

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 679 of 1999****Reserved on : 11.04.2019****Delivered on : 09.05.2019**

1. Trilochan, S/o Gopiram, aged about 55 years (Dead)
 - (a) Saphed Bai, W/o Trilochan, aged about 70 years (Deleted).
 - (b) Hargovind Lal, S/o Trilochan, aged about 40 years.
 - (c) Bhavani Lal, S/o Trilochan, aged about 42 years.
 - (d) Kamla Bai, D/o Trilochan, aged about 52 years (Deleted)
 - (e) Bharatlal Dansena, S/o Trilochan, aged about 50 years.

All are R/o Village- Kiritmal, Post- Kodtarai, Tahsil- Kharsia, District- Raigarh (C.G.)
2. Mst. Laxminbai, Wd/o Mahesh Ram, aged about 55 years by caste- Kalar, Occupation- Cultivation, R/o Village- Kiritmal, Patwari Halka No. 19, Tehsil Kharsia, District- Raigarh (C.G.) (Dead)

---- Appellants**Versus**

1. Chhattar, S/o Mahesh Ram, aged about 22 years, by caste Kalar, Occupation Labourer, R/o Tehsil & District- Raigarh (C.G.)
2. Mst. Munkun Bai, Wd/o Mahesh Ram, aged about 48 years, by caste- Kalar, R/o Tehsil & District- Raigarh (C.G.)
3. State of Madhya Pradesh (Now Chhattisgarh), Through: Collector, Raigarh (C.G.)

---- Respondents

For Appellants	:	Mr. B.P. Sharma & Mr. H.S. Patel, Advocates.
For Respondents No. 1 & 2	:	Mr. Adil Minhaj, Advocate.
For State/ Respondent No. 3	:	Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 17.11.1999 passed

by First Additional District Judge, Raigarh, District- Raigarh (C.G.) in Civil Suit No. 17A/1999, wherein the said court declared that respondent No. 1-Chhattar is son of Mahesh Ram and he is entitled for half share of the property/ land admeasuring 8.57 acres situated at Village- Kiritmal, Patwari Halka No. 19, Tahsil- Kharsia, District- Raigarh (C.G.) and possession thereof.

2. Heard on application dated 28.08.2011 filed under Order 41 Rule 27 of C.P.C. for taking document Dakhila Certificate issued by Head Master, Middle School, Kiritmal, District- Raigarh (C.G.) because the same was misplaced during trial before the trial court. Also, heard on I.A. No. 08/2014, application dated 12.11.2014 filed under Order 41 Rule 27 of C.P.C. for taking document of Election Namawali. Also, heard on I.A. No. 09/2017, application dated 26.03.2017 filed under Order 41 Rule of 27 of C.P.C. for taking document of Kiritmal Panchayat. Also, heard on application dated 11.04.2019 filed under Order 41 Rule 27 of C.P.C. for taking revenue record of B-1 of the year 1984-85 and Rin-Pustika.
3. It is pleaded that the documents are necessary for disposal of the instant appeal and the appellant was unable to produce these documents before the trial court even after exercise of due diligence. It is also pleaded that the documents are filed bonafidely and the same is necessary for just and proper adjudication of the appeal and after receiving the above mentioned documents, the same are filed.
4. To decide the application filed under Order 41 Rule 27 of the Code of Civil Procedure may be read as under:

“The parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the Appellate Court. But if -

(a) The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) The party seeking produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge of could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate court may allow such evidence or document to be produced, or witness to be examined.

5. It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.

6. The two tests for admissibility of additional evidence, is whether the appellate court is able to pronounce judgment on the material before it, without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examine the evidence, as it stands the court comes to the conclusion that some inherent lacuna or defects becomes apparent to the court. It is only for removing a lacuna in the evidence, that the appellate court is empowered to admit additional evidence. When a party failed to discharge its onus before the trial court, he is not entitled to a fresh opportunity to produce evidence.
7. It appears from record of the trial court that the trial court provided full opportunity to the appellants to adduce evidence. The suit was filed on 29.04.1985 and it was decided after 14 years i.e. in the year 1999. The issue between the parties related to paternity of Chhattar/ respondent No. 1 for which birth register is produced before the trial court by respondent No. 1 side. The documents sought to be filed are not related to issue of paternity. Revenue record is not record of title. When the appellant side failed to discharge its onus before the trial court, he is not entitled for afresh opportunity in the facts and circumstances, because the case is pending for last 34 years and it is not proper to reopen the same.
8. In view of the above, all the above mentioned applications are liable to be and are hereby rejected.
9. Chhattar- respondent No. 1/plaintiff filed a suit for declaration of title, partition and separate possession of the property in question. One

Gopiram had two sons namely Mahesh Ram (Dead) and Trilochan. The original appellant No. 2 namely Laxmin Bai (since dead) was wife of Late Mahesh Ram. It is alleged that Laxmin Bai is wife of Mahesh Ram from whom Mahesh Ram had no issue, therefore, Mahesh Ram performed second marriage as per custom with Munkun Bai some time in the year 1961 and Chhattar born out of said wedlock. Date of birth of Chhattar is 25.01.1963. After death of Mahesh Ram, Munkun Bai married to one Jagatram. When right of respondent No. 1 is denied by Trilochan, the suit was filed.

10. Learned counsel for the appellants submits as under:-

(i) Though, school register is not produced before the trial court in which date of birth of Chhattar is mentioned as 25.07.1962, but as per the school register, Chhattar is not son of Mahesh Ram.

(ii) As Chhattar is not son of Mahesh Ram, he is not entitled to claim on the property of Mahesh Ram and decree passed by the trial court is not liable to be sustained and matter should be remanded for afresh enquiry by the trial court.

11. He placed reliance in the matter of **Om Prakash & others Vs. Ram Kumar & others**, reported in **(1991) 1 SCC 441**, **Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar V. Chandran & others**, reported in **(2017) 3 SCC 702**, **Shankar Balwant Lokhande (dead) By Lrs. Vs. Chandrakant Shankar Lokhande & another**, reported in **(1995) 3 SCC 413** & **Tulashi Mallik & others Vs. Jagannath Mallik & others**, reported in **(2019) SCC OnLine Ori 142**.

12. Per contra, learned counsel for respondents No. 1 & 2 submits as under:-

(i) The birth register (Ex.P/1) is historical document in which name of father of Chhattar is mentioned as Mahesh Ram and the same is the document for deciding the issue of paternity. No other document can be equated with birth register for paternity, therefore, Chhattar is son of Mahesh Ram.

(ii) Laxmin Bai was first wife of Mahesh Ram, but she did not enter into witness box to prove that Mahesh Ram was not married to Munkun Bai and Chhattar was not child of wedlock with Munkun Bai.

(iii) One Bharat Lal who is claiming to be adopted son of Mahesh Ram, has not been examined before the trial court regarding adoption and no one is examined to prove ceremony of adoption. There is no document to establish that Mahesh Ram was recognized as father of Bharat Lal, therefore, the theory put-forth by the appellant side is not acceptable.

(iv) Finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

13. I have heard learned counsel for the parties and perused the record and documents appended thereto.

14. The first question for consideration before this Court is whether Chhattar is son of Mahesh Ram and Munkun Bai and whether Munkun Bai married to Mahesh Ram. Chhattar Singh (PW-1),

Heeramati (PW-2), Ishwari (PW-3), Jagatram (PW-4) & Munkun Bai (Witness No. 1 of defendant No. 3/respondent No. 2) deposed before the trial court that Mahesh Ram married to Munkun Bai and Chhattar born out of wedlock of Mahesh Ram and Munkun Bai. Version of oral evidence of these witnesses is supported by copy of birth register kept in police station- Kharsia (Ex.P/1) in which name of Mahesh Ram is mentioned as father of Chhattar/ respondent No. 1.

15. Though, Trilochan Prasad (DW-1), Polen (DW-2) and Gulab (DW-3) deposed before the trial court that Mahesh Ram did not marry with Munkun Bai, but oral evidence of these witnesses is not sufficient to rebut the evidence adduced by respondent No. 1 side supported with document of birth register. Laxmin Bai who was wife of Mahesh Ram did not enter into witness box to depose that Mahesh Ram did not marry with Munkun Bai and Chhattar did not born out of wedlock between Mahesh Ram and Munkun Bai, therefore, version of respondent No. 1 side and oral and documentary evidence adduced are clearly established that Chhattar is son of Mahesh Ram.
16. The second question for consideration before this Court is whether one Bharat Lal was adopted by Mahesh Ram who was son of Trilochan Prasad. No one from appellants side deposed before the trial court regarding date of adoption of Bharat Lal by Mahesh Ram. No document was produced that after adoption name of Mahesh Ram was mentioned as father of Bharat Lal.
17. In absence of proof of date of adoption and any document in this regard, it is not established that Bharat Lal was adopted son of

Mahesh Ram, therefore, the trial court is right in holding that Chhattar is son of Mahesh Ram and he is entitled for half share of the property because Laxmin Bai and Chhattar are two successors of Mahesh Ram. Even if marriage between Mahesh Ram and Munkun Bai is not valid, but illegitimate son is also entitled for share as per Section 16(3) of the Hindu Marriage Act, 1955.

18. Looking to the entire evidence, this Court has no reason to record contrary finding what is recorded by the trial court. Argument advanced on behalf of the appellants is not acceptable and the case laws cited by learned counsel for the appellants are clearly distinguishable from the facts and circumstances of the present case and the same are not in the factual background of the case, therefore, the same is not permissible.
19. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellants and in favour of respondents No. 1 & 2 on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) Parties to bear their own cost.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge