

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 281 of 2006**

Dulara Bai, W/o Jeevan Lal Satnami, aged about 52 years, resident of Village Dandgaon, Tahsil Mungeli, District Bilaspur (C.G.)

----Appellant/plaintiff

Versus

1. Tilli Bai, Wd/o Gophe, aged about 67 years,
2. Visham, aged about 65 years, S/o Gangdev.
3. Malik Ram, S/o Visham, aged 42 years

All resident of Village Dandgaon, Tahsil Mungeli, District Bilaspur (C.G.)

4. Manohar, aged 77 year, S/o not known resident of Niniyakachhar, Tahsil Mungeli, District Bilaspur (C.G.)
5. Pawan Kumar, S/o Chholan Satnami, resident of Village Dandgaon, Tahsil Mungeli, District Bilaspur (C.G.)
6. The State of Chhattisgarh, through Collector, Bilaspur (C.G.)

---- Respondents/Defendants.

For Appellant	: Shri Vivek Kumar Tripathi, Advocate.
For Respondents	: None as appeal yet not admitted.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/03/2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by appellant / plaintiff under Section 100 of the Code of Civil Procedure, 1908.
2. The plaintiff's suit for declaration of title and permanent injunction was dismissed by the trial Court and on appeal being preferred by the plaintiffs, it was

upheld by the First Appellate Court, against which, second appeal has been preferred.

3. Shri Vivek Kumar Tripathi, learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in holding that plaintiff is not the exclusive owner /title holder of the suit property after recording a finding that plaintiff is daughter of Shobharam as he was title holder of the suit land, which is perverse and contrary to the record and that give rise to substantial question of law for determination.

4. Originally the suit property was held by Shobharam. Plaintiff -Dulara Bai filed a suit for declaration of title and permanent injunction stating *inter alia* that she, being the daughter of Shobharam out of his wedlock with his first wife Radha Bai, is entitled for the aforesaid reliefs and Titli Bai, who is keep (*Up Patni*) of his father Shobharam, has no title or interest over the suit property.

5. The trial Court, by appreciation of oral and documentary evidence available on record, held that plaintiff – Dulara Bai is the daughter of late Shobha Ram but the Title Bai was also the wife of late Shobharam, therefore, plaintiff is not the exclusive title holder of the suit land and dismissed the suit.

6. On appeal being preferred, the first appellate Court has dismissed the appeal by affirming the judgment and decree of the trial Court holding that plaintiff is not exclusive title holder of the suit land as the Titlibai is the wife of Shobharam. Finding of fact recorded by both the courts below that as Titlibai is the wife of Shobharam, plaintiff – Dulara Bai, who is daughter of Shobha Ram out of his wedlock with his first wife Radha Bai, is not the exclusive title holder of the suit property is a finding of fact based on material available on record and I do not find it either perverse or contrary to

record and no question of law much less substantial question of law is involved in this appeal.

7. Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse and contrary to law. {See : **Aftaruddin (dead) represented through Legal representatives Vs. Ram Krishna Dutta alias Babul Datta and others¹ & Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others²**}

8. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without noticing to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

1 (2018) 11 SCC 77

2 (2018) 12 SCC 681

