

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 411 of 2005**

1. Bhikhiya S/o Shyamnath Gond, aged about 52 years,
2. Krishna S/o Shyamnath Gond, aged about 46 years,
3. Kashi Ram S/o Meghnath Gond, aged about 48 years,
4. Chandrakant S/o Surju Gond, aged about 18 years,
All R/o villages Pusawand, Tahsil & District Kanker (C.G.)
5. Smt. Rambai widow of Atma Ram Gond, aged about 42 years,
6. Manish Kumar s/o Atma Ram Gond aged about 11 years (minor),
7. Santosh Kumar S/o Atma Ram Gond, aged about 8 years(minor)
8. Kumari Anita D/o atma Ram Gond, aged about 19 years,
9. Kumari Rakhi D/o Atma Ram Gond, aged about 18 years,

The Respondent No. 6 & 7 are minor they are through legal guardian mother Smt. Rambai

Respondent No. 5 to 9 R/o village Puswada, Tahsil and District Kanker, C.G.
---- **Appellants**

Versus

1. Ramprasad S/o Belnath aged about 42 years, R/o village Pusawand Tahsil and District Kanker C.G.
2. Shri Ram S/o Asadu Ram Gond, aged about 53 years,
3. Mansha Ram S/o Asadu Ram Gond, aged about 42 years, both R/o village Puswada, Tahsil and District Kanker C.G.
4. State of Chhattisgarh, through the Collector, Kanker, District Kanker, C.G.
---- **Respondents**

For Appellants: Shri Vishnu Koshta, Advocate.
For State/Respondent No. 4: Shri R. K. Jaiswal, Panel Lawyer.

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

08.04.2019

1. This appeal has been preferred by the Plaintiffs questioning the propriety of the judgment and decree dated 30.07.2005 passed by the First Additional District Judge, Kanker, District- Kanker in Civil Appeal No.14-A/2001, by which, the lower appellate Court, while reversing the judgment

and decree dated 19.02.2001 passed by the Civil Judge, Class-II, Kanker, District-Kanker in Civil Suit No.83-A/93, has dismissed the plaintiff's claim.

2. Briefly stated the facts of the case are that the plaintiffs instituted a suit claiming declaration of title with regard to the property admeasuring 5.90 acre described in plaint paragraph 3 and praying further that the registered deed of sale, dated 06.09.1993 executed by Defendant No. 1-Ramprasad in favour of Defendant No. 4-Mansha Ram be declared as null and void and also praying for injunction for restraining the Defendants from interfering in their peaceful possession. It is pleaded in the plaint that the suit property was originally recorded in the name of one Punau Gond and Govind son of Belnath and upon their death, it was inherited by their (Plaintiffs') predecessor in interest namely Somnath, Meghnath and Ramnath, all sons of said Punau Gond. It is pleaded further in the plaint that said Govind, who was the only son of said Belnath, expired at the age of 7 years and thereafter his mother Gangai has also expired and upon their death, it was inherited by their co-parceners, i.e., the predecessor in interest of the Plaintiffs. The Plaintiffs have thus inherited the property in question, however, it was sold by Ramprasad, Defendant No.1, without any authority as he was not the son of said Belnath. According to the Plaintiffs, said Ramprasad, without any authority, has approached the revenue authority and succeeded to get the revenue papers recorded in his name and based upon it, applied for partition under Section 178 of the Chhattisgarh Land Revenue Code, 1959 on 20.11.1992. The Plaintiffs have, therefore, been constrained to file the suit in instant nature, instituted on 15.09.1993.

3. While contesting the aforesaid claim, it is pleaded by Defendants

No. 1 & 2 that Ramprasad is the son of Belnath born through his second wife, namely, Sagaribai and, therefore, he has inherited the property after the death of Belnath and sold the same by executing the registered deed of sale on 06.09.1993 to Defendant No. 4, namely, Mansharam.

4. After considering the evidence led by the parties, the trial Court by relying upon the documentary evidence like Ex.P.1, Ex.P.10 & Ex.P.11, which were the proceedings initiated under Section 125 of the Code of Criminal Procedure by the wife of Defendant No. 1, namely, Kharin Bai, arrived at a conclusion that Ramprasad is the son of one Deonath and, not the son of Belnath. As a consequence, the trial Court has decreed the suit holding that the Plaintiffs are the owners of the suit land and the registered deed of sale executed by Defendant No. 1-Ramprasad on 06.09.1993 is, accordingly, declared as null and void.

5. Being aggrieved, the Defendants have preferred an appeal. The lower appellate Court while considering the statement of PW4-Sadaram and that by considering further the documentary evidence, like public notice (Ex.D1) and the report of Public Enquiry Officer (Ex.D2) showing the name of Belnath as the father of Ramprasad, arrived at a conclusion that Ramprasad is the son of Belnath and based upon it, the lower appellate Court while reversing the findings of the trial Court has dismissed the suit.

6. Being aggrieved, the Plaintiffs have preferred this appeal. Shri Vishnu Koshta, learned counsel for the Appellants submits that the judgment and decree as passed by the lower appellate Court while reversing the findings of the trial Court is apparently contrary to law. According to him, the documentary evidence, like Ex.P.1, Ex.P.10 & Ex.P.11, which were the proceedings initiated by the wife of said

Ramprasad under Section 125 of the Code of Criminal Procedure, 1973, reveal that Defendant No. 1-Ramprasad is the son of one Deonath and not Belnath as contended by him. He, therefore, submits that the judgment and decree as passed by the lower appellate Court be set aside and instead, the findings of the trial Court be restored.

7. I have heard learned Counsel for the Appellants and perused the entire record carefully.

8. The Plaintiffs' suit is based mainly on the ground that Ramprasad, Defendant No. 1, is not the son of Belnath and, therefore, he is not entitled to execute the registered deed of sale on 06.09.1993 (Ex.P.3) in favour of Defendant No. 4- Mansha Ram. The Plaintiffs, under such circumstances, are required to establish this fact that Ramprasad is not the son of Belnath. The trial Court has relied upon mainly the documentary evidence, lilke Ex.P.1, Ex.P.10 and Ex.P.11 and arrived at a conclusion that said Ramprasad is the son of Deonath and, not Belnath. However, Plaintiffs own witness, namely, Sadaram, examined as PW4, has deposed very specifically in his cross-examination that said Sagaribai is the mother of Ramprasad and was married under '*chudi*' custom with said Belnath and deposed further at paragraph 3 that said Deonath is also known as Belnath.

9. Based upon the aforesaid statement, it is evident that Belnath is the father of Defendant No.1-Ramprasad and the lower appellate Court has, therefore, not committed any illegality in arriving at a conclusion that Ramprasad is the son of Belnath. Besides, the documentary evidence, like public notice (Ex.D1) and the report of Public Enquiry Officer (Ex.D2) would show further that Ramprasad is the son of Belnath. This finding has

thus been recorded by the lower appellate Court after due consideration of the oral and documentary evidence led by the parties and, I do not find any infirmity in the same. The finding so recorded by the lower appellate Court thus deserves to be and is hereby affirmed.

10. In view of the forgoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. The Appeal being devoid of merits is, accordingly, dismissed at the admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Nikita