

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 377 of 2003**

1. Smt.Badan Bai, W/o. Late Anup Verma, Aged about 50 years,
 2. Set Ram, S/o. Late Anup Verma, Aged about 30 years,
- Both R/o. Village Kumwar Jhoraki, Tehsil & Distt. Rajnandgaon (C.G.).

---- Appellants**Versus**

Smt. Shyambati Bai, W/o. Rukhumlal, Aged about 35 years, R/o. Village Malud, Tehsil Kheiragarh, Distt. Rajnandgaon (C.G.).

---- Respondent

For Appellant	: Shri S.C. Verma, Advocate.
For Respondent	: Shri H.B. Agrawal Senior counsel along with Smt. Prabha Sharma.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****05.04.2018**

1. Heard on admission.
2. This is defendant's appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (herein after referred to as 'the CPC') against the judgment and decree dated 05/03/2003 passed by the District Judge, Rajnandgaon, in Civil Appeal No.7-A/99, by which, the lower appellate Court, while affirming the judgment and decree dated 13/08/1987 passed by 2nd Civil Judge Class-2, Rajnandgaon, in Civil Suit No.131-A/1986, has dismissed the appeal.
3. The undisputed facts of the case are that plaintiff Smt. Shyambati Bai instituted a suit claiming declaration of title, injunction, partition and also for separate possession with regard to the suit property described in plaint Schedule-A by submitting *inter alia*, that her grandfather Keju Ram owned the suit property. After the death of Keju

Ram, plaintiff acquired the suit property along with her father Anup, the original defendant. It is pleaded further that she is the daughter of Anup born from his legally wedded wife Smt. Heerabati Bai, however, her father has kept one Baden Bai and as per her instructions, he is misappropriating the property in question and, pleaded further that when she went for cultivation, she was restrained by her father giving rise to the suit in the instant nature.

4. The defendant was proceeded ex-parte as he failed to appeal despite the service of notice.

5. The trial Court, after considering the evidence of the plaintiff, came to the conclusion that the suit property was the ancestral property originally held by plaintiff's grandfather Keju Ram and after his death, plaintiff was entitled to inherit the half share of the suit property along with her father Anup. In consequence, the trial Court has decreed her claim.

6. Being aggrieved, the defendant has preferred the First Appeal as per the provisions prescribed under Section 96 of CPC. During pendency of appeal, the defendant Anup has expired, therefore, the present appellants have been substituted as his legal representatives on the basis of the registered deed of will, dated 06.04.1992 executed by him. The appellate Court, in turn, has dismissed the appeal holding that the suit property is the ancestral property and it was inherited by plaintiff and her father Anup in equal share upon the death of said Keju Ram.

7. Being aggrieved, the legal representatives of original defendant has preferred this appeal. Shri Verma learned counsel for the appellants submits that the judgment and decree as passed by the

Courts below are not at all sustainable as the same have been passed without appreciating the correct legal position of law. He further submits that the plaintiff was not entitled to institute the suit during the lifetime of her father, therefore, the entire claim of the plaintiff was liable to be dismissed.

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

9. Undisputedly, the suit property described in plaint Schedule-A was originally held by plaintiff's grandfather Keju Ram who died intestate. Therefore, the property in question left by him was inherited by his son Anup and his daughter namely, Smt. Shyambati Bai, the plaintiff in equal share. Since the property was not the co-parcenary property, therefore, plaintiff Smt. Shyambati Bai had a birth right over it and, as such, was entitled to claim the partition over the suit property. The findings of the Courts below are, therefore, liable to be and are hereby affirmed.

10. Consequently, I do not find any question of law, much less the substantial questions of law which 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