

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 450 of 2007**

Mukhtiyar S/o Harau Lal Nai (Died) Through Lrs.

1. Gayatri Bai Wd/o Amrit, Aged 45 years.
2. Raju S/o Amrit, Aged 25 years.
3. Amar Singh S/o Mukhtiyar, Aged 44 years.
4. Rejit Kumar S/o Balakram, Aged 18 years.

All R/o Village Kardha, Tahsil Kota, Distt. Bilaspur, Chhattisgarh.

5. Munni Bai W/o Ramesh, D/o Mukhtiyar Singh, Aged 38 years, R/o Village Kalewa Tikri, Distt. Bilaspur, Chhattisgarh.

--- Appellants/Lrs. Of Defendant No. 1

Versus

1. Smt. Chamarin Bai W/o Makhan Lal Nai, Aged 54 years, R/o Village Lufa, Tahsil Kota, Distt. Bilaspur, Chhattisgarh. **--- Plaintiff**
2. State of Chhattisgarh, Through the Collector, Bilaspur, Chhattisgarh. **--- Defendant No. 2**

---- Respondents

For Appellants/Defendants	:	Mr. Abhijeet Mishra, Advocate
For State	:	Mr. Sanjeev Kumar Agrawal, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

29/08/2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the legal representatives of defendant No. 1 – Mukhtiyar Singh under Section 100 of the CPC.

2. Mr. Abhijeet Mishra, learned counsel appearing for the legal representatives of defendant No. 1 would submit that both the Courts below are absolutely unjustified in holding that the alleged adoption of plaintiff-Chamarin Bai by Ramdeen was legal, as it was performed in the year 1947, which was prior to coming into force of the Hindu Adoption and Maintenance Act, 1956 (hereinafter, “the Act of 1956”), therefore, both the Courts below ought not to have decreed the suit in favour of the plaintiff.
3. Mukhtiyar Singh and Ramdeen were brothers. Plaintiff – Chamarin Bai is the daughter of Mukhtiyar Singh. Ramdeen died issueless and it is the case of plaintiff, who is the daughter of Mukhtiyar Singh, that she was adopted by Ramdeen as he was issueless, therefore, she has succeeded the property of Ramdeen, being his adopted daughter.
4. Both the Courts below, after appreciating the oral and documentary evidence on record, have concurrently held that plaintiff – Chamarin Bai is the adopted daughter of Ramdeen.
5. In this second appeal, the plea that has been projected by learned counsel for the legal representatives of defendant No. 1 i.e. Mukhtiyar Singh is that the alleged adoption of plaintiff- Chamarin Bai by Ramdeen took place before coming into force of the Hindu Adoption and Maintenance Act, which came into force on 21/12/1956, therefore, adoption of Chamarin Bai by Ramdeen is clearly illegal.
6. A careful perusal of the written statement filed by defendant No. 1 would show that there is no plea on record to hold that Chamarin

Bai was adopted by Ramdeen prior to 21/12/1956 i.e. coming into force of the Hindu Adoptions and Maintenance Act, 1956. Even otherwise, there is no iota of evidence on record to hold/establish that said adoption took place prior to 21/12/1956. This plea, being the pure question of fact, ought to have been raised by specific pleading in written statement indicating the date of adoption, which was not done, even this plea was not raised before the first appellate Court. So far as the alleged adoption of Chamarin Bai by Ramdeen is concerned, both the Courts below have found that necessary ceremonies have been performed in accordance with law for adopting plaintiff which proves that the adoption of Chamarin Bai by Ramdeen is legal and therefore, Chamarin Bai, being the adopted daughter of Ramdeen, would succeed his property, which is a finding of fact based on evidence available on record, in which I do not find any perversity or illegality and which does not give rise to any substantial question of law for determination in this second appeal.

7. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No order as to cost(s).

**Sd/-
(Sanjay K. Agrawal)
Judge**