

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 417 of 2001**

1. (a) Smt. Asha Lata Awasthi, wife of Late Shri Omprakash Awasthi, aged about 60 years, resident of Bramhpuri, Raipur, Tahsil and District Raipur (C.G.)

1. (b) Ashish Awasti, son of Late Shri Omprakash Awasthi, aged about 35 years, resident of Shankarnagar, Raipur, Tahsil and District Raipur (C.G.)

1. (c) Smt. Archana daughter of Late Omprakash Awasthi, aged about 30 years, resident of Abu Dhabi, Dubai

2. (a) Smt. Triveni Awasthi, wife of Ashok Kumar Awasthi, aged about 59 years, resident of Bramhpuri, Raipur, Tahsil and District Raipur (C.G.)

2. (b) Alok Awasthi, son of Late Shri Ashok Kumar Awasthi, aged about 33 years, resident of Kalyan Mumbai, (Maharashtra)

2. (c) Abhay Awasthi, son of Late Shri Ashok Kumar Awasthi, aged about 24 years, resident of 240/1 Wheelar Road Extention, Saint Thomas Karnataka 560084 Bangalore, (Karnataka)

2. (d) Bharti Awasthi, daughter of Late Shri Ashok Kumar Awasthi, aged about 30 years, resident of Bramhpuri, Raipur, Tahsil and District Raipur (C.G.)

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Versus

1. Rameshwar Prasad son of Ramcharan alias Fakkad Shukla, aged about 60 years.

2. Narayan Prasad, aged about 68 years son of Ramcharan alias Fakkad Ram, resident of Bhathapara, Bajrang Ward, Tah. Bhathapara, Distt. Raipur (C.G.).

3. Rukma Bai, D/o Kedar Nath Tiwari, aged 35 years, R/o Lily Chowk, Purani Basti, Raipur (C.G.).

4. Savitri Bai, D/o Kedar Nath Tiwari, aged 32 years, R/o Lily Chowk, Purani Basti, Raipur (C.G.).

5. Lila Bai, D/o Kedar Nath Tiwari, aged 30 years, R/o Lily chowk, Purani Basti, Raipur (C.G.).
6. Rama Bai, D/o Baij Nath Tiwari, aged 40 years, R/o Lily Chowk, Purani Basti, Raipur (C.G.).
7. Shail Kumar, S/o Baij Nath Tiwari, aged 35 years.
8. Shankar Lal, S/o Baij Nath Tiwari, aged 30 years.
9. Sharad Kumar, S/o Tug Nath, age 50 years.
10. Shila Bai, D/o Tug Nath Tiwari, age 40 years.
11. Shalini Bai, D/o Tug Nath Tiwari, aged 40 years.
12. Sudha Bai Tiwari, D/o Tug Nath Tiwari,
13. Sharda Devi, W/o Tug Nath Tiwari, aged 65 years.

All residents of Purani Basti, Lily Chowk, Raipur (C.G.)

14. Ram Nath, S/o Ram Bhajan Tiwari, aged 60 years, R/o Near Ravi Ata Chakki (Flour Mill), Nayapara, Raipur (C.G.)
15. State of Chhattisgarh through: Collector, Raipur (C.G.)

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For Appellant

: Shri G.M. Hasan, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05.03.2019

1. Heard on the question of admission and formulation of substantial question of law of second appeal preferred by the legal representatives of defendants No.1 and 2 under Section 100 of the Code of Civil Procedure, 1908.
2. The suit filed by two plaintiffs namely Rameshwar Prasad and Narayan Prasad was decreed by the trial Court and on appeal being preferred by legal representatives of defendants No.1 and 2, the judgment and decree of the trial Court was affirmed by the First Appellate Court, against which, this second appeal has

been preferred.

3. Mr. G.M.Hasan, learned counsel for the appellants/legal representatives of defendants No.1 and 2, would submit that both the Courts below are absolutely unjustified in holding that Laxmi Bai was not sister of Shiv Lal and therefore, defendants No. 1 and 2 being son of Laxmi Bai are not entitled for any share in the property left by Shiv Lal and appeal gives rise to substantial question of law for determination.
4. The trial Court has held that the suit property was held by Shiv Lal, who died in the year 1950. He remained unmarried and died leaving three sisters namely Shivrathia, Maheshiya and Mahadevi. Shivrathia Bai has already sold her share i.e. 5.309 hectare of land to Tunni Bai vide registered sale deed dated 17.01.1958 and same is binding on defendants No.1 and 2, as such, the plaintiffs and defendants No. 3 to 13 are title-holders of the suit land and entitled for possession from defendants No.1 and 2. It was also held that Laxmi Bai was not sister of Shiv Lal. The said finding has been upheld by the First Appellate Court. The finding recorded by two Courts below that Laxmi Bai was not sister of Shiv Lal is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any perversity or illegality in the said finding. Even I do not find any substantial question of law for determination of this second 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. {See : Aftaruddin (Dead) represented through legal representatives v. Ramkrishna Datta alias Babul Datta and others¹ and Rajkumari and another v. Ravinder Kumar (deceased) through legal representatives and others²).

6. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*, without notice to other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

Ayushi

1 (2018) 11 SCC 77

2 (2018) 12 SCC 681