

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.107 of 2018**

1. Janki Devi, daughter of Late Jagdish Soni, aged about 50 years, resident of village Tikarchuiya (Jharkhand)
2. Ganga Soni, son of Late Jagdish Soni, aged about 45 years, resident of Atal Awas, Ner Pratiksha Bus Stand, Ambikapur, District Surguja (CG)
3. Jagarnath Soni, son of Late Jagdish Soni, aged about 42 years, resident of Manoharpur, Tahsil Shankargarh, District Balrampur (CG)
4. Smt. Neera Devi, daughter of Late Jagdish Soni, wife of Shri Pradeep Soni, aged about 50 years, resident of village Relha, PS Relha, District Gadhwa (Jharkhand)
5. Jamuna Soni, son of Late Jagdish Soni, aged about 48 years,
6. Manoj Soni, son of Late Jagdish Soni, aged about 32 years,
7. Shrawan Kumar Soni, son of Late Jagdish Soni, aged about 27 years,
8. Raghunandan, son of Markand, aged about 62 years,
9. Parsan, son of Raghunandan, aged about 42 years,

No.5 to 9 are resident of village Jhumartola, Tahsil Bageecha, District Jashpur (CG)

---- Appellants

Versus

1. Pano Devi, wife of Bhagto Ram, Caste-Mahkul, aged about 80 years, occupation-Housewife, resident of village Lata, Tahsil Bageecha, District Jashpur (CG)
2. State of Chhattisgarh, through the Collector, Jashpur

---- Respondents

For Appellants	:	Mr.Vivek Kumar Shrivastava, Advocate
For Respondent No.1	:	Mr.A.K.Prasad, Advocate
For Respondent No.2	:	Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/12/2018

1. This is second appeal filed by the defendants under Section 100 of the CPC questioning the judgment and decree passed by the First Appellate Court by which the said Court has reversed the judgment and decree passed by the trial Court and granted decree for declaration of title and possession in respect of suit land along with kaccha house described in Schedule "B" of the plaint.
2. Mr.Vivek Kumar Shrivastava, learned counsel for the appellants, would submit that the First Appellate Court is absolutely unjustified in granting the appeal and decreeing the suit by recording finding, which is perverse and contrary to record. He would further submit that the First Appellate Court ought to have held that defendants No.1 to 4 have perfected their title by adverse possession as they are purchasers from defendants No.5 and 6 by oral sale dated 22.5.90. He would also submit that Pano Devi being second wife of original holder Bhakto Ram would not succeed the suit property, as such, the appeal involves substantial question of law for determination.
3. I have heard learned counsel for the appellants on the question of admission of this second appeal.
4. The suit property originally belonged to Bhakto Ram, who died in the year 1986. Admittedly, Gouri was first wife of Bhakto Ram and plaintiff-Pano Devi was second wife to whom Bhakto Ram had

married in the year 1952 prior to coming into force of the Hindu Marriage Act w.e.f. 18.5.1955. Ex.P/7 is the order of Succession Court dated 9.3.95 whereby the Succession Court has clearly recorded a finding that Gouri Devi was first wife and Pano Devi was second wife of Bhakto Ram as admittedly marriage of Pano Devi with Bhakto Ram was solemnized prior to coming into force of the Hindu Marriage Act when second marriage was permissible under the law in force during subsistence of first marriage.

5. Defendant No.5-Raghunandan from whom defendants No.1 to 4 have purchased the suit property by way of oral sale has been examined as DW-5. In his cross-examination, he has admitted that the suit property described in Schedule "B" was given by Bhakto to plaintiff-Pano Devi. He has also admitted the fact of marriage of Pano Devi with Bhakto in the year 1953 and again admitted the fact that 5 acres of land was given by Bhakto Ram to plaintiff-Pano Devi, as such, the fact of land having been given by Bhakto Ram to plaintiff-Pano Devi has clearly admitted by defendant No.5 in his evidence before the trial Court. Relying upon the said admission of defendant No.5 from whom defendants No.1 to 4 have purchased the property, granted decree in favour of the plaintiff, which is neither perverse nor contrary to record particularly when marital status of plaintiff-Pano Devi has neither been challenged nor issue has been framed in this regard before the trial Court at the instance

of defendant No.5. Admittedly, no counter-claim was filed by defendants No.5 and 6 before the trial Court in the suit.

6. Coming to the next question that defendants No.1 to 4 have perfected their title by way of adverse possession. Defendants No.1 to 4 filed counter-claim claiming adverse possession that they have perfected their title by adverse possession in the suit and that plea was rejected by the trial Court while dismissing the suit and defendants No.1 to 4 did not challenge by filing appeal before the First Appellate Court or by filing cross-objection, as such, finding of the trial Court regarding adverse possession even otherwise become final, which is not open to be challenged in second appeal now preferred by the defendants.
7. I do not find any illegality or perversity in the judgment and decree passed by the First Appellate Court allowing the appeal and decreeing the suit in favour of the plaintiff. Even I do not find any substantial question of law for determination of this second appeal. The second appeal deserves to be and hereby dismissed in *limine*. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-