

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.531 of 2003

1. Balram, S/o Mangru Ram, age 50 years, Occupation Agriculture.
2. Sita Ram, S/o Mangru, age 45 years, Occupation Agriculture.
3. Devnath, S/o Mangru, age 40 years, Occupation Agriculture.
4. Shivnath, S/o Mangru, age 38 years, Occupation Agriculture.

All R/o Village Sedam, P.S. Batauli, Tehsil Sitapur, Distt. Surguja (C.G.)

5. a) Chtuk Ram, S/o late Teba, aged about 40 years, R/o Village Sedum, P.S. Batauli, Tahsil Sitapur, Distt. Surguja (C.G.)

b) Boya Ram, S/o late Teba, aged about 38 years, R/o Village Sedum, P.S. Batauli, Tahsil Sitapur, Distt. Surguja (C.G.)

c) Kalyan, S/o late Teba, aged about 35 years, R/o Village Sedum, P.S. Batauli, Tahsil Sitapur, Distt. Surguja (C.G.)

(Defendants)
---- Appellants

Versus

1. Dheghu, S/o Shivcharan, age 60 years.
2. Bahoran, S/o Shivcharan, age 55 years.

Both Occupation Agriculture, R/o Village Sedam, P.S. Batauli, Tehsil Sitapur, District Surguja (C.G.)

3. a) Paras Ram, S/o late Krishna, aged about 35 years, R/o Village Sedum, P.S. Batauli, Tahsil Sitapur, Distt. Surguja (C.G.)

b) Pawan, S/o late Krishna, aged about 35 years, R/o Village Sedum, P.S. Batauli, Tehsil Sitapur, District Surguja (C.G.)

4. Bandhan, S/o Shivratan, age 43 years, Occupation Agriculture, R/o Village Sedam, P.S. Batauli, Tehsil Sitapur, District Surguja (C.G.)
(Plaintiffs)

5. The State of Chhattisgarh, through Collector, Surguja, Ambikapur (C.G.)

(Proforma Defendant)
---- Respondents

For Appellants: Mr. A.K. Prasad, Advocate.

For Respondents No.1 to 4: -

Mr. Neeraj Choubey, Advocate.

For Respondent No.5 / State: -

Mr. Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

03/01/2019

1. This second appeal under Section 100 of the CPC has been admitted by formulating the following substantial questions of law for determination which state as under:

“1. Whether the Courts below were not justified in holding that Lavango, daughter of late Mulku will inherit an interest to the extent of 1/3 share in suit lands in the present facts and circumstances of this case?

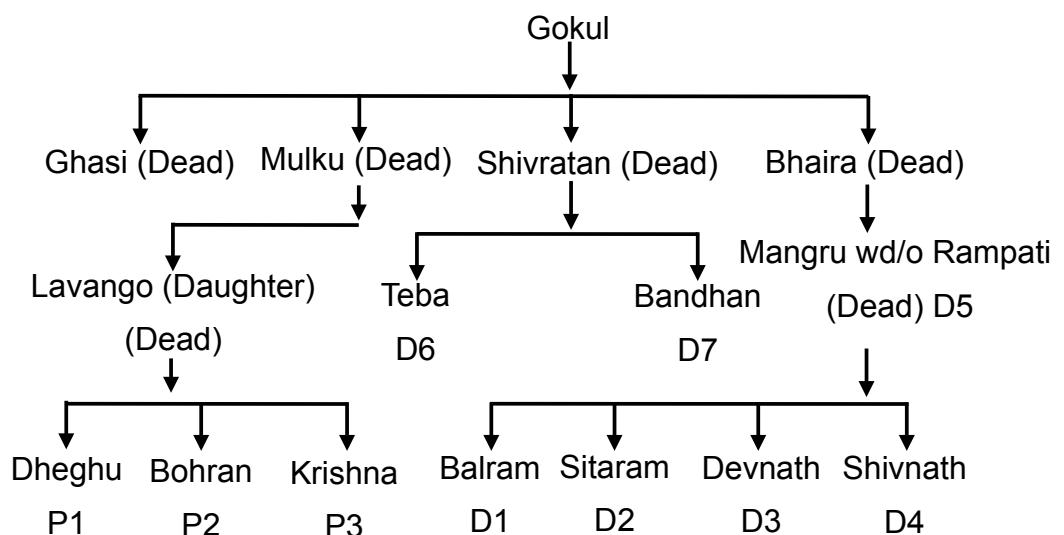
2. Whether the valuable oral and documentary evidence having direct bearing with the disputed issues in this case have been ignored by the Courts below and a wrong finding has been recorded?

3. Whether the valuable evidence/admission of PW/2 namely Bandhan has been ignored which goes to show that Mulku did not received any share in partition after death of Late Shri Ghasi?

4. Whether the suit was barred by limitation?”

(For the sake of convenience, parties would be referred as per their status and ranking shown in the plaint before the trial Court.)

2. Following genealogical tree will demonstrate the relationship among the parties: -



3. Gokul had four sons namely Ghasi, Mulku, Shivratan and Bhaira. The

dispute relates to the property left by Ghasi who died issue-less. The plaintiffs are sons of Lavango – daughter of Mulku and defendants No.1 to 4 are grandsons of Bhaira. Defendant No.5 is widow of Mangru and defendants No.6 & 7 are sons of Shivratan. The original plaintiffs filed a suit for partition and possession stating inter alia that after the death of Ghasi, they are also entitled for $\frac{1}{3}^{\text{rd}}$ share in the property left by Ghasi being grandsons of Mulku, as Mulku died in the year 1963. As such, decree for partition be passed which was opposed by the defendants by filing written statement and they have also taken the plea of adverse possession that they have perfected their title by adverse possession. The trial Court after appreciating oral and documentary evidence on record came to the conclusion that the plaintiffs are entitled for $\frac{1}{3}^{\text{rd}}$ share in the suit property and are entitled for possession and the suit is held to be within limitation repelling the plea of adverse possession. In first appeal preferred by the defendants, the first appellate Court agreed with the findings recorded by the trial Court and consequently dismissed the first appeal against which this second appeal has been preferred in which the substantial questions of law have been formulated and which have been set-out in the opening paragraph of this judgment.

4. Mr. A.K. Prasad, learned counsel appearing for the defendants / appellants, submits that the finding recorded by the two courts below holding that the plaintiffs are entitled for $\frac{1}{3}^{\text{rd}}$ share in the suit property being the daughters of Lavango, is perverse and contrary to record.
5. Mr. Neeraj Choubey, learned counsel appearing for the appellants / respondents No.1 to 4, would support the impugned judgment.
6. The trial Court has clearly recorded a finding that suit property is the self-acquired property of Ghasi and the plaintiffs are grandsons of

Mulku, they will succeed the property along with the defendants – sons and daughters of Shivratan and Bhaira as per the provisions of the Hindu Succession Act, 1956. It has further been held that Mulku died in the year 1963 as after the death of Ghasi, his three brothers Mulku, Shivratan & Bhaira would succeed the property jointly and the plaintiffs being sons of Lavango – daughter of Mulku, would succeed the property along with the legal representatives of Shivratan & Bhaira and as such, entitled for $\frac{1}{3}^{\text{rd}}$ share in the property which has been upheld by the first appellate Court. The Courts below have correctly held that the succession after death of Ghasi would be governed in accordance with the provisions of the Hindu Succession Act, 1956 and the plaintiffs being grandsons of Mulku would succeed the property along with the defendants – sons and daughters of Shivratan and Bhaira in accordance with the provisions of the said Act which is neither perverse nor contrary to record. I do not find any merit in the second appeal. The second appeal is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own cost(s). The substantial questions of law are answered accordingly.

7. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge