

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 106 of 2018**

Punwasi (died through LR's), S/o Lalan Prasad, aged about 65 years, R/o Village Lohari, Tahsil Marwahi, Distt. Bilaspur (C.G.)

1. Sunaina Bai, W/o Raghuwansh Prasad Shukla, aged about 64 years, R/o Village Lohari, Tahsil Marwahi, Distt. Bilaspur (C.G.)
2. Sunita Bai, W/o Shri Shankar Lal, aged about 47 years, R/o Ward No. 2, Village & Post Baihatola, Tahsil Kotma, Distt. Anuppur (M.P.)

---- Appellants

Versus

1. Smt. Sonu Tripathi, W/o Narayan Prasad, aged about 37 years, W/o Raghvendra Prasad, Occupation Housewife, Caste Bramhan, R/o Village Marwahi, Tahsil Marwahi, Distt. Bilaspur (C.G.)Defendant No. 1
2. Raghvendra Prasad, S/o Kamlakant, aged about 37 years, Occupation Service, Caste Bramhan, R/o Village Marwahi, Tahsil Marwahi, Distt. Bilaspur (C.G.)Defendant No. 2
3. State of Chhattisgarh, Through Collector, Bilaspur (C.G.)..Defendant No.3
4. Narayan Prasad Dubey, S/o Lalan Prasad, aged about 62 years, R/o Village Lohari, Tahsil Marwahi, Distt. Bilaspur (C.G.) Plaintiff

---- Respondent/Plaintiff

For Appellants	: Mr. Yogendra Chaturvedi, Advocate
For Respondents No. 1 & 2	: Mr. Ashok Soni, Advocate.
For Respondent No. 3	: Mr. R.K. Bhagat, Dy. Govt. Advocate.
For Respondent No. 4	: Mr. Vinod Kumar Tekam.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/08/2019

(1) The appellants herein, who were not a party to civil suit/first appeal has preferred this second appeal stating that their interest is involved in the subject matter of such

suit, which was dismissed by the both the courts below.

(2) Civil suit filed by plaintiff - Narayan Prasad Dubey against his daughter and son-in-law, defendants No. 1 & 2 was dismissed by the trial Court, which was upheld by the first appellate Court, against which the appellants herein have preferred second appeal under Section 100 of the CPC.

(3) Heard on I.A. No. 1, application seeking leave to file instant appeal, on which I have heard learned counsel for the parties and considered their rival submissions made hereinabove.

(4) Punwasi was defendant before the trial Court and respondent No. 4/defendant before the appellate Court. Appellants claiming to be the daughters of Punwasi have filed second appeal seeking condonation of delay in filing the second appeal and seeking leave to file instant second appeal stating inter alia that since Will executed by Lalla Bai in favour of defendant No. 1 has been found established by the trial Court, therefore, they are aggrieved by the said judgment & decree.

(5) The respondents have filed reply stating inter alia that appellants herein have already filed substantive civil suit claiming civil death of Punwasi and further sought partition in the suit property, which is pending consideration being Civil Suit No. 61-A/2018 (Sunta Tiwari & others Vs. Smt. Sonu Tripathi & others) pending in the Court of learned Civil Judge, Class –II, Marwahi.

(6) Since the civil suit filed by Narayan Prasad Dubey has already been dismissed and the substantive civil suit filed by the appellants herein for declaring that Punwasi has suffered civil death is pending consideration before the trial Court, it would be

appropriate for the appellants to pursue the civil suit, which has already filed before the trial Court and that will be considered by that Court strictly in accordance with law, as such, I.A. No. 1, application seeking leave to appeal is disposed off.

(7) With the aforesaid observations, the second stands finally disposed of. It is made clear that this Court has not expressed any opinion on the merits of the case.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

