

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.566 of 2004

Motilal Kanwar, Lanja by Caste, S/o Kejuram, aged 40 (Forty) years,
Cultivator and R/o Village Putpura, Tahsil Kasdol, District Raipur
(C.G.)

(Plaintiff)
---- Appellant

Versus

1. Kejaa Bai, W/o Onkar, by caste Kanwar (Lanja), aged 30 (Thirty) years, cultivator and R/o Village Borsi, Tahsil Kasdol, District Raipur (C.G.)

2. Onkar Kanwar (Lanja), S/o Bilwa, aged 32 years, cultivator and R/o Village Borsi, Tahsil Kasdol, District Raipur

3. Ramlal (Dead) through LR

3A. Fenku Ram Yadav, S/o late Ramlal Yadav, aged about 55 years, R/o Village Putpura, District Baloda Bazaar-Bhatapara (C.G.)

4. Mohan Yadav (Dead) through LR

4A. Khedu Yadav, S/o late Mohan Yadav, aged about 50 years, R/o Village Putpura, District Baloda Bazaar-Bhatapara (C.G.)

5. Padum, S/o Budga Kewat, aged 30 (Thirty) years

6. Sewak Ram, S/o Narayan Sahu, aged 40 years (Forty) years

7. Jalhal, S/o Pyare Kanwar, aged 45 (Forty five) years,

All Nos. 3 to 7 cultivators and R/o Village Putpura, Tahsil Kasdol, District Raipur

8. Ram Prasad Kanwar (Lanja), S/o Charan kanwar (Lanja), aged 41 (Forty one) years, cultivator and R/o Village Beltikari, Post Office Chainpur, Tahsil Katghora, District Bilaspur, at present residing at Village Putpura, Tahsil Kasdol, District Raipur (C.G.)

9. State of Chhattisgarh, through the Collector, Raipur, District Raipur (C.G.)

(Defendants)
---- Respondents

For Appellant: Mr. Sudhir Kumar Verma, Advocate.

For Respondents No.1, 2, 5, 6, 7 and 8: -

Mr. Hari Shankar Patel, Advocate.

For Respondent No.9 / State: -

Mr. Anshuman Rabra, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

12/12/2019

1. This second appeal under Section 100 of the CPC filed on behalf of the appellant herein / plaintiff has been admitted for consideration on the following substantial questions of law: -

“1. Whether findings of both the Courts below that defendant No.1 Kejabai is the daughter of Manohar based on document Ex. D-1, is contrary to the material available on record and as such perverse?

2. Whether findings of First Appellate Court in paragraph 29 of the judgment that the plaintiff / appellant is not entitled for half share in the suit property is illegal in view of the fact that plaintiff is the recorded owner of the suit property as per the documents of A-3 and A-4?”

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

2. The suit property was originally held by Manohar. The plaintiff is his nephew, son of Nohar. He filed a suit that defendant No.1 Keja Bai is not the daughter of Manohar and Shyam Bai was not the wife of Manohar, defendant No.1 is not the daughter of Manohar out of his wedlock with Shyam Bai. She is the daughter of Charan. Defendant No.1 by filing written statement refuted the claim and submitted that she is the daughter of Manohar out of his wedlock with Mangli and the suit is liable to be dismissed.
3. The trial Court upon appreciation of oral and documentary evidence on record while recording issue Nos.2, 3 & 4 clearly recorded a finding that defendant No.1 is the legitimate daughter of Manohar and her mother is not Shyam Bai, she is the daughter of Manohar out of his wedlock with Mangli and dismissed the suit which the first appellate Court affirmed in appeal preferred by the plaintiff against which this

second appeal has been preferred by the plaintiff Section 100 of the CPC in which two substantial questions of law have been formulated which have been catalogued in the opening paragraph of this judgment.

4. Mr. Sudhir Kumar Verma, learned counsel appearing for the plaintiff / appellant herein, would submit that concurrently both the Courts below had erred in holding that Keja Bai is the daughter of Manohar based on Ex.D-1 and since Manohar is recorded owner of the suit property, she would succeed the property held by Manohar.
5. On the other hand, learned counsel appearing for respondents No.1, 2, 5, 6, 7 and 8 herein, would support the judgments of both the Courts below.
6. I have heard learned counsel for the parties and perused the record with utmost circumspection.
7. It is the case of the plaintiff that Keja Bai is not the daughter of Manohar and the suit property being Manohar's property and in absence of that, he would succeed the property of Manohar which the Courts below have not accepted relying upon oral and documentary evidence including Ex.D-1 filed by defendant No.1. In Ex.D-1 date of birth of defendant No.1 is recorded as 25-3-1962 which both the Courts have accepted.
8. The plaintiff brought suit that defendant No.1 is not the daughter of Manohar, but to prove the said fact, except the documents pertaining to some litigation which took place between the parties, no other document(s) has been brought on record from any Gram Panchayat or from Police Station or document of any official records from any other competent authority maintained in discharge of official duty, to

prove the fact that defendant No.1 is not the daughter of Manohar, whereas defendant No.1 has brought Ex.D-1 from the police station in which her date of birth with father's name Manohar has been recorded as 25-3-1962 and she has been shown as daughter of Manohar. This document has been accepted by both the Courts below along with oral evidence brought on record. As such, in the present case, no documentary evidence has been brought on record by the plaintiff to prove that defendant No.1 is not the daughter of Manohar. It was incumbent upon the plaintiff to bring clinching evidence of appropriate nature to establish that defendant No.1 is not the daughter of Manohar, as it is impermissible for the Court to record a finding in absence of any appropriate evidence that she is not the daughter of Manohar. It is a finding of fact recorded by the two Courts below holding that Keja Bai is the daughter of Manohar and the said finding is based on the evidence available on record. It is neither perverse nor contrary to the record. Likewise, since the suit property belongs to Manohar, father of defendant No.1, mainly because in the revenue record the plaintiffs' name is also recorded, it would not per se give him a ground to claim title as mutation entry neither confers title nor extinguishes title in favour of the person in whose name it is recorded, it is only for the purpose of keeping records up-to-date and for fiscal purposes. The substantial questions of law are answered accordingly. I do not find any merit in the second appeal. The second appeal deserves to be and is hereby dismissed reaffirming the judgment & decree of the trial Court. No order as to cost(s).

9. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge