

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 362 of 2006**

Dhaniram, son of Shri Chatur Singh Aghariya, aged about 60 years, Police Station Pithoura, Resident of Village Godpali, Agriculturist, Village Jhalap, P.H. No. 13, R.I. Circle Patewa, Tahsil and District Mahasamund (C.G.)

----Appellant/plaintiff

Versus

1. Bharat, Son of Shri Ramlal Aghariya, resident of Village Jhalap, P.H. No. 13, R.I. Circle Patewa, Tahsil and District Mahasamund (C.G.)
2. State of Chhattisgarh, through : The Collector, District mahasamund (C.G.)

----Respondents/defendants.

For Appellant	: Mr. V.K. Pandey, Advocate
For Respondents	: None as appeal yet not admitted.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/02/2019

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

(2) The plaintiff's suit for declaration of title, permanent injunction and for declaring the sale deed dated 2.2.1996 (Ex.D-6) & 22.10.1997(Ex.D-7) as null and void was dismissed by the trial Court. First appeal preferred thereagainst was also dismissed, against which this second appeal has been preferred.

(3) Mr. V.K. Pandey, learned counsel appearing for the appellant/plaintiff would submit that both the courts below are unjustified in dismissing the suit of the plaintiff by recording findings which are perverse and contrary to the records and that give rise to substantial question of law for determination.

(4) The suit property was originally held by one Shri Nandlal. Smt. Sundermoti claiming to be his wife sold the suit property to defendant No. 1 by registered sale deed dated 2.2.1996 (Ex.D-6) and 22.10.1997 (Ex.D-7). These sale deeds were challenged by plaintiff/appellant on the ground that Sundermoti was not the legally wedded wife of Nandlal and even otherwise she had remarriage with Gangadhar Adhariya after the death of Nandlal, therefore, alienation is bad in law.

(5) Trial Court as well as first appellate Court have clearly recorded a finding of fact on appreciation of oral & documentary evidence available on record that Sundermoti was legally wedded wife of Nandlal and she was full owner of the property under Section 14 (1) of Hindu Succession Act, 1956 (henceforth "Act, 1956").

(6) Both the courts below have also recorded a finding that remarriage of Sundermoti with Gangadhar Adhariya, she will not be deprived of her property inherited by her former husband Nandlal as Section 4 of the Hindu Succession Act has over-riding effect over the Section 2 of Hindu Widow Remarriage Act, 1856.

(7) The Supreme Court in **Cherotte Sugathan (Dead) through LRs. and others Vs. Cherotte Bharathi and others**¹ has clearly held that by virtue of Section 4 & 24 of Hindu Succession Act, the absolute right of widow under Section 14(1) of the Act, 1956, could not be subjected to divestment, save and except by reason of a statute as Section 4 of the Act, 1956 has an over-riding effect over the Hindu Widow Remarriage Act, 1856. Therefore, remarriage of Sundermoti with Gangadhar cannot be a ground for her losing right to succeed her husband's (Nandlal's) property.

(8) The above-stated finding recorded by both the courts below are finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

1 (2008) 2 SCC 610

(9) Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse and contrary to law. {See : **Aftaruddin (dead) represented through Legal representatives Vs. RamKrishna Dutta alias Babul Datta and others² & Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others³**}

(10) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

² (2018) 11 SCC 77

³ (2018) 12 SCC 681

