

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 412 of 2005

1. Baldev (since deceased) through LRs:-

1-A Deopatiya, Widow of Late Baldev, aged about 55 years;

1-B Rajeshwar, son of Late Baldev, aged about 30 years;

1-C Nageshwar, Son of Late Baldev, aged about 28 years;

1-D Satyanarayan, son of Late Baldev, aged about 22 years;

The appellant No. 1-A to 1-D are resident of Village Dandkarwan,
Colony Bhunidand, Tahsil Pratappur, District Surguja (C.G.)

1-E Smt. Kailasho, Wife of Tarengan, aged about 20 years; Resident of
Village Vijaynagar, Police Station Ramanujnagar, Tahsil Surajpur,
District Surguja (C.G.)

2. Bandhiya, Widow of Bansdev, Aged about 43 years.

3. Ganesh, Son of Bansdev, Aged about 32 years.

4. Munesh, Son of Bansdev, Aged about 30 years.

5. Kapil, Son of Bansdev, Aged about 27 years.

6. Kaushalya, D/o. Bansdev, Aged about 24 years, W/o. Shiv Kumar,
Caste – Bhuiyan.

7. Ramdev, Son of Late Dashrath, Age 43 years, Caste – Bhuiyan,
Occupation Cultivator,

All Resident of Village Dand Karwa, Colony Bhuranidand, Tehsil
Pratappur, District Surguja (C.G.)

---- Appellants/Defendants

Versus

1. Dularo (since deceased) through LRs:-

1(A) Ramavtar, S/o. Late Rambriksh, Aged about 65 years.

1(B) Ramcharittar (since deceased) through LRs:-

1(B) (I) Budho, Wd/o Late Ramcharittar, Caste Bhuiyan, aged about 55
years, Occupation cultivator.

1(B) (II) Shivlal, son of late Ramcharittar, caste Bhuniyan, aged about 26 years, occupation cultivator.

Both resident of village Dandkarvan, P.S. Chandraura, Tahsil Pratappur, District Surajpur (C.G.)

1(C). Ramsharan, S/o. Late Rambriksh, Aged about 50 years.

All are resident of village Dandkarvan, P.S. Chandraura, Tahsil Pratappur, District Surajpur (C.G.)

1(D). Devlatiya, W/o Rallakhan, D/o Rambriksh, aged about 40 years, R/o Village Rampur, P.S. Chandraura, Tahsil Pratappur, District Surajpur (C.G.)

2. Ramvichar, S/o. Late Motiya, Aged about 45 years, Occupation Cultivator.

3. Devsharan, S/o. Late Motiya, Aged 42 years, Caste – Bhuiyam, Occupation – Cultivator.

All R/o. Village Dandkarwa, Colony Bhuranidand, Tahsil Pratappur, P.S. Ramkola, District Surguja (C.G.)

4. State of Chhattisgarh, Through the Collector, Ambikapur, Distt. Surguja (C.G.)

---- Respondents/Plaintiffs

For Appellants : Mr. Ashok Kumar Shukla, Advocate.
For Respondents No. 1(A) to 3 : Mr. D.N. Prajapati, Advocate.
For Respondent No. 4/State : Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/07/2019

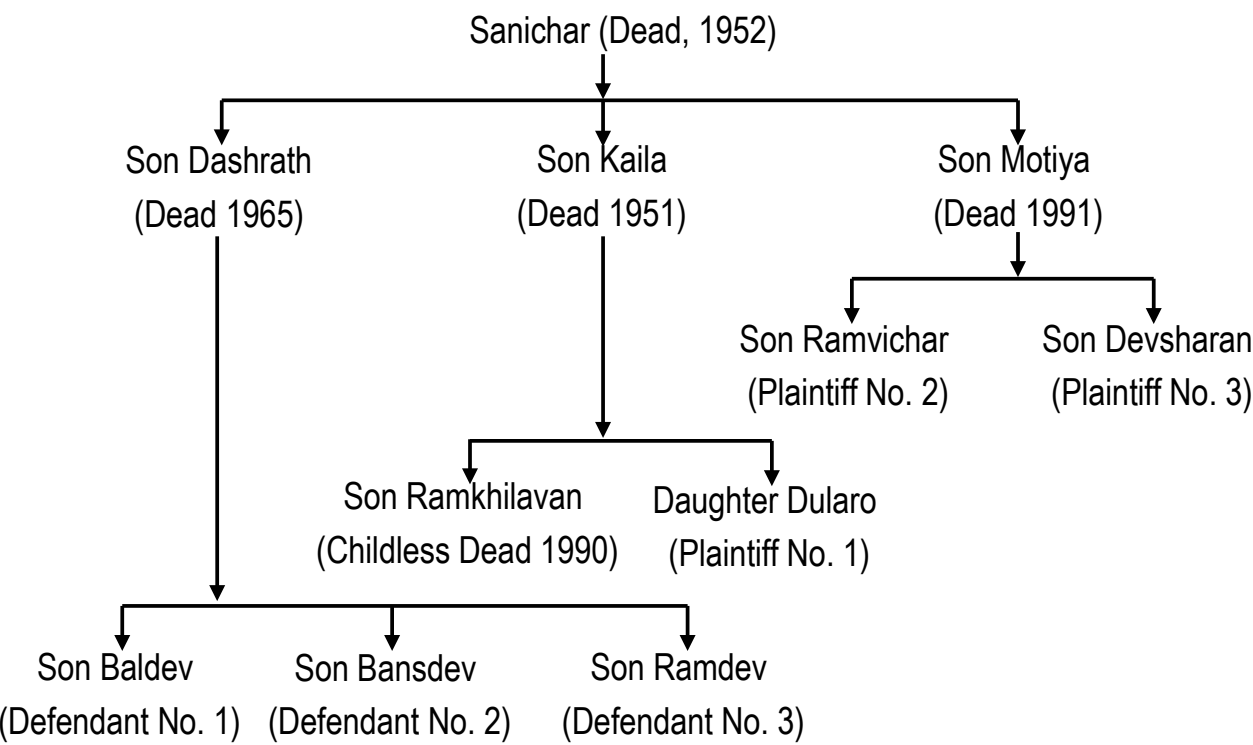
(1) The substantial questions of law involved, formulated and to be answered in this defendants' second appeal state as under:

“(i) Whether the judgment and decree of both the Courts below holding that 1/3 share of the respondent No. 1 is erroneous in the eye of law ?

- (ii) Whether the finding of the Courts below is perverse for the reason that after death of Kaila in the year 1951, the property devolved on Ramkhelawan and thereby Dularo Bai was deprived of her right and title in respect of the property ?
- (iii) Whether the Courts below could not appreciate that the provision of Hindu Succession Act, 1956 are not applicable to the parties ?

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

(2) Following genealogical tree would demonstrate relationship among the parties :-



(3) Originally the suit property was held by Shanichar. He died in the year 1952 leaving three sons namely Dashrath, Kaila & Moutia, Dashrath had three sons namely Baldev, Basdev and Ramev, who were defendants No. 1 to 3 before the trial Court. Kaila had one son namely Ramkhilawan and one daughter Dularo. Since Ramkhilawan died issue-less, his daughter Dularo is one of the plaintiffs i.e. plaintiff No. 1 before the trial Court. Moutia had two sons namely Ramvichar & Devsharan, who were plaintiffs No. 2 & 3 before the trial Court. All the plaintiffs commenced an action for declaration of title and partition stating inter alia that lands shown in Schedule 'A' are the joint family property of their father and father of defendants i.e. Dashrath, who died in the year 1965, which they have been inherited from Shanichar, therefore, each of them are entitled for 1/3rd share in the suit property.

(4) The defendants filed their written statement and set up a plea that the parties are aboriginal tribe by caste and they governed by their custom, in which daughter do not get share in the property of their father and, therefore, the suit be dismissed.

(5) The trial Court, after appreciating the oral and documentary evidence available on record, held that the defendants have failed to establish that they are aboriginal tribe by caste, in which daughters do not get any share in the property of their father and decreed the suit holding that each of the plaintiffs and defendants are entitled for 1/3rd share in the suit property. Defendants preferred first appeal there-against. The first appellate court, on re-appreciation of evidence on record dismissed the appeal and now this second appeal under Section 100 of the CPC has been preferred by the appellants/defendants, in which, substantial questions of law has been formulated, which has been set-out in the opening paragraph of this judgment.

(6) Learned counsel appearing for the appellants/defendants would submit that both the courts below are absolutely unjustified in granting decree in favour of the plaintiffs particularly in favour of plaintiff No. 1 – Dularo, who is not entitled for any share in view of the fact that she being the daughter of Kaila, would not inherit the property of her father as parties are the aboriginal tribe by caste, in which, the daughters do not get any share in the property of their father. He would further submit that father of Dularo i.e. Kaila predeceased Shanichar as he died in the year 1951 and his brother Ramkhilawan died issue-less, therefore, the property would revert to the brothers of Kaila namely Dashrath and Motiya and defendants No. 1 to 3 and, therefore, both the courts below have grossly erred in granting decree in favour of Dularo, as such, the plaintiff No. 1 – Dularo is not entitled for share in the suit property.

(7) Per contra, Shri D.N. Prajapati, learned counsel appearing for the plaintiffs/respondents No. 1(A) to 3 would support the impugned judgment & decree.

(8) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(9) In order to decide the plea raised by the defendants, the substantial question of law No. 3 is taken first: whether the Courts below failed to consider the fact that the provisions of Hindu Succession Act, 1956 are not applicable to the parties ?

(10) The First appellate Court, after appreciating the oral & documentary evidence available on record, has clearly come to the conclusion in paragraph 21 that parties are Bhuiya by caste, which does not fall within the category of Scheduled Tribe and they are Hindus, as such, provisions of Hindu law would apply in the present case, the

said finding is finding of fact based on consideration of the relevant documents on record in which I do not find any illegality or perversity warranting interference in the second appeal. Substantial question of law No. 3 is answered accordingly in favour of the plaintiffs and against the defendants.

Answer to substantial questions of law No. 1 & 2

(11) The trial Court after appreciating the oral and documentary evidence on record reached to specific conclusion while answering the issue No. 1 that parties herein including plaintiff and defendants are successor-in-interest of deceased Sanichar and suit property mentioned in schedule A-1 is the joint family property of them and no partition has been effected between them qua the suit land and has also taken note of fact that defendant has not brought evidence on record qua nature of property and partition. The first appellate Court also on fresh consideration of evidence on record concluded that suit property was self acquired property of Sanichar and which was inherited by his successor-in-interest by his three sons namely Dashrath, Kaila & Motia. Since the partition has not taken place among them, therefore, plaintiff No. 1 will be entitled for 1/3rd share in the suit property, plaintiff No. 2 and plaintiff No. 3 will jointly inherit 1/3rd share in the suit property.

(12) The above-stated finding of fact recorded by two courts below is a finding of fact based on evidence available on record. It has not been demonstrated that said finding of fact are either perverse or contrary to record or rendered by passing the material available on record. I do not find any illegality or perversity in the said finding of fact so arrived herein. Consequently, two courts below are justified in decreeing the suit of the plaintiff, that is affirmed.

(13) Resultantly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. No cost(s)

(14) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

