

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 290 of 2018****Judgment reserved on : 19/07/2019****Judgment delivered on: 26/07/2019**

1. Tiharuram Sahu S/o Kejuram Sahu, aged 62 years, Occupation – Agriculturist.
2. Sunita D/o Tiharuram Sahu, aged 28 years.
3. Toman S/o Tiharuram Sahu, aged 26 years.
4. Pankaj S/o Tiharuram Sahu, aged 24 years.
5. Deva S/o Tiharuram Sahu, aged 22 years.
6. Rekha D/o Tiharuram Sahu, aged 22 years.

Appellants No. 4 to 6 are Minor at the relevant time, now major, All R/o Village Raudra, Tahsil Saja, Distt. Bemetara, Chhattisgarh.

7. Rukhmani Bai, W/o Manshuram Sahu, aged 65 years, R/o Village Dahi-Mahi, Tahsil Saja, Distt. Bemetara, Chhattisgarh.
8. Smt. Puniya Bai, W/o Tiharuram Sahu, aged 55 years, R/o Raudra, Tahsil Saja, Distt. Bemetara, Chhattisgarh.
9. Prahlad S/o Vishwanath, aged 45 years, R/o Raudra, Tahsil Saja, Distt. Bemetara, Chhattisgarh.

---- Appellants/Defendants**Versus**

1. Santoshi D/o Tiharuram Sahu, aged 24 years.
2. Sati D/o Tiharuram Sahu, aged 19 years.

Both R/o Vidyanagar, Pikri, Tahsil & District Bemetara, Chhattisgarh.

3. State of Chhattisgarh, Through the Collector, Bemetara, Tahsil & District Bemetara, Chhattisgarh.

----Respondents/Plaintiffs

For Appellants	:	Mr. Viprasen Agrawal, Advocate
For State	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the defendants under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC").

2. Plaintiffs herein filed a civil suit bearing No. 25A/2006, which was decreed by learned trial Court on 13/04/2017 holding that each of the two plaintiffs are entitled for 1/3rd share in the suit property. On appeal being preferred by the defendants bearing No. 10A/2017, learned first appellate Court modified the decree of the trial Court and held that each of the plaintiffs are entitled for 1/8th share in the suit property and the defendants namely Sunita, Toman, Pankaj, Deva and Rekha are also entitled for 1/8th share in the suit property, being the illegitimate children of Tiharuram out of his customary marriage with Puniya Bai, his second wife, which has been questioned in this second appeal.
3. Mr. Viprasen Agrawal, learned counsel for the defendants submits that learned first appellate Court has committed legal error in holding that each of the plaintiffs are entitled for 1/8th share in the suit property. It ought to have separated the share of Tiharuram's sister namely Rukhmani Bai, before defining the share, as Tiharuram was holding the share of his sister Rukmani Bai. As such, the finding recorded by the first appellate Court is contrary to the fact and law available on record and being perverse, it gives rise to substantial question of law for determination in this second appeal.
4. I have heard learned counsel for the defendants, considered his submissions and went through the records with utmost circumspection.
5. Admittedly, the plaintiffs are the daughters of Tiharuram, out of his first marriage with Kumari Bai. Thereafter, Tiharuram left his first wife Kumari Bai and entered into marriage with his second

wife namely Puniya Bai by 'choodi form', clearing subsistence of first marriage, with whom he has three sons and two daughters which are defendants No. 3 to 7.

6. Learned trial Court held that the suit property is the ancestral property of Tiharuram. The suit property originally belonged to Tiharuram's father on which partition has already happened between Tiharuram and his brothers and sisters namely Vishwanath, Jhadiram, Sukhbat, Pusaiya and Rukhmani. Therefore, it cannot be held that Tiharuram was having the share of her sister Rukhmani Bai. Learned trial Court further held that the second marriage of Tiharuram with Puniya Bai is not proved, therefore, defendants No. 3 to 7 are not entitled for any share in the suit property, being the illegitimate children of Tiharuram, out of his wedlock with Puniya Bai by 'choodi form'. All of the defendants preferred first appeal before the first appellate Court challenging the judgment and decree passed by learned trial Court.

7. Learned first appellate Court correctly relying upon the decision of the Supreme Court, in the matter of ***Revanansiddappa & Anr. Vs. Mallikarjun & Ors.***¹, held that the defendants No. 3 to 7, though being the illegitimate children of Tiharuram out of his wedlock with Puniya Bai, are still entitled for their share in the suit property of their father, whether it be his self-acquired property or his ancestral property.

8. The only submission that has been made by learned counsel for the defendants is that before partitioning the suit property of Tiharuram into 1/8th share, learned first appellate Court ought

¹ (2011) 11 SCC 1

to have separated the share of his sister Rukhmani Bai in the suit property and thereafter, could have demarcated the share, which deserves to be noticed for rejection.

9. Learned trial Court has clearly recorded the finding that the suit property is recorded in the name of Tiharuram and it is his ancestral property. The plea that Tiharuram was having the share of his sister Rukhmani Bai has expressly been rejected, while answering the issue No. 12 by holding that in 1979, partition of the ancestral property had already taken place between Tiharuram and his brothers and sisters, and no such arrangement of having the share of his sister was agreed upon. The said finding does not appear to have been seriously questioned before the first appellate Court and even otherwise, it has been affirmed by learned first appellate Court in paragraph 13 of its judgment by holding that the suit property fell in the share of Tiharuram on partition.

10. In the matter of ***Revanansiddappa & Anr. Vs. Mallikarjun & Ors.***, the Supreme Court has doubted the correctness of the decision rendered in ***Jinia Keotin & Ors. Vs. Kumar Sitaram Manjhi & Ors.***², and has referred the matter to the larger Bench for consideration, and as on date, the position is that the illegitimate children are entitled for share in the self-acquired property of their parents.

11. Be that as it may, since either side has no grievance and the first appellate Court has granted decree in favour of the defendants and considering the fact that the two Courts below have already held that partition has already taken place

² (2003) SCC 730

between Tiharuram and his brothers and sisters in 1979 and the suit property fell in the share of Tiharuram, which is a finding of fact based on evidence on record, I do not find any perversity or illegality in the said finding and no substantial question of law is involved for determination in this second appeal.

12. The second appeal deserves to be and is accordingly dismissed *in limine* at admission stage without noticing to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet