

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 368 of 2006**

Dasrath Ram, adopted son of Bahadur, aged 24 years, Caste Bhuihar, Occupation Cultivator, Resident of village Ekemba, Tahsil Bagicha, District Jashpur (C.G.)

----Appellant/Plaintiff

Versus

1. Ramjatan, son of Bajru Ram, aged 31 years, Caste Bhuihar, Occupation Cultivator, resident of Village Chhienhali, Tahsil Bagicha, District Jashpur (C.G.)
2. State of Chhattisgarh, Through Collector Jashpur (Chhattisgarh)

---- Respondents/Defendants.

For Appellants	: Shri H.B. Agrawal, Senior Advocate assisted by Smt. Preeti Yadav, Advocate.
For Respondents	: None as appeal yet not admitted.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/03/2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908.
2. The plaintiff's suit for declaring that he is only the title holder of the suit property was partly decreed and partly dismissed by the trial Court. First appeal preferred thereagainst was also dismissed by the first appellate Court by affirming the judgment & decree of trial Court, against which instant second appeal has been preferred..
3. Learned counsel appearing for the appellant / plaintiff would submit that both the courts below have concurrently erred in holding that plaintiff is not the adopted son of

Phulhi and Bahadur by recording perverse finding that give rise to the substantial question of law for determination in the appeal.

(3) It is undisputed position on record that the suit property was originally held by Bahadur and after his death it was held by Phulhi; and as they were issueless, the plaintiff claimed that he is the adopted son of Phulhi and Bahadur. The trial Court has clearly recorded a finding that plaintiff has failed to prove the fact of adoption; and further held that plaintiff and defendant No.1 – Ramjatan both are legal heirs of Ghashi and being near relative of Bahadur (original holder of suit property), they have inherited the suit property and therefore, plaintiff and defendant No. 1 both have equal share in the suit property and accordingly partly decreed the suit and partly dismissed the suit, which has duly been upheld by the first appellate Court , in which I do not find any perversity or illegality and no question of law much less substantial question of law is involved in this appeal.

7. 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. Ram Krishna Dutta alias Babul Datta and others¹ & Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others²** }

8. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without noticing to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

¹ (2018) 11 SCC 77

² (2018) 12 SCC 681

