

**HIGH COURT OF CHHATTISGARH, BILASPUR****S.A. No. 37 of 2016**

1. Darbari And Others S/o Paras, Aged About 52 Years R/o Village Chhote Ragraa, Indauri, Police Station Pipariya, Tahsil Kawardha, District Kabirdham (Chhattisgarh)
2. Gauri Bai W/o Melaram, Aged About 60 Years R/o Village Tura Semariya, Police Station And Tahsil Nawagarh, District Bemetara (Chhattisgarh)
3. Godawari Bai W/o Mohan, Aged About 55 Years R/o Village Gudha, Police Station Pipariya, Tahsil Kawardha, District Kabirdham (Chhattisgarh).....(Defendants)

**---- Appellants****Versus**

1. Annapurna Bai And Another W/o Makhan, Aged About 41 Years R/o Harinchhapra, Police Station And Tahsil Kawardha, District Kabirdham (Chhattisgarh).....(Plaintiff)
2. The State Of Chhattisgarh Through The Collector, District Kabirdham (Chhattisgarh).....(Defendant No. 2)

**---- Respondents**


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| For Appellants:            | Shri P. P. Sahu, Advocate.                                                     |
| For Respondent No. 1:      | Shri H. B. Agrawal, senior advocate<br>along with Ms. Meera Jaiswal, Advocate. |
| For Respondent No. 2/State | Shri R. K. Jaiswal, PL                                                         |

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**Single Bench: Hon'ble Shri Sanjay Agrawal, J****Order On Board****12.09.2017**

1. This is the Defendants' Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 15.12.2015 passed by the Additional District Judge, Kabirdham (Kawardha) in Civil Appeal No. 25-A/2015, by which, the lower appellate Court, while modifying the judgment and decree dated 30.06.2014 passed by the Civil

Judge, Class-I, Kabirdham (Kawardha) in Civil Suit No. 30-A/2012, has decreed the plaintiff's claim in part by awarding her 1/5th share over the suit property.

2. The undisputed facts of the case are that the Plaintiff - Annapurna Bai instituted a suit for declaration of title, partition and for separate possession by submitting, *inter-alia*, that the suit property described in Plaint Schedule-A is the ancestral property. It is pleaded further that her sister Gauri Bai has relinquished her interest by obtaining 2 acres of the land from ancestral property, therefore, she does not have any interest over the ancestral property. It is pleaded further that when she demanded the partition from her brother, namely, Darbari, Defendant No. 1, however, it was refused by him, therefore, the plaintiff has been constrained in filing the suit in the instant nature.

3. The defendants have contested the aforesaid claim and stated that the suit property is not the ancestral property as pleaded by the plaintiff. It is pleaded that the suit property was in fact purchased by defendant No. 1 – Darbari and his father Parasram, therefore, it was their self acquired property, in which plaintiff has no interest over it. It is pleaded further in the written statement that the defendant No. 2 Gauri Bai has not obtained 2 acres of land as pleaded by the plaintiff, and pleaded further that he has obtained the suit property by virtue of will deed dated 21.04.2011 executed by Parasram in favour of defendant No. 1- Darbari, therefore, plaintiff is not entitled to claim any share with regard to the suit property.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the suit property described in Plaint Schedule-A is the ancestral property. It held further that the defendant No.

2 – Gauri Bai has not relinquished her interest by obtaining 2 acres of land as alleged by the plaintiff and, held further that the will deed dated 21.04.2011 was duly executed by Parasram in favour of his son Darbari. While holding as such, it is observed further by the trial Court that the interest of plaintiff – Annapurna Bai would not be affected by virtue of the execution of the alleged will deed dated 21.04.2011. In consequence, the trial Court has decreed the plaintiff's claim in part by providing her 1/4th share with regard to the property in question described in Plaint Schedule-A.

5. Being aggrieved, the Defendants have preferred first Appeal against the aforesaid judgment and decree of the trial Court under Section 96 of the CPC. The appellate Court, in turn, while modifying the decree of the trial Court, has granted 1/5th share to the plaintiff instead of 1/4th share, as awarded by the trial Court.

6. Being aggrieved, the defendants have preferred this Appeal. Shri P. P. Sahu, learned Counsel for the Appellants submits that the judgment and decree as passed by the lower appellate Court by awarding 1/5th share to the plaintiff is apparently contrary to law. He submits further that the lower appellate Court ought to have come to the conclusion that the suit property is the self acquired property of defendant No. 1 Darbari and his father Parasram and under such circumstances, the lower appellate Court ought not to have granted any share in favour of the plaintiff.

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

8. The only contention as raised before this Court is that since the property is the self acquired property by defendant No. 1 - Darbari and his

father Parasram, therefore, the plaintiff is not entitled to claim any share with regard to suit property described in Plaint Schedule-A is noted to be rejected. In order to establish the said fact that the suit property is the self acquired property of Defendant No. 1 Darbari and his father Parasram, the burden is heavily upon the defendants to adduce the cogent and reliable evidence to prove the said fact. However, from the perusal of the entire documentary evidence, the defendants have not produced any documentary evidence so as to hold that the suit property was the self acquired property of defendant No. 1 Darbari and his father Parasram as claimed by them.

9. In view of this fact, the trial Court as well as the lower appellate Court have not at all committed any illegality in arriving to a conclusion that the suit property described in Plaint Schedule-A is the ancestral property. This finding is the pure finding of fact based upon due and proper appreciation of the evidence led by the parties. Therefore, I do not find any illegality so as to interfere the same. Accordingly, the findings so recorded by the Courts below in this regard deserves to be and are hereby upheld.

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

Sd/-  
(Sanjay Agrawal)  
**JUDGE**