

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.460 of 2003

Shiv Kumar, S/o Punau Ram Sahu, aged 40 years, R/o Village
Bharada, Tah. Gunderdehi, Distt. Durg (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Uchen Bai, D/o Sukaloo Ram Sahu, aged 58 years, R/o Village
Chandan Birahi, Teh. Gunderdehi, Distt. Durg (C.G.)
2. Tuliya Bai, D/o Sukaloo Ram Sahu, aged 56 years, R/o Mahud, Teh.
Gunderdehi, Distt. Durg (C.G.)
3. Parseema Bai, D/o Sukaloo Ram Sahu, aged 51 years, R/o Village
Mahud, Tehsil Gunderdehi, Distt. Durg (C.G.)

(Defendants)
---- Respondents

For Appellant:	Mr. Praveen Dhurandhar, Advocate.
For Respondents:	Mr. Shobhit Koshta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

25/01/2019

1. This second appeal preferred by the plaintiff under Section 100 of the
CPC has been admitted by formulating the following substantial
question of law for determination which states as under:

“Whether the Courts below were not justified in disbelieving
the certified copy of entries of birth register (Ex.P.1) only
due to difference of date of birth in Ex.P.1 and School
Transfer Certificate and thereby holding that the appellant/
plaintiff – Shiv Kumar is not the son of Punau?”

(For the sake of convenience, parties would be referred as
per their status and ranking shown in the plaint before the trial
Court.)

2. The appellant / plaintiff filed suit for declaration of title that he is son of
Late Punau Ram Sahu out of his wedlock with Bisahin Bai and as
such entitled for the property left by Punau Ram Sahu and thus, he be

declared exclusive owner of the suit property. The defendants denied the plaint allegations and disputed the status of the plaintiff being the son of Late Punau Ram Sahu. The trial Court on due appreciation of evidence on record held that the plaintiff has failed to prove that he is the legitimate son of Punau Ram Sahu which was affirmed by the first appellate Court in the appeal preferred by the plaintiff and thus, the instant second appeal has been preferred by the plaintiff in which the substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

3. Learned counsel appearing for the plaintiff / appellant would submit that the concurrent finding recorded by the two Courts below in dismissing the suit and disbelieving the birth register Ex.P-1 is perverse and contrary to record.
4. Learned counsel appearing for the defendants / respondents, would support the impugned judgment and decree.
5. The question is, whether Ex.P-1, in which the plaintiff's name has been recorded as son of Punau Ram Sahu, is a document by which the plaintiff's status as son of Punau Ram Sahu stands established?
6. The Registration of Births and Deaths Madhya Pradesh Rules, 1973 (for short, 'the Rules of 1973') have been framed in exercise of the powers conferred by Section 30 of the Registration of Births and Deaths Act, 1969 (for short, 'the Act of 1969'). Under Rule 7 of the Rules of 1973, time and form for notifying information under Section 10(i) of the Act of 1969 is to be given to the Registrar in Form numbers 5, 6 or 7, as the case may be, by the person required to notify a live-birth, still-birth or death under Section 10 of the Act of 1969. Form No. 5 framed under Rule 7 of the Rules of 1973 prescribes as under: -

NOTIFICATION FORM FOR A BIRTH

Date of Birth (1)	Sex of the child (2)	Place of birth (with full address) (3)	Name and local address of parent (4)

Signature of the person notifying
Name and Designation
Date

For the use of Registration Office

(a) Whether registered or not.

(b) If “Yes”—

(i) annual serial number in the register.

(ii) Date of registration.

“No” (i) Date of issuing the notice. (See Section 21)

(ii) Date of registration.

(iii) Date of prosecution.

7. The plaintiff has filed document Ex.P-1 which is a copy of the notification intimating the birth of one Shiv Kumar which states as under: -

नकल पैदाइश रजिस्ट्रार थाना - अर्जुन्दा				सन् - १८६३			
ग्राम- भरदाकला							
क्रमांक	रिपोर्ट की तारीख	होने की तारीख	बाप का नाम पता	जन्मे हुए के नाम दर्ज करने की ता०	बालक का नाम	लिंग पु० स्त्री	जातकर पु०स्त्री हिन्दु
1	2	3	4	5	6	7	8
२७	२०१७	११/७	पुनऊ व० सुकालू जातू	२७/५	शीवकुमार	१-	१-

सत्यप्रतिलिपि
सही/-
जिला सांखिकी अधिकारी एवं
जिला रजिस्ट्रार (जन्म-मृत्यु) दुर्ग (म०प्र०)

8. A careful perusal of the document Ex.P-1 would show that in Ex.P-1 signature of the person notifying is missing. This is a certified copy issued by the Zila Sankhiyiki Adhikari who has signed Form No.5, copy of birth register and it has been proved by the plaintiff, whereas it ought to have been proved by the person notifying the information and it has not been proved that the entry in question was made by the public servant in discharge of his official duties in the light of Section 35 of the Evidence Act, 1872 as observed by the Supreme Court in the matter of **Ram Prasad Sharma v. The State of Bihar**¹ in which Their Lordships of the Supreme Court held as under: -

“In this case it has not been proved that the entry in question was made by a public servant in the discharge of his official duties. As observed by this Court in 1965-3 SCR 861 at p. 864 = (AIR 1965 SC 282 at p. 286) "the reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high." No proof has been led in this case as to who made the entry and whether the entry was made in the discharge of any official duty. In the result we must hold that Ex. D, the hath chitha, was rightly held by the High Court to be inadmissible.”

9. Since in the document in question, the signature of the person notifying the information who is said to be Kotwar is missing, the document is incomplete and the person notifying it has not been examined and thus the said document has not been proved in accordance with law. Therefore, the trial Court is justified in disbelieving the document Ex.P-1 for granting declaration that the plaintiff is the son of Punau Ram Sahu, particularly when the date of birth in Ex.P-1 and the date of birth in the transfer certificate Ex.P-3 are not tallying. In Ex.P-1, the date of birth was recorded as 11-7-

1 AIR 1970 SC 326

1963 and in Ex.P-3, the date of birth was recorded as 5-3-1964.

10. In view of the above, the concurrent finding recorded by the two Courts below are based on the evidence available on record, it is neither perverse nor contrary to record. I do not find any merit in the second appeal. The second appeal is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own cost(s). The substantial question of law is answered accordingly.

11. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma