

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.70 of 2002****Judgment reserved on 31.7.2018****Judgment delivered on 09.8.2018**

- Sarvesh Devi, aged about 30 years, W/o. Rajkumar Sharma, R/o. Village Tilda, Distt. Raipur (CG)

---- Appellant**Versus**

1. Sushila Bai, aged about 29 years, W/o. Poona Ram,
 2. Anandi alias Urmila, aged about 25 years, W/o. Basant Singh
 3. Kumari Triveni Bai, aged about 19 years, D/o. Bhaiyalal Sahu
 4. Kumari Revti Bai, D/o. Bhaiyalal Sahu through elder sister Sushila Bai, W/o. Poonam Ram
- No.1 to 4 R/o. Village Tilda, Post Nevra, Distt. Raipur (CG)
5. Porgi Bai, aged about 52 years, widow of Bhaiyalal Sahu
 6. Jailal Dewangan, S/o. Not known, Proprietor Diamond Tailors
 7. Mansingh Sen, Aged about 40 years, S/o. Mani Ram
 8. Kalika Prasad Gupta, aged about 42 years, S/o. Baldev Prasad Gupta
 9. Bhaskar Rao, S.o. Karnal (**Deleted**)
 10. Dinesh Tiwari, S/o Not known
 11. Seema, D/o. Dulari, R/o. Behind FCI Godown, Tilda, Nawa, Raipur (G)

No.5 to 11 are R/o. Village Tilda, District Raipur (CG)

---- Respondents

For Appellant	: Shri BD Guru, Advocate
For Respondents 1 to 4	: Smt. Renu Kochar, Advocate
For other Respondents	: None present.

SB: Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal preferred by the appellant claiming right under Gangabai is against judgment and decree dated 17.4.2002 passed by the District Judge, Raipur (CG) in Civil Suit No.39-A/1999,

wherein the said Court decreed 1/4 share to each respondents 1 to 4 in the property in question. The suit property is a house situated at village Tilda Ward No.4 marked as House No.4/156.

2. As per the case of respondents 1 to 4 (plaintiffs), they are the daughters of late Bhaiyalal, who had two wives namely Ganga Bai and Porgi Bai. The plaintiffs are the daughters of Porgi Bai. Late Bhaiyalal has no issue with his first wife Ganga Bai, therefore, he married Porgi Bai according to the Hindu rituals. After passing of Bhaiyalal, Municipal Corporation had recorded the name of Ganga Bai in the property owned by Bhaiyalal in his place and Ganga Bai sold the same to respondent No.6 without having full rights.

3. Learned counsel for the appellant submits as under:

(i) There is no evidence on record to substantiate the plea of marriage of Porgi Bai with Bhaiyalal. From the evidence marriage of Porgi Bai is not established with Bhaiyalal, therefore, respondents 1 to 4 have no rights over the property in question.

(ii) There can be no presumption of marriage of Porgi Bai with Bhaiyalal even then the trial Court recognised their marriage.

(iii) In absence of proof of marriage of Porgi Bai, respondents 1 to 4 are not entitled to be benefited from the provisions of Section 16(3) of the Hindu Marriage Act, 1955.

(iv) The finding of the trial Court is perverse as Porgin Bai earlier married with another person and there was no divorce in relation to her first marriage.

(v) Learned counsel appellant placed reliance in the case of **Surjit Kour Vs. Garja Singh & Ors.** reported in **AIR 1994 SC 135.**

4. On the other hand, learned counsel for respondents 1 to 4 submits that the finding of the trial Court is based on proper appreciation of oral and documentary evidence and the same is not liable to be interfered with invoking the jurisdiction of the appeal. She placed reliance in the matter of **Dhannulal and Ors. vs. Ganeshram and Anr.** reported in **2015(12)SCC 301.**

5. The first point for consideration before this Court is whether the marriage of Porgi Bai took place with Bhaiyalal. Admittedly Bhaiyalal died on 23.01.1985. Porgi Bai entered into witness box before the trial Court as witness No.1 of defendant No.2 and she deposed on oath that she got married with Bhaiyalal 50 years ago. She further submits that she is the married wife of Bhaiyalal and after marriage she resided with Bhaiyalal till his death. In the present case, Bhaiyalal had dead, therefore, evidence of Bhaiyalal was not possible. Ganga Bai who was claiming to be the wife of Bhaiyalal did not appear in witness box before the trial Court and has not rebutted the version of Porgi Bai. Version of Porgi Bai is supported by the version of Susheela (PW-1), Parmanand (PW-2) and Misri Lal (DW-2).

6. In **Dhannulal and Ors. vs. Ganeshram and Anr.** reported in **2015 (12) SCC 301** it is held by the Hon'ble Supreme Court that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a long time. As

per other evidence respondents 1 to 4 are the daughters of Bhaiyalal and Porgi Bai. Therefore, looking to the direct evidence of Porgi Bai and other supporting evidence, it is established that Porgi Bai was married to Bhaiyalal. Case law cited on behalf of the appellant is distinguishable in the facts and circumstances of the case as Porgi Bai herself deposed before the trial Court regarding her marriage with Bhaiyalal which is not rebutted by anyone. Therefore, the finding arrived at by the trial Court regarding Porgi Bai's marriage with Bhaiyalal is based on proper appreciation of the evidence and the same is not liable to be interfered with.

7. It is contended on behalf of the appellant that Porgi Bai was earlier married with another person, there was no divorce regarding her first marriage, therefore, she is not entitled to be benefited. The trial Court has not granted any share to Porgi Bai and the trial Court has granted share only to the daughters of Porgi Bai and Bhaiyalal who are respondents 1 to 4.

8. Section 16(3) of the Hindu Marriage Act, 1955 reads as follows:

“16. Legitimacy of children of void and voidable marriages.-

xxxx	xxxx	xxxxx
xxxx	xxxx	xxxx

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have

been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

9. Even if the marriage of Porgi Bai with Bhaiyalal is illegal, their daughters are entitled for share in the property of Bhaiyalal. Admittedly, property belongs to Bhaiyalal, therefore, it cannot be said that the finding of the trial Court is perverse in this count. Again the trial Court has not recorded its finding on any presumption, but recorded its findings on the basis of direct evidence of Porgi Bai, therefore, it is not a case where the finding is arrived at on any presumption.

10. As respondents 1 to 4 and Ganga Bai were share holders of the property, the trial Court is right in awarding 1/4 share to each respondents 1 to 4. The finding of the trial Court is not out of record, it is based on factual matrix of the case and is not liable to be interfered with.

11. Accordingly, the decree is passed against the appellant and in favour of respondents 1 to 4 as under:

- (1) The appeal is dismissed with cost.
- (2) The appellant shall pay the cost to respondents 1 to 4.
- (3) Pleaders' fee, if certified be calculated as per certificate or as per Schedule whichever is less.
- (4) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE