

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment reserved on 18-2-2019**

**Judgment delivered on 8-03-2019**

**FA No. 500 of 1996**

Semkunwar widow of Jaising, aged 30 years, Agriculturist, resident of village Naka, Tahsil Pendra Road, District Bilaspur MP now CG (since died through following legal heirs).

1(A) Jai Singh, aged about 39 years.

1(B) Karan Singh s/o. Shri Jai Singh, aged about 9 years.

1(C) Kunwar Singh s/o. Shri Jai Singh, Minors representative through father Jai Singh.

All residents of village Naka, Tahsil Marvahi, District Bilaspur (CG).

**---- Appellants/plaintiffs.**

**Versus**

1. Andhroo Bai widow of not known, Gond, Agriculturist, resident of Tendumuda, District Bilaspur (MP) now CG..
2. State of Madhya Pradesh (now CG) through Collector, Bilaspur, Bilaspur (MP) now CG.
3. Ramdhan son of Baldeo, r/o village Naka, Tahsil Pendra Road, District Bilaspur (MP now CG) (died through LR)

3(A) Kalyan Singh s/o. Late Ramdhan Gond, aged about 50 years, r/o village Naka, Tahsil Marwahi, District Bilaspur (CG).

**---- Respondents/defendants.**

**FA No. 484 of 1996**

- Andhroo Bai widow of not known, Gond, Agriculturist, resident of Tendumuda, District Bilaspur (MP) now CG. (died – deleted – through LRs).
1. Bhagwania aged 55 years, w/o. Sadan, occupation Cultivation r/o. Tendumuda, Tahsil Pendra Road, District Bilaspur (CG).
  2. Gangaram s/o. Andhubai, aged 56 years, r/o. Tendumuda, Tahsil Marwahi, Dist. Bilaspur (CG).

---- Appellants.

**Versus**

Semkunwar widow of Jaising, aged 30 years, Agriculturist, resident of village Naka, Tahsil Pendra Road, District Bilaspur MP now CG (since died through following legal heirs).

1(A) Jai Singh, aged about 42 years.

1(B) Karan Singh s/o. Shri Jai Singh, aged about 9 years.

1(C) Kunwar Singh s/o. Shri Jai Singh, aged about 16 years. Karan Singh and Kunwar Singh inors represented through father Jai Singh. All residents of village Naka, Tahsil Marvahi, District Bilaspur (CG).

2. State of Madhya Pradesh through Collector, Bilaspur (CG).

3. Ramdhan, son of Baldeo Gond r/o. Naka, Tahsil Pendra road, Dist. Bilaspur (died through LR).

3(a) Kalyan Singh s/o. Late Ramdhan Gond aged 50 years, r/o. Village Naka, Tahsil Marwahi, District Bilaspur \*(CG).

---- Respondents

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For appellants in : Mr. Sourabh Sharma, Advocate.  
FA No. 500 of 1996

For respondents : Mr. Anand Mohan Tiwari, Advocate  
No.1(a) to 1(e)

For respondent : Mr. Raghavendra Verma, G.A.  
No.2/State

For Appellants in : Mr. Anand Mohan Tiwari, Advocate.  
FA No.484 of 1996

for respondents No. : Mr. Sourabh Sharma, Advocate.  
1 & 3.

For respondent : Mr. Raghavendra Verma, Govt. Adv.  
No.2/State

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**SB: Hon'ble Shri Justice Ram Prasanna Sharma**

**CAV JUDGMENT**

1. As both the aforesaid appeals arise out of same judgment and decree, they are heard analogously and are being disposed of by this common judgment.

2) Both the appeals are preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 1-8-1996 passed by Vth Additional District Judge, Bilaspur, MP now CG in Civil Suit No. 63-A/90 wherein the said court decreed the suit for land mentioned in Schedule -B of the plaint area 10.72 acres which will be shared by Hem Kunwar/legal representative and Andhroo Bai/legal representative and each of them will get half share of the property and area 2.31 acres mentioned in the decree will be succeeded by Hem Kumwar/legal representative on the basis of will executed in her favour by the deceased Sukhrajya.

3) Original appellant in FA No. 500 of 1996 namely Semkunwar filed the appeal for declaring her to be owner of the whole property whereas original appellant in FA No. 484 of 1996 namely Andhroo Bai filed the appeal for declaring her to be owner of the whole property. Original plaintiff Semkunwar filed the suit before the trial Court regarding suit property in which house is shown in Schedule-A and land is shown in Schedule-B situated at village Naka, Patwari Halka No.15, Tahsil Pendra road, District Bilaspur.

4. As per version of original plaintiff/Senkuwar, the whole property was owned by late Sukhrajya who was widow of one Mitthu Gond and her name was shown as owner in possession as Bhoomiswami in revenue record. Apart from the suit land, certain other lands situated in village Naka were also in her name. Sukhrajya died in the year 1978. As per Semkunwar she was the nearest relative of said Sukhrajya, she executed a will in her favour on 24-8-1978 and on the basis of said will she became owner in possession of the suit land. Original appellant Andhroo Bai, who was defendant No.1 in the suit before the trial Court, was claiming the right over the property that she is daughter of late Mitthu and his first wife name is Soniya. As per version of Andhroo Bai, the alleged will executed in favour of Semkumar is forged document., therefore, Andhroo Bai is the owner of sole property in question. Semkunwar took alternative plea that she is grand-daughter of Sameran., being daughter of Ananta and grand-daughter of Sameran, who was brother of late Mitthu and heir of Mitthu and Sukhrajya.

5. I have heard learned counsel for the parties and perused the record of the court below in which judgment/decree has been passed.

6. The first question for consideration of this court is whether Andhroo Bai is daughter of late Mitthu and his first wife is Soniya.

Semkumwar examined herself as PW/1, Mohan Singh (PW/2), Bakshu Singh (PW/3) and Banwar Singh (PW/4). Andhroo Bai examined herself as DW/1, Prem Singh (DW/2) and produced documents Exs. D/1 to D/6. Semkumwar produced documents Exs. P/1 to P/5.

7. Andhroo Bai deposed before the trial Court that she is daughter of late Mitthu and his first wife is Soniya. Prem Singh (DW/2) supported the version of Andhroo Bai that she is daughter of late Mitthu and Soniya. He further deposed that Soniya died earlier and Mitthu died later. He further deposed that after death of Sonia said Mitthu was married to Sukhrajia. As per version of this witness, he is Patel of village Naka and collects land revenue from lands situated at village Naka. This witness has proved the document Ex. D/5. From the entry of serial No. 91 of the said register (Ex.D/5), it is clear that Andhroo Bai was mentioned as daughter of late Mitthu. Version of Andhroo Bai and Prem Singh is supported by document Ex.D/5 and same is not rebutted by oral evidence adduced on behalf of Semkuwar.

8. Looking to the entire evidence, the trial court recorded the finding that Andhroo Bai is daughter of late Mitthu. After re-assessing the entire evidence, this court has no reason to substitute contrary finding, therefore, it is determined that Andhroo Bai is daughter of late Mitthu.

9. Semkunwar claimed her right over the property on alternative ground that she being grand-daughter of Sameran who was brother of Mitthu. From the record of right (Ex.D/6), Mitthu's father name is mentioned as Sabnu whereas as per Ex.D/7, Sameran's father name is mentioned as Ram Singh. Therefore, the trial Court opined that Mitthu and Sameran were not real brothers and Semkunwar is not legal heir of Mitthu. Finding of the trial Court is based on documentary evidence which is unrebutted by any document and oral evidence is also not sufficient to rebut the same, therefore, it cannot be held that Semkunwar is legal heir of late Mitthu.

10. The second question for consideration of this Court is as to who are the successors of late Mitthu. From the evidence of both sides, it is clearly established that after death of first wife of Mitthu namely Soniya, said Mitthu was married to Sukhrajya. On the date of death of Mitthu when right opens Sukhrajya being wife of said Mitthu and Andhroo Bai being daughter of said Mitthu were successors, therefore, Sukhrajya and Andhroo Bai each will get half share of the property of late Mitthu. From the record of right, it appears that survey Nos. 743, 112/3, 112/4, 348/1D, 744 & 745/2, total area 2.3 acres was not recorded in the name of Mitthu which is mentioned in the will executed by Sukhrajya in favour of Semkunwar, therefore, it appears that the said land is owned by Sukhrajya as her independent property. Rest of the land area 10.72

acres/any other land recorded in the name of Mitthu shall be divided between Andhroo Bai and Sukhrajya and each of them will get half of the share being successors of late Mitthu. As there is no record that the house in question is owned by late Mithhu, the same cannot be inherited by Andhroo Bai. From the record, it appears that Sukhrajya Bai was the owner and possessor of the house in question, therefore, the question for consideration of this court is whether the will executed by Sukhrajya Bai regarding house and land is valid. Will (Ex.P/1) is a registered document. Bakshu Singh and Mohan Singh are attesting witnesses of the said will and both deposed before the trial Court as PW/2 and PW/3. From their evidence, it is clear that Sukhrajya executed will in favour of Semkunwar in best of health and after hearing and understanding the consequences of the will. As per version of these witnesses, Sukhrajya marked her thumb impression in the said will that they and other witnesses also signed in the said will. This will is duly proved by attesting witnesses and unrebutted by other side, therefore, it is established and recorded that Sukhrajya executed will in favour of Semkunwar in which it is clearly mentioned that the house and land will pass to Semkunwar as testamentary succession after passing of said Sukhrajya.

11. Looking to the entire evidence, it is established that Sukhrajya executed will for house and land in question. The trial Court is right

that Andhroo Bai and Semkunwar will get half share in the land owned by late Mitthu and in addition to that Semkunwar will get land and house mentioned in the will which is not the property of Mitthu. Finding of the trial Court is based on factual matrix and legal aspect of the matter which is not liable to be interfered with. The grounds raised in both the appeals sans merit and same are not acceptable. The judgment/decreed passed by the trial court is affirmed.

12. Accordingly, judgment and decree is passed as under:

- I) Both the appeals are dismissed.
- II) Parties to bear their own costs.
- iii) Pleaders' fee, if certified be calculated as per schedule or as per certificate whichever is less.
- iv) A decree be drawn up accordingly.

**Sd/-**

**(Ram Prasanna Sharma)**

**Judge**

Raju