

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 397 of 2008**

1. Dwarika, Son of Late Kripal Sahu, Aged about 34 years
 2. Leelaram, Son of Late Kripal Sahu Aged about 32 years,
- Both are resident of Village Mongrapali, Tahsil and District Mahasamund (C.G.)

---- Appellants/Plaintiffs**Versus**

1. Fagnibai, Widow of Kripal Sahu, Aged about 51 years, Resident of Village Mongrapli, Tahsil & District Mahasamund (C.G.)
2. Lokeshwari, Daughter of Late Kripal Sahu, Aged about 27 years, Resident of Village Seoni Kala, P.O. Konakhan, Tahsil and District – Mahasamund (C.G.)
3. Rukha Bai, wife of Sonau, Aged about 54 years, Resident of Village Dhanora, Tahsil and District – Mahasamund (C.G.)
4. Santrabai, Wife of Lakhan Sahu, Aged about 44 years, Resident of Village Gogul, Tahsil and District – Mahasamund – (C.G.)
5. State of Chhattisgarh, Through – Collector, Mahasamund (C.G.)

---- Respondents/defendants

For Appellants	: Mr. V.K. Pandey, Advocate
For Respondent No. 5/State	: Mr. Akash Pandey, PL.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****11/09/2019**

- (1) Heard on the question of admission and formulation of substantial question of law on this second appeal preferred by plaintiffs under Section 100 of the Code of Civil Procedure, 1908.
- (2) Learned counsel appearing for the appellants/plaintiffs would submit that the first

appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court holding that plaintiffs, being the sons of Kripal Sahu out of his wedlock with his second wife Fagni Bai, are not entitled for share in ancestral property left by Kripal Sahu, by recording a finding which is perverse and contrary to the record and that give rise substantial question of law for determination.

(3) Admittedly, the suit property was held by Kripal Sahu and the suit property is his ancestral property. Plaintiffs are the sons of Kripal Sahu out of his second marriage with Fagni Bai during the life time of his first wife Keja Bai. Though, the trial Court granted share to the plaintiffs in the suit property, but first appellate Court has reversed the judgment & decree of the trial Court holding that plaintiffs are the sons of Kripal Sahu out of second marriage with Fagni Bai during the life time of his first wife Keja Bai and, therefore, the plaintiffs are not entitled for any share in the suit property left by Kripal Sahu.

(4) In ***Jinia Keotin v. Kumar Sitaram Manjhi***¹, their Lordships of the Supreme Court have held that by virtue of provisions contained in Section 16(3) of the illegitimate child would only be entitled to a share of the self-acquired property of the parents and not in the ancestral property. Relevant paragraph of the report states as under :-

“4. We have carefully considered the submissions of the learned counsel on either side. [The Hindu Marriage Act](#) underwent important changes by virtue of the [Marriage Laws \(Amendment\) Act](#), 1976, which came into force with effect from 27.5.1976. Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of contravention of the statutory prescriptions, any child born of such marriage would have the effect, per se, or on being so declared or annulled, as the case may be, of bastardizing the children born of the parties to such marriage. Polygamy, which was permissible and widely prevalent among the Hindus in the

1 (2003) 1 SCC 730

past and considered to have evil effects on society, came to be put an end to by the mandate of the Parliament in enacting the [Hindu Marriage Act](#), 1955. The legitimate status of the children which depended very much upon the marriage between their parents being valid or void, thus turned on the act of parents over which the innocent child had no hold or control. But, for no fault of it, the innocent baby had to suffer a permanent setback in life and in the eyes of society by being treated as illegitimate. A laudable and noble act of the legislature indeed in enacting [Section 16](#) to put an end to a great social evil. At the same time, [Section 16](#) of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as succession or inheritance by such children are concerned *to the properties of the parents only.*"

(5) The same proposition has been reiterated in judgment of the Supreme Court in the matter of ***Bharatha Matha v. R. Vijaya Renganathan***².

(6) In view of above, the first appellate court after re-appreciating the entire evidence available on record is justified in reversing the finding of the trial Court holding that plaintiffs, being the illegitimate child of Kripal Sahu out of his marriage with second wife- Fagni Bai and the suit property being the ancestral property in the hands of Kripal Sahu, would not be entitled for share in the said property and dismissed the suit. Thus, I do not find any perversity or illegality in the judgment & decree impugned and no question of law much less substantial question of law is involved in this appeal.

(7) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

