

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.88 of 2003**

Smt. Ramdulari Devi W/o Late Tulsiram, aged about 56 years,
Caste-Gond, Occupation – Agriculturist R/o Near Police Line,
Ambikapur Distt. Ambikapur (CG)

---- Appellant/Defendant

Versus

1. Smt. Sukhni Devi (deleted)
2. Vijay Kumar S/o Somaru Ram, aged about 25 years,
3. Ku. Pramila, D/o Somaru Ram, aged about 22 years,
4. Ku. Geeta, D/o Somaru Ram, aged about 20 years,

All by caste-Gond (Aadiwasi), R/o Nagar Ramanujganj, Ward No.15, Tah.
Pal, Distt.Surguja (CG)

---- Respondents/Plaintiffs

For Appellant	:	Mr.Bhaskar Payashi, Advocate
For Respondents	:	Mr.Sushil Dubey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

17.01.2019

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by the defendant is as under:-

“Whether the finding of the 1st appellate court in reversing the judgment of the trial court particularly in respect of accepting the claim of the plaintiff regarding the adoption of Somaru by Harinandan is perverse particularly when the adoption documents were not produced before the court below nor has the adoption been established as is required under the provisions of law ?”

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

2. The plaintiffs filed a suit for declaration of title, recovery of possession and permanent injunction stating inter-alia that late Shri Somaru Ram, husband of plaintiff No.1 and father of plaintiffs No.2 to 4 was title-holder of khasra No.1236 area 0.31 acre and khasra No.1233 area 0.02 acre, totalling to 0.33 acre. It was further stated that they were residing in the suit accommodation and defendant No.1 dispossessed them from the suit accommodation on 16.9.85 leading to filing of the suit for the above-stated reliefs.
3. Defendant No.1 filed her written statement stating inter-alia that the suit property was originally held by Sampat Ram, Shri Sampat Ram had one son namely Somaru and two daughters namely Ramdulari Devi & Subhagi Devi. Second daughter Subhagi Devi was married with Harinandan. It is further case of defendant No.1 that Sampat Ram had kept Harinandan as gharjian and had given the suit property to Harinandan. Thereafter, Harinandan and Subhagi Devi died issueless, therefore, defendant No.1 being class-II heir would inherit the property and she is in possession of the suit land and house in that capacity and prayed for dismissal of suit.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 4.3.98, dismissed the suit.
5. On appeal being preferred by the plaintiffs, the First Appellate Court

reversed the finding of the trial Court and decreed the suit.

6. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.
7. Mr.Bhaskar Payasi, learned counsel for the appellant/defendant, would submit that the First Appellate Court is absolutely unjustified in ignoring the admission made by Sukhni Devi (PW-1) clearly admitting that the property is owned by Harinandan, therefore, it never belonged to Somaru. The First Appellate Court has made a new case that Somaru was adopted by Harinandan and therefore, the plaintiffs would succeed the property held by Harinandan, as such, the judgment and decree of the First Appellate Court deserves to be set aside.
8. On the other hand, Mr.Sushil Dubey, learned counsel for the respondents/plaintiffs, would support the impugned judgment and decree.
9. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
10. The suit property originally belonged to Sampat Ram, Sampat Ram had one son namely Somaru and plaintiff No.1 is widow of Somaru and plaintiffs No.2 to 4 are son and daughters of Somaru. Sampat Ram had two daughters namely Ramdulari Devi & Subhagi

Devi and Subhagi Devi was married with Harinandan. It is admitted case of defendant No.1 that Sampat Ram had kept Harinandan as gharjian and had given the suit property to him for his maintenance. It is admitted position on record that Harinandan and her wife Subhagi Devi both have died issueless. Thus, the dispute relates to property left by Harinandan, which was given to him by his father-in-law Sampat Ram.

11. The plaintiffs set-up the case before the trial Court that they are title-holder of the suit property as it is the property held by Somaru, husband of plaintiff No.1 and father of plaintiffs No.2 to 4. Plaintiff No.1-Sukhni Devi was examined as PW-1 before the trial Court in which she candidly admitted in para-3 of her cross-examination that the suit house was earlier belonged to Harinandan as Harinandan was kept by her father-in-law Sampat Ram as gharjian and further admitted that Harinadan died issueless, but she further stated that her husband Somaru was adopted by Harinandan, therefore, her husband-Somaru become successor of Harinandan. Once the fact of property to be owned by Harinandan is admitted by plaintiff No.1-Sukhni Devi, then suit property is no longer of Somaru. The trial Court has rightly dismissed the suit that the property did not belong to Somaru, but the First Appellate Court after having taken cognizance of admission made by plaintiff No.1-Sukhni Devi (PW-1) that the suit property belonged to Harinandan further held that Harinandan had adopted Somaru, husband of plaintiff No.1. It is not the case of the plaintiffs set-up in the plaint or

before the First Appellate Court that Harinandan has adopted Somaru, husband of plaintiff No.1, therefore, the First Appellate Court could not have made a new case, which was not set-up by the plaintiffs in a plaint before the trial Court. Since it has been admitted that the property belonged to Harinandan and not to Somaru, the First Appellate Court is absolutely unjustified in granting the decree in favour of the plaintiffs holding that Somaru, husband of plaintiff No.1, was adopted by Harinandan. The finding recorded by the First Appellate Court is perverse and contrary to the record. Accordingly, the substantial question of law is answered in favour of the defendant and against the plaintiffs.

12. For the foregoing reasons, the judgment and decree passed by the First Appellate Court is hereby set aside and that of the trial Court is hereby restored. The suit stands dismissed.
13. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).
14. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge