

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 282 of 2004**

1. Santosh Kumar, son of Late Jagatram Sahu, aged about 40 years, Occupation - Labourer, resident of Garhumariya, Tah. and District Raigarh (C.G.)
2. Smt. Kamla Bai, wife of shri Sundarlal Sahu, aged about 35 years, resident of Salhepali, Tah and District – Raigarh (C.G.)
3. Basant Kumar, son of Late Jagatram Sahu, aged about 31 years, occupation – Labourer, resident of Garhumariya, Tah and District Raigarh.
4. Smt. Dropadibai, wife of Kaushalprasad Sahu, aged about 25 years, Occupation – Labourer, resident of Baraliya, Tah & District Raigarh (C.G.)

----Appellants/plaintiffs**Versus**

1. Chandrakanti Bai, Rakhail, late Jagatram Sahu, aged about 44 years,
 2. Minor Lalita Bai, daughter of unknown, aged about 8 years, (through : natural guardian mother : Smt. Chandrakanti Bai)
- Both are resident of Binjkot, P.S. Chakradharnagar, Tah and Distt. Raigarh (C.G.)
3. The Principal, Kirodimal Government Polytechnic College, Raigarh (C.G.)
 4. The State of Chhattisgarh, through : District Collector, Raigarh (C.G.)

---- Respondents.

For Appellants : Shri A.N. Bhakta & Shri Vivek Bhakta, Advocate.
 For Respondents No. 1 & 2 : Shri Vineet Kumar Pandey, Advocate.
 For Respondent No. 3 & 4 : Shri S.K. Agrawal, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****13/03/2019**

(1) The substantial questions of law involved, formulated and to be answered in this plaintiffs' second appeal state as under:

“Whether the finding in relation to respondent No. 1, being wife of deceased – Jagatram is perverse on the face of record ?

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court]

(2) Dispute relates to status of defendant No. 1 and defendant No. 2 as wife and daughter, respectively of late Jagat Ram Sahu, who died in harness while working as Government Servant in Government Polytechnic College, Raigarh. Son and daughters of late Jagatram filed a civil suit stating that defendant No.1 is not the wife of Jagat Ram Sahu and defendant No. 2 is not his daughter out of alleged wedlock with defendant No.1, in which defendants set up a plea that defendant No. 1 married to Jagat Ram Sahu after death of his first wife namely Mini Bai and he had made them nominee in service record, pursuant to which defendant No. 1– Chandrakanti Bai got the compassionate appointment after death of Jagat Ram Sahu and also got his retiral dues and, therefore, the civil suit filed by the plaintiffs, being no substance, is liable to be dismissed.

(3) The trial Court after appreciating oral and documentary evidence on record, dismissed the suit holding that defendant No.1 is the wife of Jagat Ram Sahu and defendant No. 2 is the daughter of Jagat Ram Sahu out of wedlock with defendant No.1, which has duly been affirmed by the first appellate Court by the impugned judgment & decree, against which this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial question of law has been formulated and which has been set out in opening paragraph of this judgment.

(4) Shri Bhakta, learned counsel appearing for the appellants/plaintiffs would submit that both the courts below are absolutely unjustified in holding that defendant No.1 is the wife of deceased Jagat Ram Sahu and defendant No.1 is his daughter out of their wedlock and, therefore, it is liable to be dismissed being perverse to the record.

(5) On the other hand, Shri Vineet Kumar Pandey, learned counsel appearing for respondents No. 1 & 2/defendants would support the impugned judgment & decree.

(6) I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

(7) It was incumbent on the part of the plaintiff to establish that defendant No. 1 was not the married wife of Jagat Ram Sahu and defendant No. 2 is not the daughter of Jagat Ram Sahu out of his alleged wedlock with defendant No. 1.

(8) It is an admitted position on record that the plaintiffs are *Sahu* by caste, in which marriage of *Churi* form is prevalent. It is the case of defendants No. 1 & 2 that after death of first wife (Mini Bai) of Jagat Ram Sahu, he married with defendant No.1 in *Churi* form and out of their wedlock, defendant No. 2 – Minor Lalita Bai was born and, therefore, relationship between late Jagat Ram Sahu and defendants No. 1 & 2 is fully established.

(9) Plaintiff No. 1 - Santosh Kumar (PW-1), who is son of late Jagat Ram Sahu, in his cross-examination before the trial Court has clearly admitted that his father Jagat Ram Sahu married with defendant No. 1, after death of his first wife i.e. Mini Bai as per prevalent custom. He has also admitted in his evidence that defendant No. 1 remained with Jagat Ram Sahu till his death and defendant No. 1 was maintained by his father Jagat Ram Sahu. He has also admitted that on the birth of defendant No. 2- Lalita Bai, birth ceremonies in usual form were arranged by Jagat Ram Sahu as per custom prevalent in their Sahu caste and the name of defendant No. 2 is recorded in Kotwari register as a daughter of Jagat Ram Sahu and also in voter list relationship of Jagat Ram Sahu & defendant No. 1- Chandrkanti Bai is shown as husband & wife.

(10) The trial Court has relied upon the admission made by the plaintiff No.1 in his cross-examination before the trial Court and negatived the plea that Jagat Ram Sahu had suffered sterilization certificate operation and, therefore, question of birth of defendant No. 2 – Lalita Bai out of their wedlock with defendant No. 1 does not arise, which has duly been upheld by the first appellate Court by the impugned judgment & decree.

(11) Thus, the finding recorded by both the courts below that Jagat Ram Sahu was married with defendant No. 1 after death of his former wife Mini Bai in *churi* form as per their custom and thereafter the defendant No. 1 lived with Jagat Ram Sahu till his life time and defendant No. 2 is his daughter out of wedlock with defendant No. 1 ; and Jagat Ram Sahu, during his life time, had made them nominee in service record, pursuant to which defendant No. 1 – Chandrakanti Bai also got the compassionate appointment after death of Jagat Ram Sahu and also got his retiral dues and they are accepted as husband and wife in the custom prevalent in the Sahu caste, are the findings of fact based on material available on record and I do not find it either perverse or contrary to the record and, thus, the second appeal, being no substance, is liable to be dismissed.

(12) Consequently, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. Substantial question of law framed is answered against the plaintiffs and in favour of defendants No. 1 & 2.

(13) A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

