

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 617 of 2016**

1. Soniya Bai Wd/o Shri Pati Ram, Aged About 65 Years Caste Satnamy, R/o Village Nawagaon, Tahsil And District Dhamtari, Chhattisgarh
2. Devnarayan S/o Late Shri Pati Ram, Aged About 50 Years Caste Satnamy, R/o Village Nawagaon, Tahsil And District Dhamtari, Chhattisgarh
3. Dhan Raj S/o Late Shri Pati Ram, Aged About 32 Years Caste Satnamy, R/o Village Nawagaon, Tahsil And District Dhamtari, Chhattisgarh(Defendants)

---- Appellants/Defendants**Versus**

1. Pradeep Kumar Aged About 32 Years Caste Satnamy, R/o Mahant Ghasiyadas Ward, Amapara, Dhamtari, Tahsil & District Dhamtari, Chhattisgarh
2. Bhagwati Wd/o Shri Pati Ram, Aged About 60 Years Caste Satnamy, R/o Village Nawagaon, Tahsil And District Dhamtari, Chhattisgarh
3. Sewaram S/o Late Shri Pati Ram, Aged About 35 Years Caste Satnamy, R/o Village Nawagaon, Tahsil And District Dhamtari, Chhattisgarh
4. Laxmi Bai D/o Late Shri Pati Ram, Aged About 26 Years Caste Satnamy, R/o Village Nawagaon, Tahsil And District Dhamtari, Chhattisgarh
5. Chandrakala D/o Late Shri Pati Ram, Aged About 20 Years Caste Satnamy, R/o Village Nawagaon, Tahsil And District Dhamtari, Chhattisgarh
6. Smt. Savitri Bai D/o Late Shri Pati Ram, Aged About 22 Years W/o Ashok Kumar, R/o Village Rajoli, Tahsil Gunderdehi, District Balod, Chhattisgarh
7. Shanti Bai Aged About 45 Years Caste Satnamy, R/o Mahant Ghasidas Ward, Amapara Dhamtari, Tahsil And District Dhamtari, Chhattisgarh(Plaintiffs)

---- Respondents

For Appellants	:	Shri Somnath Verma, Advocate
For Respondent No.1 & 7	:	Shri Malay Kumar Bhaduri, Advocate
For Respondent No.2 to 6	:	Shri Adil Minhaj, Advocate

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

05/07/2017

1. Heard on admission.
2. This is an appeal preferred by the defendants No.1 to 3 (appellants herein) under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code of 1908' in short) by questioning the judgment and decree dated 29.11.2016 passed by the Additional District Judge, Dhamtari, in Civil Appeal No. 55-A/2016, by which, the lower appellate Court while affirming the judgment and decree dated 10.05.2013 passed in Civil Suit No.92-A/2013 by the 2nd Civil Judge, Class-II, Dhamtari, has dismissed the appeal.
3. The undisputed facts of the case are that plaintiff Pradeep Kumar instituted a suit for declaration, injunction, partition and for separate possession claiming 1/3rd share over the property of his father Patiram by submitting, inter alia, that he is the son born from his third wife Shanti Bai, and, being the son, he is entitled to inherit the property owned by his father.
4. The defendants have contested the aforesaid claim mainly on the ground that Pradeep Kumar is not the son of Patiram, therefore, he is not entitled to claim any relief as sought by him.
5. The trial Court, after considering the evidence led by the parties and by considering the documentary evidence, particularly, Ex.P.1 and Ex.P.2, has come to the conclusion that plaintiff Pradeep Kumar is the son of Patiram as he was born from the wedlock of Patiram and his third wife Shanti Bai. In consequence, the trial Court by considering the share of all the parties, decreed the claim in part by awarding him 1/8th share over the suit property by excluding the suit house.
6. The aforesaid finding of the trial Court has been affirmed further by the

lower appellate Court in an appeal preferred by the present appellants.

7. Being aggrieved, the defendants/appellants have preferred this appeal. Shri Somnath Verma, learned counsel for the appellants submits that the judgment and decree as passed by the Courts below by holding that Pradeep Kumar is the son of Patiram is apparently contrary to law. He submits further that a bare perusal of the document (Ex.P.2), the birth certificate, would show very specifically that the plaintiff Pradeep Kumar was born on 24.07.1980, however, the said certificate was issued on 28.07.2003. Therefore, under such circumstances, the said document cannot be relied upon. On these premises, he prays for quashment of the judgment and decree as passed by the Courts below.

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

9. The main contention of the appellants before this Court is that since the plaintiff Pradeep Kumar is not the son of Patiram, and therefore, he is not entitled to claim any share with regard to the property of Patiram. However, the documentary evidence, as produced by the plaintiff, in order to show his paternity would show that his father's name is recorded as Patiram in these documents. The documents (Ex.P.1 & Ex.P.2) are the birth certificates, one issued from Dhamtari Christian Hospital while the other by the Municipal Council, Dhamtari. A bare perusal of the birth certificate (Ex.P.2) issued by Municipal Council, Dhamtari, would show that the said document was issued in pursuance to the order passed by the Executive Magistrate on 28.07.2003 in case No. 148/A/74-02-03. The said document has been issued only as per the order passed by the said authority. Therefore, under such circumstances, the genuineness of this document cannot be held to be invalid. Besides, the statement of Shanti Bai, which unequivocally shows that Pradeep Kumar is born out of the wedlock of herself with Patiram. The statement of said Shanti Bai could not have been

rebutted in cross-examination. If we examine the documentary evidence as well as the oral evidence, then it would lead to an irresistible conclusion that the plaintiff Pradeep Kumar is the son of Patirm as he was born out of wedlock of Patiram and Shanti Bai. Consequently, the finding as recorded by both the Courts below that the plaintiff Pradeep Kumar is the son of Patiram deserves to be and is hereby affirmed.

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

Sd/-

(Sanjay Agrawal)
Judge