

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 595 of 2004**

1. Onkar Bai W/o Manrakhan D/o Manthir Das Sahu
(died) through Lrs. :-

(i) Eropin Bai, W/o Hansdas Sahu, Aged about 55 years, R/o Village Maneri, Post Maneri, P.S. Dongergaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

(ii) Jankibai, W/o Kamta Sahu, Aged about 52 years, R/o Ram Nagar Bhilai, P.S. Supela, Civil and Revenue District Durg, Chhattisgarh.

(iii) Khemu Das Sahu, S/o Manrakhan Das Sahu, Aged about 50 years.

(iv) Doman Das, Son of Manrakhan Das Sahu, Aged about 41 years.

(v) Dewant Das, Son of Manrakhan Das Sahu, Aged about 44 years.

No. 3 to 5 all are R/o Village Jhika, Post Deewan Bhedi, P.S. Dongergaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

(vi) Lata Bai, W/o Ram Singh Sahu, Aged about 38 years, R/o Village Paragaon, Post Musra, P.S. Dongergaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

(vii) Bhanbai, W/o Shobhitram Sahu, Aged about 36 years, R/o Deori Khurd, Post Khursuni, P.S. Arjunda, Civil and Revenue District Balod, Chhattisgarh.

----- Appellants/Defendants

Versus

1. Shambhu Sahu S/o Bishal Das Sahu (died) through
Lrs. :-

A-1. Devdhar, Son of Feruram Sahu, Aged about 42 years, Resident of Khursipar, Tahsil and P.S. Dongargaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

A-2. Devantin Bai, W/o Dev Kumar Sahu, Aged about 39 years, Resident of Riwa Gahan, Police Station Pinkapar, Tahsil Dondi Lohara, Civil and Revenue District Balod, Chhattisgarh.

B. Kanti Bai W/o Hari Ram Sahu, Aged about 51 years, Resident of Village Maneri, Tahsil and Police Station Dongargaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

C. Neman Bai D/o Shambhu Sahu, Aged about 40 years, R/o Village Jhika, Tahsil and Police Station Dongargaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

D. Bailsiya Bai W/o Dev Narayan Sahu, Aged about 36 years, R/o Bhatguna, Tahsil and Police Station Dongargaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

E. Sunita Bai W/o Tukaram Sahu, Aged about 34 years, R/o Khamtari, Police Station Pinkapar, Tahsil Dondi Lohara, Civil and Revenue District Balod, Chhattisgarh.

F. Rukmani Bai W/o Tokuram Sahu, Aged about 32 years, R/o Village Chhuikhadan Karamtara, Police Station Dongargaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

G. Vimla Bai W/o Mitthu Sahu, Aged about 30 years, R/o Tendunala, Tahsil and Police Station Dongargaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

---- Respondents/Plaintiffs

For Appellants	:	Mr. Vinod Kumar Sharma, Advocate
For Respondents	:	Mr. Anand Shukla, Advocate

Second Appeal No. 138 of 2005

1. Shambhu Sahu S/o Bishal Das Sahu (died) through
Lrs. :-

A-1. Devdhar, Son of Feruram Sahu, Aged about 42 years, Resident of Khursipar, Tahsil and P.S. Dongargaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

A-2. Devantin Bai, W/o Dev Kumar Sahu, Aged about 39 years, Resident of Riwa Gahan, Police Station Pinkapar, Tahsil Dondi Lohara, Civil and Revenue District Balod, Chhattisgarh.

B. Kanti Bai W/o Hari Ram Sahu, Aged about 51 years, Resident of Village Maneri, Tahsil and Police Station Dongargaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

C. Neman Bai D/o Shambhu Sahu, Aged about 40 years, R/o Village Jhika, Tahsil and Police Station Dongargaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

D. Bailsiya Bai W/o Dev Narayan Sahu, Aged about 36 years, R/o Bhatguna, Tahsil and Police Station

Dongargaon, Civil and Revenue District
Rajnandgaon, Chhattisgarh.

E. Sunita Bai W/o Tukaram Sahu, Aged about 34
years, R/o Khamtari, Police Station Pinkapar,
Tahsil Dondi Lohara, Civil and Revenue District
Balod, Chhattisgarh.

F. Rukmani Bai W/o Tokuram Sahu, Aged about 32
years, R/o Village Chhuikhadan Karamtara, Police
Station Dongargaon, Civil and Revenue District
Rajnandgaon, Chhattisgarh.

G. Vimla Bai W/o Mitthu Sahu, Aged about 30
years, R/o Tendunala, Tahsil and Police Station
Dongargaon, Civil and Revenue District
Rajnandgaon, Chhattisgarh.

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(iii) Khemu Das Sahu, S/o Manrakhan Das Sahu,
Aged about 50 years.

(iv) Doman Das, Son of Manrakhan Das Sahu, Aged
about 41 years.

(v) Dewant Das, Son of Manrakhan Das Sahu, Aged
about 44 years.

No. 3 to 5 all are R/o Village Jhika, Post Deewan Bhedi, P.S. Dongergaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

(vi) Lata Bai, W/o Ram Singh Sahu, Aged about 38 years, R/o Village Paragaon, Post Musra, P.S. Dongergaon, Civil and Revenue District Rajnandgaon, Chhattisgarh.

(vii) Bhanbai, W/o Shobhitram Sahu, Aged about 36 years, R/o Deori Khurd, Post Khursuni, P.S. Arjunda, Civil and Revenue District Balod, Chhattisgarh.

---- Respondents/Defendants

For Appellants	:	Mr. Anand Shukla, Advocate
For Respondents	:	Mr. Vinod Kumar Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

02/12/2019

1. Since, both of these above-stated second appeals have arisen out of the common judgment and decree passed by the first appellate Court, therefore, they have been heard together and are decided by this common judgment.

2. **Second Appeal No. 595/2004** preferred by the defendant - Onkarbai (now, her Lrs.) was admitted for hearing on the following substantial question of law:-

"Whether in view of the admission in para-4 of his testimony by Shambhu Sahu that he is the son of Vishal Das, the lower Appellate Court was not justified in granting one half share to the respondent/plaintiff over the suit property mentioned in Schedule-C ?"

3. Second Appeal No. 138/2005 preferred by the plaintiff – Shambhu Sahu (now, his Lrs.) was admitted for hearing on the following substantial question of law:-

"Whether the first appellate Court was justified in reversing the judgment and decree of the trial Court holding that plaintiffs are entitled for $\frac{1}{2}$ share in the property shown in Schedule A & B annexed with the plaint by recording a finding, which is perverse 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.)

4. The suit property mentioned in Schedule 'A' and 'C' annexed with the plaint was originally held by one

Manthir Das and the suit property mentioned in Schedule 'B' annexed with the plaint was held by the plaintiff – Shambhu Sahu on the basis of lease granted to him by the Ex-Gontia Manthir Das. Defendant – Onkarbai is admittedly, the daughter of Manthir Das born out of his wedlock with Fagni Bai. Manthir Das died in the year 1946 and thereafter, his wife Fagnibai succeeded the suit property as a limited owner, but after coming into force of the Hindu Succession Act on 17/06/1956, she became the full owner of the suit property, whereas plaintiff – Shambhu Sahu claimed that he is the son of Manthir Das and filed Civil Suit No. 15A/2001 for declaration of title, partition and possession stating *inter alia* that he purchased the suit property shown in Schedule 'A' from the widow of Manthir Das i.e. Fagni Bai by registered sale deeds dated 12/03/1970, 12/03/1970 and 21/01/1967 (Exhibits P/2, P/3 and P/4 respectively) and the suit property shown in Schedule 'B' was granted to him by Ex-Gontia Manthir Das on lease and the suit property shown in Schedule 'C' was succeeded by him, being the illegitimate son of Fagni Bai.

5. Defendant – Onkarbai denied the plaint allegations and filed her written statement stating that the suit property shown in Schedule 'A' was held by her father Manthir Das and after his death, it was

succeeded by her mother Fagni Bai who executed gift deed dated 15/10/1952 in her favour and thereby, gifted the said suit property to her. She further stated that she is the exclusive owner of the suit property shown in Schedule 'C' as plaintiff is not even the illegitimate child of Manthir Das and he cannot succeed the suit property by virtue of Section 16 (3) of the Hindu Succession Act, 1956 and, as such, the suit deserves to be dismissed.

6. Learned trial Court, upon appreciating the oral and documentary evidence on record, held that plaintiff is the exclusive owner of the suit property shown in Schedule 'A' and 'B' annexed with the plaint however, plaintiff along with the defendant will be entitled for $\frac{1}{2}$ share in the suit property shown in Schedule 'C' annexed with the plaint since, he is the son of Fagni Bai.

7. Questioning the judgment and decree of the trial Court, defendant — Onkarbai preferred an appeal claiming that plaintiff is not entitled for any share in the property shown in Schedule 'A' and 'C' of the plaint which the first appellate Court did not accept and held that plaintiff as well as defendant, both are entitled for $\frac{1}{2}$ share in the suit property shown in Schedule 'A' 'B' and 'C' of the plaint.

8. Against the judgment and decree of the first appellate Court, Second Appeal No. 595/2004 has been preferred by the defendant whereas Second Appeal No. 138/2005 has been preferred by the plaintiff and for the sake of convenience, both have been clubbed together.
9. Mr. Vinod Kumar Sharma, learned counsel appearing for the appellant/defendant in Second Appeal No. 595/2004 would submit that both the trial Court as well as the first appellate Court are absolutely unjustified in granting $\frac{1}{2}$ share in the suit property mentioned in Schedule 'C' to the plaintiff as he, himself, has admitted in para-4 of his testimony that his father's name is Vishal Das and he is not the son of Manthir Das. He would further submit that even the trial Court has recorded a finding that plaintiff is the son of Fagni Bai born out of her illicit relationship with Vishal Das, and plaintiff, being the illegitimate child of Fagni Bai with Vishal Das, would not succeed the suit property held by Manthir Das by virtue of Section 16 (3) of the Hindu Succession Act, 1956 and in light of the decision rendered by this Court in **Rameshwar Prasad v. Tara Bai and Anr.**¹ therefore, the appeal deserves to be allowed by setting aside the finding with regard to the suit

property shown in Schedule 'C' of the plaint, which has been seriously opposed by Mr. Anand Shukla, learned counsel appearing for the plaintiff stating that both the Courts below are absolutely justified in granting $\frac{1}{2}$ share in the suit property held by Manthir Das to the plaintiff.

10. Mr. Anand Shukla, learned counsel appearing for the appellant/plaintiff in Second Appeal No. 138/2005 would submit that the trial Court has rightly held that the suit property was earlier held by Manthir Das and after his death in the year 1946, his wife Fagni Bai inherited the suit property as full owner and vide Exhibits P/2, P/3 and P/4 she sold the property shown in Schedule 'A' to the plaintiff therefore, he has become the title-holder of the suit property shown in Schedule 'A' of the plaint as no counter-claim was filed by the defendant questioning the registered sale deeds executed by Fagni Bai in favour of the plaintiff. He would further submit that so far as the suit property shown in Schedule 'B' of the plaint is concerned, it is admitted by defendant Onkarbai herself in para-9 of her statement that the property was leased to the plaintiff by Ex Gontia – Manthir Das, as such, he has become the title-holder of the suit property shown in Schedule 'B' of the suit property and that cannot be questioned by the defendant,

therefore, the first appellate Court has gravely erred in granting $\frac{1}{2}$ share in the suit properties shown in Schedule 'A' and 'B' to the defendant. The submissions made by him are opposed by Mr. Vinod Kumar Sharma, learned counsel for the defendant stating that the first appellate Court is absolutely justified in granting $\frac{1}{2}$ share to the plaintiff as well to the defendant with regard to the suit property shown in Schedule 'A' and 'B' of the plaint, therefore, the appeal filed by the plaintiff deserves to be dismissed.

11. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

Second Appeal No. 595/2004 preferred by the defendant :-

12. This appeal only relates to the suit property shown in Schedule 'C' of the plaint. Learned trial Court, in paragraph 10 of its judgment, has clearly recorded a finding that the suit property shown in Schedule 'A' and 'C' were the ancestral property of Manthir Das. The said finding was not challenged by the plaintiff by way of filing cross-objection or cross-appeal, thus, the nature of the suit property

shown in Schedule 'C' holding it to be the ancestral property owned by Manthir Das becomes final.

13. In para-4 of his testimony, plaintiff – Shambhu Sahu has candidly admitted that he is the son of Vishal Das born out of his illicit relationship with Fagni Bai therefore, though he is the illegitimate son of Fagni Bai, born out of her illicit relationship with Vishal Das, but he cannot be said to be the illegitimate son of Fagni Bai/Manthir Das. This Court considered the same issue in **Rameshwar Prasad** (supra) and relied upon the decision rendered by the Madhya Pradesh High Court in the matter of **Reshamlal Baswan v. Balwant Singh Jwalasingh Punjabi and Ors.**² and held as under :-

“9. The question so raised is no longer res integra and stands authoritatively decided by the Madhya Pradesh High Court in the matter of **Reshamlal Baswan v. Balwant Singh Jwalasingh Punjabi & Others**³ in which the question was whether illegitimate son is the son within the meaning of Section 8 of the Hindu Succession Act, 1956. *Gulab C. Gupta, J.* speaking for the Madhya Pradesh High Court has clearly held that children born to married woman from illicit

² 1994 MPLJ 446

³ 1994 MPLJ 446

relationship are not entitled to the benefit under Section 16 of the Act. It was further held that benefit under Section 16 is available only when there is a marriage but same is hit by Section 11. It was observed as under:-

"4. Marriage Laws Amendment Act, 1976 provided legitimacy to children of a marriage hit by Section 11 of Hindu Marriage Act. It provides a procedure for getting a marriage declared void if it contravenes one of the conditions of Section 5 of the said Act. The conditions under which a marriage is said to be void are those mentioned in clauses (i), (iv) and (v) of [Section 5](#) of the said Act. Marriage between parties having a spouse living at the time of marriage is hit by this provision. This provision has been interpreted to mean that there must be a marriage, which would be hit by the provisions of this Act and would not cover a relationship resulting from any other arrangement than the marriage. That is the reason why it has been held in *M. Muthayya v. Kamu and Ors.*, AIR 1981 NOC 172, that in those cases where there is no proof of solemnisation of marriage, the provision in [Section 16](#) is not attracted.

6. The decision of Bombay High Court in *Laxmibai's case* (supra), of course, supports the contention advanced by the learned counsel for the appellant. The question for consideration of the court was the impact of Section 16(1) and 16(3) of the Hindu Marriage Act read with the provision of Section 8 of the Hindu Succession Act. It has already been noticed that Section 16 deals with the offsprings of marriage, which is void. The Court

was of the opinion that 1976 amendment of the Hindu Marriage Act takes away and eclipses general rule that the offspring of a marriage, which is null and void ipso jure is illegitimate. According to the Court, this was common law doctrine, inevitably resulting in the effect of bastardising children and has been superseded by this provision. Considering the effect of this amendment, in the context of Section 8, clause (a) of the Hindu Succession Act, the Court held that illegitimate children now given legitimacy would be included within the meaning of 'son' and 'daughter' in the Schedule to the Hindu Succession Act. The Court, therefore, held that though the lady would not be the widow, her sons and daughters would be included within the meaning of the term in Section 8 read with the schedule. A close reading of this decision would indicate that it was the effect of 1976 amendment of Section 16 of the Hindu Marriage Act that made the difference. If the said amendment had not been there or any particular case was not governed by the said amendment, the learned Judge would not have decided in the same manner. Since 1976 amendment does not apply to the facts and circumstances of the case before this Court, this judgment cannot be of any help to the appellant. In fact, *Dadu v. Raghunath*, AIR 1976 Bombay 176, is the case before the amendment and holds on a detailed consideration of provisions, that illegitimate sons even of a Sudra would not be included within the meaning of the word 'son' or 'daughter' appearing in Schedule to Hindu Succession Act. Learned Judge had noticed that before 1956, legitimate children of a Sudra had enjoyed the status of

an heir and, therefore, it observed surprisingly that an otherwise dynamic legislation should have extinguished the intestate succession rights of illegitimate sons of Sudras. Regrettable it may be, but since it was intended, it should be accepted as our national discipline. Sentiments howsoever strong cannot justify transgressing the limits of judicial discipline. This being a direct case on the point should, if at all, conclude the matter.

8. Then, it is also not correct to say that the word 'son' has not been defined anywhere. It has, of course, not been defined in the Hindu Succession Act, 1956, but every word need not be defined in the statute itself. The General Clauses Act defines 'son' and includes only the adopted son. In case the illegitimate son was also included within this definition, a corresponding amendment would have been made in the definition given in the General Clauses Act.

9. In view of the discussion aforesaid, this Court is unable to hold that the appellant, even as an illegitimate son is a 'son' for purposes of Section 8 read with schedule to the Hindu Succession Act and, has, therefore, right to succeed to the properties of late Baswan. In the opinion of this Court, he is not a 'son' within the meaning of the term and, therefore, not an heir to Baswan. The appeal accordingly fails and is dismissed, but without any order as to costs."

10. Their Lordships of the Supreme Court in Jinia Keotin (supra), Bharatha Matha (supra) and Neelamma (supra) have held that illegitimate children out of wedlock of void marriage are entitled to succeed

to the self acquired property of their parents under Section 16(3) of the Act of 1956. In the matter of Revanasiddappa & Anr v. Mallikarjun & Ors⁴, their Lordships of the Supreme Court have referred the matter to larger Bench doubting the correctness of the principles of law laid down in Jinia Keotin (supra), Bharatha Matha (supra) and Neelamma (supra) opining that in ancestral property also, illegitimate children are entitled to succeed."

14. In view of the aforesaid legal position, plaintiff is the illegitimate son of Fagni Bai, born out of her illicit relationship with Vishal Das, and no marriage was performed at all between Vishal Das and Fagni Bai, therefore, plaintiff cannot be said to be the illegitimate son of Fagni Bai or Manthir Das for the purpose of Section 16 (3) of the Hindu Succession Act, 1956 and would not succeed the suit property shown in Schedule 'C' of the plaint. The trial Court as well as the first appellate Court have concurrently and gravely erred in holding that plaintiff would get $\frac{1}{2}$ share in the suit property shown in Schedule 'C' which was owned by Manthir Das and in that view of the matter, the aforesaid finding recorded by both the Courts below is hereby set aside and plaintiff's suit with

regard to the suit property shown in Schedule 'C' of the plaint stands dismissed.

Second Appeal No. 138/2005 preferred by the plaintiff :-

15. The trial Court decreed the suit of the plaintiff holding that the suit property shown in Schedule 'A' of the plaint was earlier held by Manthir Das and after his death in the year 1946, it was succeeded by Fagni Bai. Fagni Bai, before her death in the year 1982, sold the said suit property shown in Schedule 'A' by three registered sale deeds dated 12/03/1970, 12/03/1970 and 21/01/1967 (Exhibits P/2, P/3 and P/4 respectively) to the plaintiff and therefore, he has become the title-holder of the said suit property, but the first appellate Court, without meeting the reasonings of the trial Court, granted $\frac{1}{2}$ share to the defendant as well in the suit property shown in Schedule 'A' and no counter-claim was preferred by the defendant regarding this.

16. The fact remains that the suit property shown in Schedule 'A' was admittedly held by Manthir Das and after his death, her wife Fagni Bai succeeded the suit property as a limited owner, but after coming into force of the Hindu Succession Act in 17/06/1956, she became the full owner and before

her death, she sold the suit property shown in Schedule 'A' to the plaintiff Shambhu Sahu vide Exhibits P/2, P/3 and P/4 and thereby, plaintiff became the owner of the said suit property. The alienation made by Fagni Bai in favour of the plaintiff with regard to the suit property shown in Schedule 'A' was not assailed by the defendant by filing counter-claim or raising cross-objection, as such, the title of the plaintiff over the suit property in Schedule 'A', remaining unchallenged by the defendant, could not have been negatived by the first appellate Court by granting $\frac{1}{2}$ share to the defendant as well. Therefore, the finding recorded by the first appellate Court to the extent of granting $\frac{1}{2}$ share to the defendant in the suit property shown in Schedule 'A' is hereby set aside being perverse and contrary to record.

17. Now, so far as the suit property shown in Schedule 'B' is concerned, defendant in para-9 of her statement, has clearly mentioned that the suit property in Schedule 'B' was given to the plaintiff on lease by the Ex Gontia Manthir Das vide Ex. P/1. This fact has not been seriously controverted by the defendant either during the course of the trial in the trial Court or in the first appeal before the first appellate Court or in this second appeal before this Court. As such, the first appellate

Court has gravely erred in granting $\frac{1}{2}$ share to the defendant in the suit property shown in Schedule 'B' of the plaint.

18. Resultantly, plaintiff's suit with respect to the suit property shown in Schedule 'A' and 'B' of the plaint is decreed *in toto*, but his suit with respect to the suit property shown in Schedule 'C' of plaint is dismissed.

19. As a fallout and consequence of the aforesaid discussion, Second Appeal No. 595/2004 preferred by the defendant as well as Second Appeal No. 138/2005 preferred by the defendant, both are partly allowed leaving the parties to bear their own cost(s).

20. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet