, Bemetara in Civil Appeal No.9-A/2013 by which

the appellate Court, while reversing the finding of the trial Court, has decreed the Plaintiff's claim in part.

3. The undisputed facts of the case are that the Plaintiff Sawana Bai (since deceased represented by her legal representatives) has instituted a suit for declaration of title, partition and separate possession by submitting *inter alia* that she is the daughter of one Panchram born through his first wife namely Jalwan Bai. It is pleaded further that when the Defendants have refused to provide her the share in the property in question left by Panchram, the the Plaintiff has been constrained in filing the suit in the instant nature.

4. The Defendants have contested the aforesaid claim and denied very specifically that Sawana Bai is the daughter of Panchram. It is pleaded further that the said Jalwan Bai has left the company of Panchram and started living with some other person namely Punaoram of village Navrangpur and from their wedlock, Sawana Bai was born therefore, the Plaintiff Sawana Bai cannot be held to be the daughter of Panchram and as such, she is not entitled to claim any share as claimed by her.

5. In support of her claim, the Plaintiff has examined herself and submitted a birth certificate marked as Ex.P-2 of the year 1949, in which it is mentioned that she is the daughter of Panchram while Defendants have examined two witnesses in their support.

6. The trial Court, after considering the evidence led by the parties, has dismissed the Plaintiff's claim by disbelieving the said birth certificate (Ex.P-2) by holding that she is not the daughter of Panchram.

7. Being aggrieved with the aforesaid judgment and decree of the trial Court, the Plaintiff Sawana Bai has preferred an Appeal under Section 96 of the CPC. After considering the said Appeal and that by considering the

evidence of both the parties vis-a-vis the birth certificate (Ex.P-2), the appellate Court has come to the conclusion that the Plaintiff is the daughter of Panchram and therefore, she is entitled to 1/6th share with regard to the property in question left by said Panchram.

8. Being aggrieved with the aforesaid finding of the lower Appellate Court, the Defendants have preferred this Appeal. Shri Sahu, learned Counsel for the Appellant has submitted that the appellate Court, while reversing the finding of the trial Court, has apparently erred in holding that Sawana Bai is the daughter of Panchram. He submits further that the burden was heavily lying upon the Plaintiff to establish this fact. However, merely by placing the birth certificate, it cannot be held that she is the daughter of Panchram and therefore, the finding as recorded by the lower Appellate Court deserves to be set aside.

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

10. The Plaintiff Sawana Bai's case was based upon the fact that she is the daughter of Panchram and as such entitled to inherit the property in question along with the Defendants. In support of her claim, the Plaintiff has submitted a birth certificate (Ex.P-2) for the year 1949. The said document was produced by her after obtaining the same from District Office, Durg. In her evidence, she has placed the said birth certificate which was marked as Ex.P-2. This piece of evidence could not be rebutted in her cross-examination by the Defendants. Moreover, from a bare examination of the statements of the Defendants, it cannot be held that Jalwan Bai, has started living with other person namely Punaoram upon leaving the company of Panchram and out of their wedlock i.e., Jalwan Bai and Punaoram as stated by Defendants, the

Plaintiff Sawana Bai was born. While producing the birth certificate, Ex.P-2 and adducing the evidence in this regard, the initial burden was discharged by the Plaintiff whereas, the Defendants have failed to prove that she is not the daughter of Panchram by producing any cogent evidence in this regard.

11. The appellate Court has examined this material issue extensively by referring to the provisions of Section 112 of the Indian Evidence Act and also by considering the fact that the alleged birth certificate was of the year 1949 and was produced by the Plaintiff after obtaining the same from the District Office, Durg has come to definite conclusion that the Plaintiff Sawana Bai is the daughter of said Panchram. This finding is a pure finding of fact based upon due and proper appreciation of evidence and therefore, cannot be held to be a perverse one. The findings of the appellate Court thus deserves to be and is hereby upheld.

12. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law, involved in this Appeal. Consequently, the Appeal being devoid of merit, is accordingly dismissed at admission stage itself. There shall be no order as to costs. Sd/-

(Sanjay Agrawal)

JUDGE