

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 147 of 2017**

Rajnath S/o Moharsai Aged About 32 Years Caste Uraon R/o Village Jaganathpur Police Station And Tehsil Pratappur, District Surajpur Chhattisgarh. Appellant / Defendant No. 2, Chhattisgarh

---- Applicant**Versus**

1. Smt. Kanti Devi W/o Akalsai Aged About 45 Years D/o Late Nirmal R/o Village Jaganthpur, Tehsil - Pratappur, District Surguja Chhattisgarh. Respondent No. 1 / Plaintiff , Chhattisgarh
2. Mohar Sai S/o Bhakta Aged About 50 Years Caste Uraon R/o Village Jaganathpur Tehsil Pratappur District Surguja Chhattisgarh Respondent No. 2 / Defendant No. 1.
3. Mangal Sai, S/o Bhakta, Aged About 45 Years Caste Uraon, R/o Village Jaganathpur, Tehsil Pratappur District Surguja Chhattisgarh. Respondent No. 3 / Defendant No. 3.
4. Kanwal Sai, S/o Dhansai, Aged About 50 Years Caste Uraon, R/o Village Jaganathpur, Tehsil- Pratappur, District Surguja, Chhattisgarh. Respondent No. 4 / Defendant No. 4.
5. State Of Chhattisgarh, Through The Collector, Surajpur, District Surajpur, Chhattisgarh. Respondent No. 5/Defendant No. 5.

---- Non-Applicants

For Applicant:	Dr. N. K. Shukla, Learned senior counsel along with Shri Sunil Lakra and Shri Ajay Lakra.
For Non-applicant No. 5/ State:	Shri V. B. Singh, PL.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****18.09.2018**

1. Heard on admission.
2. This review petition has been preferred by the Applicant-Rajnath against the order dated 04.09.2017 passed in Second Appeal No. 271 of 2016 (Rajnath Vs. Smt. Kanti Devi and another), by which the appeal preferred by the Applicant has been dismissed by decreeing the Plaintiff's

claim by holding that the Plaintiff-Smt. Kanti Devi is the daughter of the erstwhile owner Nirmal.

3. Dr. N. K. Shukla, learned senior counsel appearing along with Shri Sunil Lakra and Ajay Lakra for the Applicant submits that the order impugned as passed by this Court while upholding the paternity of Smt. Kanti Devi is apparently contrary to law. He submits further that under the Uraon tribe, the Plaintiff would not be entitled to inherit the property from her father. In support, he placed his reliance upon the decision rendered in the matter of “**Ramdev Ram V. Dhani Ram and Ors**” reported in *AIR (2016) Chhattisgarh 107*.

4. I have heard learned Counsel for the Applicant and perused the entire record carefully.

5. A suit was instituted by Plaintiff-Smt. Kanti Devi for declaration of title and injunction by submitting *inter-alia* that the property in question described in Plaint Schedule 'A' was originally held by her father Nirmal and being a daughter, she inherited the same and, pleaded further that when her possession was disturbed by the Applicant/Defendant-Rajnath on the basis of the Will executed in his favour by her father, she has been constrained to file the said suit. The claim as made by the Plaintiff was contested by the Defendant by raising a counter claim that he acquired the valid title upon the suit property by virtue of the Will dated 29.06.2009 executed by said Nirmal in his favour. It is pleaded that since the Plaintiff's mother Manjo Bai is not the wife of said Nirmal, therefore, the Plaintiff-Smt. Kanti Devi cannot be held to be the daughter of said Nirmal and suit as framed by her deserves to be dismissed.

6. The trial Court, after considering the evidence led by the parties,

has come to the conclusion that Plaintiff-Smt. Kanti Devi is not the daughter of said Nirmal and that by disbelieving the due execution, attestation and validity of the alleged Will has dismissed the Plaintiff's claim as well as the counter claim of the Applicant/Defendant-Rajnath.

7. The aforesaid finding of the trial Court that Plaintiff-Smt. Kanti Devi is not the daughter of said Nirmal has been reversed by the lower appellate Court in an appeal bearing Civil Appeal No. 7-A/2016 preferred by the Plaintiff, where, upon due consideration of the evidence of the parties has held that Plaintiff-Smt. Kanti Devi is the daughter of said Nirmal and , as a consequent of it, decreed her claim.

8. The aforesaid finding has been affirmed by this Court by holding that Smt. Kanti Devi is the daughter of said Nirmal and no substantial question of law, therefore, arises for determination in this regard. As regards the reliance placed by Dr. N. K. Shukla, learned senior counsel for the Applicant in the matter of **"Ramdev Ram V. Dhani Ram and Ors"** (supra), in support of his contention is, however, not acceptable as the same is distinguishable from the facts involved in the present case. While contesting the Plaintiff's claim, it was pleaded by the Applicant/Defendant-Rajnath that the Plaintiff is not the daughter of said Nirmal as her mother Manjo Bai was not married with him. However, no specific plea, as contended herein, was raised in the written statement that under the Uraon Tribe, the Plaintiff would not be entitled to inherit the property in question from her father. The principles laid down in the said matter would therefore, not come as a rescue for the Applicant/Defendant-Rajnath.

9. Even otherwise, I do not find any error or mistake apparent on the face of the record, so as to warrant interference in the order impugned in

exercise of review jurisdiction.

10. Consequently, this review petition being devoid of merits is dismissed at the admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Nikita