

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 417 OF 2009**

Girish Kumar Sahu aged about 38 years, S/o Tararam Sahu cultivator R/o Village Tenduwa-Nayapara Tah. Saja, Dist. Durg C.G.

---- Appellant**Versus**

1. Ku. Aarti Yadeo aged about 16 years D/o Dongaroo Yadeo through her legal Guardian & mother Smt. Ramhinbai wife of Dongroo Yadeo.
2. Smt. Ramhinbai wife of Deena Yadeo of village Bhanora, at present wife of Dongroo Yadeo.

Both, at present residing in village Tenduwa- Nayapara, Tah. Saja Dist. Durg C.G.

---- Respondents

For Appellant : Mr. Viprasen Agrawal, Advocate

Hon'ble Shri Sanjay Agrawal, J.**Judgment On Board****19/04/2018**

1. Heard on admission.
2. This is defendants' second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter called as 'CPC') against the judgment and decree dated 28/07/2009 passed by the Additional District Judge, (F.T.C.), Bemetara, District Durg (C.G.) in Civil Appeal No. 12-A/2008, by which, the lower appellate Court, while reversing the judgment and decree

dated 30/06/2008 passed by the First Civil Judge Class-II, Bemetara, District Durg C.G., in Civil Suit No. 31-A/2006, has dismissed the suit.

3. The undisputed facts of the case are that the plaintiff Girish Kumar Sahu instituted a suit claiming declaration and injunction that neither defendant No. 2 Ramhinbai is his wife nor defendant No. 1 Ku. Arti Yadav is his daughter. It is pleaded in the plaint that on 23/01/2006, an application enumerated under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter called as 'Cr.P.C.') has been made by the defendants before the concerned Court seeking maintenance amount from him by showing that defendant No. 2 Ramhinbai is his wife and defendant No. 1 Ku. Arti Yadav is his daughter, which led to the filing of the suit in the instant nature.

4. Defendants have contested the aforesaid claim and pleaded that defendant No. 2 Ramhinbai is his wife and defendant No. 1 Ku Arti Yadav is his daughter. It is denied very vehemently that plaintiff Girish Kumar Sahu is not the father of Ku. Arti Yadav.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that defendant No. 2 Ramhinbai is not the legally wedded wife of plaintiff Girish Kumar Sahu nor defendant No. 1 Ku. Arti Yadav is his daughter. Accordingly, the trial Court has decreed the suit.

6. Being aggrieved, the defendants have preferred an appeal as per the provisions prescribed under Section 96 CPC. The lower appellate Court, in turn, has held that defendant No. 2 Ramhinbai is not the wife of plaintiff Girish Kumar Sahu, and held further after examining the documentary evidence particularly the Birth Certificate (Ex. D-3C) that defendant No. 1 Ku. Arti Yadav

is his daughter. In consequence, the lower appellate Court has allowed the defendants' appeal in part.

7. Being aggrieved, the plaintiff has preferred this appeal. Mr. Viprasen Agrawal, learned counsel for the appellant submits that the judgment and decree as passed by the lower appellate Court reversing the finding of the trial Court in relation to the paternity of defendant No.1 Ku. Arti Yadav is apparently contrary to law. He further submits that the documentary evidence like Birth Certificate (Ex. D-3C) is not an admissible evidence, therefore, under such circumstances, the lower appellate Court ought not to have allowed the defendants' appeal in part by placing his reliance upon the said document. He therefore, submits that the judgment and decree as passed by the lower appellate Court be set-aside.

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

9. The claim of plaintiff Girish Kumar Sahu is mainly on the ground that defendant No. 2 Ramhinbai is not his wife and defendant No. 1 Ku. Arti Yadav is not his daughter. In order to establish the said fact, the burden was heavily upon the plaintiff, however, as reflected from the documentary evidence placed by him, he failed to produce any material document so as to hold that defendant No. 1 is not his daughter, as contended by him. According to the plaintiff, he came to know about the alleged Birth Certificate (Ex. D-3C) of Ku. Arti Yadav only when a proceeding was initiated against him by the defendants under Section 125 Cr.P.C. Perusal of the record would, however, reveal that the plaintiff has not approached the concerned authority i.e. the Registrar of the Statistical Department, immediately upon knowing the said fact that as to under what circumstances his name was recorded as the father of defendant

No. 1 Ku. Arti Yadav. The conduct of the plaintiff, therefore, shows that he is the father of defendant No. 1 Ku. Arti Yadav, else he would have immediately approached the concerned authorities in this regard. Moreover, the plaintiff has not even applied for DNA test in order to prove the said fact or to rebut the said certificate. Contrarily, the defendants have produced *prima facie* materials on record as evidenced by the said Birth Certificate coupled with their oral statements showing that defendant No. 1 is plaintiff's daughter. In absence of any rebuttal, it is difficult to hold that defendant No. 1 Ku. Arti Yadav is not his daughter. Consequently, the lower appellate Court, upon considering all the material documentary evidence as well as oral statements made by the parties, has rightly come to the conclusion that plaintiff Girish Kumar Sahu is the father of defendant No. 1 Ku. Arti Yadav. This fact is a pure finding of fact arrived at after due and proper appreciation of the evidence led by the parties. The findings so recorded therefore, do not require to be interfered and therefore, the same deserve to be and are hereby affirmed.

10. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law which arise for determination in this appeal. 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