

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 155 of 2004**

1. Safed Lal S/o Dujram (died) through Lrs.

A. Samay Bai Wd/o Late Safed Lal, Aged about 56 years.

B. Manthir Tandan S/o Late Safed Lal, Aged about 28 years.

Both are R/o Nekaintar, Post- Ulkhar, Tahsil Sarangarh, Distt. - Raigarh, Chhattisgarh.

C. Laxmin Bai D/o Late Safed Lal, W/o Mugeshwar Mahilange, Aged about 32 years, R/o Pirari, Tahsil Sarangarh, Distt. Raigarh, Chhattisgarh.

D. Lachhan D/o Late Safed Lal, W/o Murli Kurre, Aged about 25 years, R/o Survapali, Distt. Janjgir-Champa, Chhattisgarh.

**---- Appellants/ Lrs. of Defendant No. 2
Versus**

1. Dashrath S/o Hetram Satnami (died) through Lrs.

A. Bitawan Wd/o Late Dashrath, Aged about 60 years.

B. Jeevan Lal S/o Late Dashrath, Aged about 35 years.

C. Vijay Lal S/o Late Dashrath, Aged about 33 years.

D. Dorilal S/o Late Dashrath, Aged about 30 years.

All are R/o Nekaintar, Post Ulkhar, Tahsil Sarangarh, Distt. Raigarh, Chhattisgarh.

--- Lrs. Of Plaintiff

2. Pouli Bai, Widow of Late Hetram Satnami (died and deleted)

--- Defendant No. 1

3. State of Chhattisgarh, Through Collector, Raigarh, Chhattisgarh.

--- Defendant No. 3

----Respondents

For Appellants	:	Mr. Awadh Tripathi and Mr. Vivek Tripathi, Advocates
For Respondent No. 1	:	Mr. R.S. Patel and Mr. Malay Jain, Advocates
For State	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

28.08.2019

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by legal representatives of defendant No. 2 states as under:-

“Whether the first appellate court is justified in reversing the judgment and decree of the trial Court by recording a finding which is perverse and contrary to the record ?”

(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. The suit property was originally held by Hetram. He died, leaving behind his son namely Dashrath from his first wife, who is the plaintiff in the civil suit, and Pauli Bai, who is his second wife and is impleaded as defendant No. 1 in the civil suit.
3. Defendant No. 1 – Pouli Bai sold the suit property to defendant No. 2 – Safed Lal on 06/07/2001, which necessitated the plaintiff – Dashrath to file the civil suit for declaration of title and for declaring the sale deed dated 06/07/2001 as null and void and also for possession and *mesne* profit, which was denied by the defendants in their written statement holding that the suit property was sold by defendant No. 1 with consent of the plaintiff.

4. Learned trial Court, vide judgment and decree dated 4/12/2002, dismissed the civil suit filed by the plaintiff holding that the suit property was already recorded in the name of defendant No. 1 in the revenue records and held the sale of the suit property, by defendant No. 1 in favour of defendant No. 2, to be valid, against which plaintiff preferred a civil appeal.
5. In the first appeal preferred by the plaintiff, learned first appellate Court, by its judgment and decree dated 16/02/2004, reversed the judgment of the trial Court and allowed the appeal by decreeing the suit of the plaintiff holding that since, the suit property originally belonged to Hetram, therefore, plaintiff - Dashrath, being his son from his first wife and defendant No. 1 – Pauli Bai, being his widow and both of them being the class 1 heirs of Hetram, would jointly succeed the suit property, therefore, plaintiff is entitled for $\frac{1}{2}$ share in the suit property.
6. Being aggrieved by the judgment and decree passed by the first appellate Court, this second appeal has been preferred by defendant No. 2 (now, his Lrs.) in which substantial question of law has been framed and set out in the opening paragraph of this judgment.
7. Mr. Awadh Tripathi and Mr. Vivek Tripathi, learned counsel appearing for legal representatives of defendant No. 2 would submit that the first appellate Court is absolutely unjustified in granting decree in favour of plaintiff by recording a finding which is perverse and contrary to record as defendant No. 2 is the bonafide purchaser of the suit land and the sale of the suit

land was made by defendant No. 1 with consent of the plaintiff, as such, the judgment and decree passed by the first appellate Court deserves to be set aside.

8. Mr. R.S. Patel and Mr. Malay Jain, learned counsel appearing for legal representatives of plaintiff would submit that plaintiff, being the son of Hetram and defendant No. 1, being the widow of Hetram, would jointly succeed the suit property, as both of them are the class – 1 heirs of Hetram, as such, learned first appellate Court is absolutely justified in granting decree in favour of plaintiff and declaring the sale deed dated 06/07/2001 executed by defendant No. 1 – Pauli Bai in favour of defendant No. 2 – Safed Lal, as void upto the extent of $\frac{1}{2}$ share of the plaintiff.
9. I have heard learned counsel appearing for the parties, considered their submissions and went through the records with utmost circumspection.
10. Admittedly, the suit property belonged to Hetram. Plaintiff – Dashrath is the son of Hetram from his first wife and defendant No. 2 – Pauli Bai, whom Hetram married after the death of his first wife, is the legally wedded wife of Hetram.
11. At this stage, Sections 8 and 10 of the Hindu Succession Act, 1956 (hereinafter, “the Succession Act”) would be relevant to notice, which reads as under :-

“8. General rules of succession in the caste of males. - The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter -

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;....

THE SCHEDULE

(See section 8)

HEIRS IN CLASS I AND II

Class I – Son; daughter ; widow ; mother ; son of a pre-deceased son ;....

10. Distribution of property among heirs in Class I of the Schedule – The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules -

Rule 1. - The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2. - The surviving sons and daughters and the mother of the intestate shall each take one share.....”

12. In light of the aforesaid provisions contained in Section 8 and 10 of the Succession Act, plaintiff – Dashrath, being the son of Hetram from his first wife and defendant No. 1, being the widow of Hetram and both of them, being the class-1 heirs of Hetram, would jointly succeed the suit property, therefore, learned first appellate Court has rightly reversed the finding of the trial Court and granted decree in favour of the plaintiff by declaring that plaintiff is entitled for $\frac{1}{2}$ share in the suit property and the sale of the suit property made by defendant No. 1 - Pauli Bai to defendant No. 2 - Safed Lal is void upto the extent of $\frac{1}{2}$ share of the plaintiff in the suit property, which is neither perverse nor contrary to record. Consequently, the substantial question of

law has been answered in favour of the legal representatives of plaintiff and against the legal representatives of defendant No. 2.

13. The second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

14. A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet