

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 183 of 2008**

Urmila Bai, Aged about 59 years, D/o Rungu Sahu,
R/o Mangdapara, Raipur, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. (a) Yashoda Wd/o Late Valad Sahu, R/o Ghutwa
Talab, Saheed Nagar Khamtarai, Tahsil and
District Raipur, Chhattisgarh.

(b) Durga Bai W/o Santosh Sahu, R/o 09 Block
Bhanpuri, Raipur, Tahsil and District Raipur,
Chhattisgarh.

2. Girdhari, Aged about 35 years.

3. Balmukund, Aged about 21 years.

4. Balkishan, Aged about 19 years.

No. 2 and 4 all S/o Jhungu Sahu, All residents
of Mangdapara, Jawaharnagar Ward, Raipur,
Chhattisgarh.

--- Respondents/Defendants

For Appellant	:	Mr. Raghvendra Pradhan, Advocate
For Respondents	:	Mr. Prateek sharma and Mr. Ravindra Sharma, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

05/11/2019

1. The two substantial questions of law involved,
formulated and to be answered in this second

appeal preferred by the appellant/plaintiff state as under :-

"1. Whether Courts below have erred in holding that plaintiff Urmila Bai is not a daughter of Rangu Sahu ?

2. Whether the First Appellate Court has erred in not deciding the application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 ?"

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. Sole plaintiff – Urmila Bai filed a civil suit for declaration of title and permanent injunction stating *inter alia* that her father namely Rangu Sahu and husband of defendant No. 1 and father of defendants No. 2 to 4 namely Jhangu Sahu, both of them were brothers who together constructed a house at Mangadapara, Jawaharnagar Ward, Raipur. After partition of the said suit house, out of a total of six rooms, three rooms came into possession of the plaintiff in which she was residing but due to heavy rainfall, the rooms

fell and defendants started interfering with her possession by stopping her from repairing the said rooms for which proceedings under Section 145 of the CPC have been initiated against them and as such, she is entitled for decree of declaration of title and permanent injunction.

3. Defendants filed their written statement and disputed the paternity of the plaintiff by stating that plaintiff is not the daughter of Rangu Sahu and she has not succeeded the suit house, therefore, she is not entitled for decree of declaration of title and permanent injunction.

4. Learned trial Court, after appreciating the oral and documentary evidence on record, dismissed the suit of the plaintiff by its judgment and decree dated 30/08/1999 holding that plaintiff is not the daughter of Rangu sahu, therefore, she is not the title-holder of the suit house and is not entitled for decree as claimed.

5. Being aggrieved, plaintiff preferred an appeal under Section 96 of the CPC wherein learned first appellate Court upheld the judgment and decree passed by the trial Court. Questioning the judgment and decree dated 12/03/2008 passed by the first appellate Court, this second appeal

under Section 100 of the CPC has been preferred by the plaintiff in which two substantial questions of law were framed on 03/03/2017 and are set out in the opening paragraph of this judgment.

6. Mr. Raghvendra Pradhan, learned counsel for the appellant/plaintiff would submit that both the Courts below have concurrently erred in dismissing the suit of the plaintiff by holding that plaintiff is not the daughter of Rangu Sahu and as such, she is not the title-holder of the suit house. He further submits that the application under Order 41 Rule 27 of the CPC filed by the plaintiff ought to have been decided by the first appellate Court before dismissing the appeal on merits.

7. Mr. Prateek Sharma and Mr. Ravindra Sharma, learned counsel for the respondents would submit that the concurrent finding recorded by both the Courts below that plaintiff is not the daughter of Rangu Sahu is a pure finding of fact based on evidence available on record. They further submit that plaintiff herself did not press the application under Order 41 Rule 27 of the CPC before the first appellate Court and only at the

time of admission of the appeal, this ground was raised.

8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

Answer to 1st substantial question of law :-

9. Plaintiff relied upon Exhibit P/1 that is her birth certificate issued by the Additional Registrar on 16/01/1949 in which plaintiff's father's name is clearly mentioned as Rangu Sahu and her date of birth is mentioned as 15/01/1949.

10. Per contra, defendants examined one S.K. Mishra from the Health Department, Nagar Nigam, Raipur as D.W. 1 who brought birth register from 18/10/1948 to 31/06/1949 wherein at page No. 91, serial No. 139, birth of a girl child namely Urmila is registered and her father's name is recorded as Bhukhu Teli. The said document is exhibited as D/1 which has been proved by the officer issuing birth certificate and on that basis, learned trial Court has reached to the conclusion that plaintiff is not the daughter of Rangu Sahu.

11. Likewise, the trial Court has also relied upon Exhibit DC/2 in which also father's name of the

girl child who has taken birth on 15/01/1949 is mentioned as Bhukhu S/o Ghasiya and has reached to the conclusion that Exhibit P/1 relied upon by the plaintiff is a forged document and even otherwise, plaintiff has not examined any officer who has issued Exhibit P/1 holding her to be the daughter of Rangu Sahu.

12. Learned trial Court, after recording elaborate and valid reasons, has rightly come to the conclusion that plaintiff is not the daughter of Rangu Sahu which the first appellate Court has affirmed. Learned counsel for the plaintiff has taken me through the findings as well as the statements of the witnesses but he could not demonstrate that the finding recorded by both the Courts below holding that plaintiff is not the daughter of Rangu Sahu is perverse, as such, the finding recorded by both the Courts below in this regard is a finding of fact based on evidence available on record in which I do not find any merit.

Answer to 2nd Substantial question of law :-

13. So far as the second substantial question of law is concerned that plaintiff's application under Order 41 Rule 27 of the CPC was not decided by the

first appellate Court, it is pertinent to mention here that the said application which was filed before the first appellate Court on 23/12/1999 with which plaintiff sought to file ration card as well as voters' list, was not supported by any affidavit.

14.A careful perusal of both the documents would show that the copy of voters' list was applied on 25/11/1999 and it was issued on the same day whereas learned trial Court dismissed the suit on 30/08/1999. The second document which has been filed is a copy of the ration card wherein head of the family is stated to be Urmila Sahu and the name of father/husband is mentioned as Bhajeram Sahu, as such, the non-consideration of the aforesaid application under Order 41 Rule 27 of the CPC has not caused any prejudice to the plaintiff particularly, when this the said application was not pressed into service by plaintiff herself before the first appellate Court. Thus, both the substantial questions of law are answered against the plaintiff and in favour of the defendants.

15.The second appeal deserves to be and is accordingly dismissed with no order as to cost(s).

16. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet