

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.439 of 2002**

1.a) Akil Ram S/o. Late Hulas, aged about 31 years, R/o. Village Saraitikra P.S. Darima, Post Karji, Tahsil Ambikapur, Distt. Surguja (CG)

1.b) Dagun Bai W/o. Chander Rajwade, D/o. Late Hulas, aged about 34 years, R/o. Village Latpatra, Post-Latpatra, P.S. & Tahsil Lakhanpur, District Surguja (CG)

1.c) Baichan Bai W/o. Sitam Ram D/o. Late Hulas, aged about 42 years, R/o. Village Koilaar Tikra, Post & P.S. Darima, Tahsil – Lakhanpur, District Surguja (CG)

---- Appellants

Versus

1. Smt. Sukhmen d/o Shri Dular, age 40 years, Caste-Rajwar, occupation-Agriculture, r/o village Chitabahr, P.S. Darima, Tehsil Ambikapur, District Surguja (CG)

2. The State of Chhattisgarh, through Collector, Surguja (CG)

---- Respondents

For Appellants	:	Mr.A.K.Prasad, Advocate
For Respondent No.1	:	None present
For Respondent No.2	:	Mr.Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****23.01.2019**

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by defendant No.1 is as under:-

“Whether the lower appellate Court committed an error of law in passing a decree for ½ share in favour of the plaintiff in respect of suit land in spite of the fact that the heirs (daughters & wife) of the brother of the appellant namely, Adhnu have surrendered their shares in favour

of the defendant No.1/appellant herein ?”

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

2. Respondent No.1/plaintiff filed a suit for declaration of title, partition and possession stating inter-alia that the suit property was originally held by late Shri Harishchandra. Shri Harishchandra had three sons namely, Dular, Hulas and Aghnu. After death of Aghnu, his wife Sahodri Bai (DW-3) and four daughters had surrendered their share/property in favour of defendant No.1 and her husband Dular, therefore, she is entitled for $\frac{1}{2}$ share in the suit property.
3. Defendant No.1 filed his written statement stating inter-alia that Sahodri Bai, wife of Aghnu and his daughters have surrendered their share/right in his favour, therefore, the plaintiff is not entitled for any share in the suit property and the suit is liable to be dismissed.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 4.7.2001, dismissed the suit. On appeal being preferred by the plaintiff, the First Appellate Court reversed the finding of the trial Court and held that the plaintiff is entitled for $\frac{1}{2}$ share in the suit property. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

5. Mr.A.K.Prasad, learned counsel for the appellant/defendant, would submit that the First Appellate Court is absolutely unjustified in granting the decree for $\frac{1}{2}$ share in favour of the plaintiff in respect of the suit land in spite of the fact that heirs of Aghnu (brother of the appellant) have already surrendered their share/property in favour of the defendant and at the most, she will be entitled for 1/3rd share in the suit property. Therefore, the decree deserves to be modified to that extent.
6. None present for respondent No.1 though served.
7. I have heard learned counsel for the appellant/defendant, perused the judgment and decree impugned and records of the Courts below with utmost circumspection.
8. It is undisputed that the suit property belonged to late Shri Harishchandra. The plaintiff is daughter of one of his son Dular, defendant No.1-Hulas is second son of late Shri Harishchandra and Aghnu was third son of Shri Harishchandra. Sahodri Bai (DW-3), wife of Aghnu, has clearly stated in her statement that she and her daughters have surrendered their share in suit property in favour of Hulas only, as such, the plaintiff being daughter of Dular would be entitled for 1/3rd share in the suit property as right & title in the share of Aghnu as his wife Sahodri Bai and her daughters are said to have surrendered their share in suit property in favour of Hulas though there is no registered relinquishment deed executed in favour of defendant No.1, therefore, the First Appellate Court ought to have granted 1/3rd share to the plaintiff instead of $\frac{1}{2}$ share in the

suit property. Even otherwise, the plaintiff is only entitled to 1/3rd share in the suit property as she has failed to prove relinquishment by legal representatives of Aghnu in favour of Dular (her father).

9. Accordingly, the judgment and decree passed by the First Appellate Court is modified and it is held that the plaintiff is entitled for 1/3rd share in the suit property instead of ½ share as granted by the First Appellate Court and remaining part of the decree would remain intact. The judgment and decree passed by the First Appellate Court is modified accordingly. The substantial question of law is answered in favour of defendant No.1 and against the plaintiff.

10. The second appeal is allowed to the extent indicated hereinabove. No cost(s).

11. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-