

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 223 of 2007**

1. Katru, S/o Baula, Aged about 53 years,
2. Nanak, S/o Baula, Aged 48 years,

Both by caste Pando/Parahiya, Occupation Cultivator and Resident of Village Lodhi Tahsil, Wardrafnagar, Distt. Sarguja (C.G.)

---- Appellants/Plaintiffs

Versus

1. Rajmatiya, D/o Buddhu Pando, W/o Hansraj Pando, Aged about 56 years, Occupation, House Wife, R/o Dumarher, Tahsil, Duddhi, Sonbhadra Residing at present, Village Lodhi, Tahsil, Wadrafnagar, Distt. Sarguja (C.G.)
2. State of Chhattisgarh Through Collector, Sarguja Ambikapur Distt. Sarguja (C.G.)

---- Respondents/defendants

For Appellants/Plaintiffs	: Mr. Sunil Tripathi, Advocate.
For Respondent No. 2/State	: Mr. Mateen Siddiqui, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/08/2019

(1) Heard on the question of admission and formulation of substantial question of law on this second appeal preferred by plaintiffs under Section 100 of the Code of Civil Procedure, 1908.

(2) Shri Sunil Tripathi, learned counsel appearing for the appellants/plaintiffs would submit that both the courts below are unjustified in holding that through the parties are tribe by caste yet, it has been recorded that daughters get share in the property of their father, which is perverse and contrary to the record and the appeal involves substantial question of law for determination.

(3) I have heard learned counsel appearing for the appellant and considered his submissions and went through the record with utmost circumspection.

(4) Maheshwar Pando had three sons namely Baura, Budhhu and Bhagat. The plaintiffs are sons of Baura whereas defendant No. 1 – Rajmatiya is daughter of Budhu. Plaintiffs filed a suit that they are pando aboriginal tribe, in which the daughters do not get any share in the ancestral property of their ancestor/father, which was denied by the defendant No. 1 by filing written statement. Ultimately, the trial Court, after appreciating oral and documentary evidence available on record, held that though the parties are aboriginal tribe but yet the defendant No. 1 being the Gharjihan daughter is entitled for share in the property of her father as it has been proved, which the first appellate Court has declined to interfere through on different grounds.

(5) Both the courts below have concurrently recorded a finding that though plaintiffs and defendant No. 1 are the aboriginal tribe (Pando), yet plaintiff / defendant No. 1 being the gharjihan daughter would succeed the property of her father, the said finding is a finding of fact based on material available on record, even otherwise the plaintiff has failed to establish the valid custom in which the daughters do not get share in the property of his/her father, in which I do not find any illegality or perversity warranting interference under Section 100 of the Code of Civil Procedure and no substantial question of law is involved in this second appeal.

(6) The second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

both the courts below have committed legal error in partly dismissing the suit by not granting the decree for possession with respect to the land encroached by the defendants and, therefore, the appeal involves substantial question of law for determination.

(3) I have heard learned counsel appearing for the parties and considered his submissions and went through the record with utmost circumspection.

(4) The appellant/plaintiff filed a suit for declaration of title, possession and eviction, which was partly decreed by the trial Court. Plaintiff has also claimed that defendants have encroached upon suit land bearing Khasra No. 101/1, area 0.077 hectare but both the courts below have clearly recorded a finding that plaintiff has failed to establish the extent of encroachment by the defendants as the plaintiff was required to establish the extent of encroachment upon the suit land by the defendants by seeking appointment of revenue commissioner, as such, there is no evidence regarding extent of encroachment by the defendants, therefore, both the courts below declined to grant decree in favour of plaintiff, which is neither perverse nor contrary to the record, rather it is based on material available on record and I do not find illegality or perversity in the judgment & decree impugned and no question of law much less substantial question of law is involved in this appeal.

(5) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed without notice to the other side.

(Sanjay K. Agrawal)
Judge

