

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 287 of 2003**

Kalyan (dead) through Legal Resentatives:-

1(A) Kyaso Bai, W/o Late Kalyan Singh, aged about 62 years,

1(B) Govind Singh, S/o Late Kalyan Singh, aged about 45 years,

1(C) Ram Singh, S/o Late Kalyan Singh, aged about 40 years,

1(D) Sitaram, S/o Late Kalyan singh, aged about 36 years,

All are resident of village & Post: Salka, Police Station & Tahsil: Udaypur, Distric Sarguja (C.G.)

1(E) Mahtin Bai, W/o Lakhan Singh, D/o Late Kalyan Singh, aged about 42 years, R/o Village: Nunera, Post: Khamharia, Police Station & Tahsil : Udaypur, District Sarguja (C.G.)

----Appellants/Defendants

Versus

Smt. Mankunwar, wife of Harihar Prasad, aged about 32 years, Occupation Agriculture, R/o Village Salka, Police Station Lakhanpur, Tahsil Ambikapur, Distt. Surguja (C.G.)

----Respondent/Plaintiff.

For Appellants	:	Mr. Ashok Kumar Shukla, Advocate.
For Respondent	:	Ms. Priyanka Mehta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/09/2018

(1) This is defendants' Second Appeal filed under Section 100 of CPC against the judgment and decree dated 16.09.2002, passed by the Second Additional District Judge, Ambikapur, District Surguja in Civil Appeal No. 64-A/2002 affirming the judgment and decree dated 20.03.1990 passed by First Civil Judge, Class-II, Ambikapur, in Civil Suit No. 73-A/88, decreeing the suit.

(2) Plaintiffs -Smt. Man Kunwar suit for declaration of title and recovery of possession was decreed by the trial Court.

(3) The defendant preferred first appeal thereagainst. The First appellate court, on re-appreciation of entire evidence and material placed on record, dismissed the defendant's appeal and decreed the suit, against which this second appeal has been filed by the defendant questioning the same.

(4) Mr. Ashok Kumar Shukla, learned counsel appearing for the appellant/defendant would submit that the finding recorded by both the courts below while granting the decree is based on perverse ground and it involves substantial question of law for determination.

(5) I have heard learned counsel appearing for the defendants and perused the record of both the courts below including judgment and decree impugned.

(6) The property shown in Schedule "A" was settled in the name of Ramharakh and his brother Sangarm Kunwar in Surguja Settlement by granting ryoti patta in their favour. Sangram Kunwar died issueless. Ramharak and his wife died leaving behind their only daughter – Smt. Mankunwar (plaintiff). According to plaintiff, she was living with her parents as Gharjiheen daughter as per tribal custom after her marriage and jointly cultivating the land with her father. In the year 1980, the crops shown by her was cultivated by defendant No. 1 and got his name mutated in the revenue records and, thus, she filed a suit for declaration of title and recovery of possession. The trial Court decreed the suit after recording a finding that Ramharakh & Sangram Kunwar both were brothers and the plaintiff is daughter of Ramharak. Further finding was recorded that defendant No.1 has failed to establish any relationship with Sangram Kunwar and after death of Ramharakh, plaintiff and her husband have succeeded the suit property as per custom and granted a decree in her favour. The First appellate Court by its impugned judgment & decree affirmed that finding and dismissed the appeal, finding no merit in the appeal.

(7) The finding recorded by two courts below holding that the plaintiff being the daughter of Ramharak and being Gharjahin, as per tribal custom succeeded the property of her father and defendant No.1 has not proved the fact of relationship with Sangram Kunwar, are the finding of fact based on evidence available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(8) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

