

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 490 of 2003**

1. Bharat Singh Gond (since deceased) through Legal heirs:-

1-A Bhuwan Singh, aged 35 years, son of Bharat Singh

1-B Shiv Singh, aged 30 years, son of Bharat Singh

1-c Smt. Lalita Bai, aged 25 years, wife of Mangal Singh

1-d Bund Kuwar, aged 50 years, wife of Bharat Singh

All are residents of village Donganala, Tahsil Katghora, District Korba (C.G.)

2. Awadh Bihari Gond, aged 30 years, son of Shri Sirdar Singh,

3. Indra Pal Singh gond, aged 27 years, son of Shri Sirdar Singh,

4. Smt. Mathura Bai, aged 66 years, wife of late Shri Sirdar Singh,

All residents of village Donganala, tehsil Katghora, District Korba (C.G.)

----Appellants/plaintiffs

Versus

1. Smt. Sumitra Bai, aged 50 years, wife of late Shri Chait Singh, resident of village Khokhra, P.O. Beltara, P.S. Ratanpur, tehsil & district Bilaspur (C.G.)

2. Dharam Singh, son of Shri Bodh Ram, resident of village Batara Nagarahi, Post Podi, tehsil Katghora, District Korba (C.G.)

3. Damyanti Bai, wife of late Shri Deriha Gond, resident of village Dakupthana near Mungadih, P.O. Mungadih, tehsil Katghora, District Korba (C.G.)

4. Sita Bai, wife of Pakkad, resident of village Nunera, near Pali, tehsil Katghora, District Korba (C.G.)

5. Smt. Kota Bai, wife of Shri Itwar Singh, resident of Andhiyaripara, near Beltara, Tehsil and District Bilaspur (C.G.)

6. Smt. Indramati, wife of Shri Jan Singh, resident of village Potapani near Pali, tehsil Katghora, district Bilaspur (C.G.)

7. State of Chhattisgarh through the Collector, Korba (C.G.)

---- Respondents/Defendants.

For Appellants : Shri Somnath Verma, 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 appellants/plaintiffs 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 Somnath Verma, learned counsel appearing for the appellant/plaintiff would submit that both the courts below are concurrently unjustified in holding that plaintiffs have failed to prove that among the aboriginal tribes, daughters do not get share in the property of their father by recording a finding, which is not only perverse but also contrary to record and that give rise to substantial question of law for determination.
4. In a suit filed by plaintiffs for declaration of title and permanent injunction, the trial Court as well as first appellate Court have recorded a finding that among the aboriginal tribes, son and daughters both have a right to property of their father, which is a finding of fact based on material available on record as the valid custom has not been pleaded and established 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.
5. 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** }

6. 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

