

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 121 of 2005**

1. Dhanmet D/o Baghi Rajwar (died) through Lrs.

(a) Fulmet D/o Late Dhanment W/o Rameshwar, Aged about 45 years, R/o Village Jarahi, Tahsil Pratappur, District Surajpur, Chhattisgarh.

(b) Basmet D/o Late Dhanmet W/o Balsai, Aged about 43 years, R/o Village Salka, Bhatgaon, District Surajpur, Chhattisgarh.

(c) Somaro D/o Late Dhanmet, W/o Somar Sai, Aged about 40 years, R/o Village Adhina, Mahadev Para, Bhatgaon, District Surajpur, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Sukhmen Wd/o Chhauwa, Aged about 60 years, Caste Rajwar, R/o Village Salka, Tahsil Surajpur, District Surguja, Chhattisgarh.

2. The State of Chhattisgarh, Through Collector, Surguja, Ambikapur, Chhattisgarh.

---Respondents/Defendants

For Appellant	:	Mr. A.K. Prasad, Advocate
For Respondent	:	Mr. Ashok shukla, Advocate
For State	:	Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/12/2019

1. This second appeal preferred by the appellant/plaintiff (now, her lrs.) was firstly admitted on 13/06/2005 for hearing on the following two substantial questions of law :-

"1. Whether the Court below in deciding the time of death of Badhi, failed to consider the material and substantial evidence available on record ?

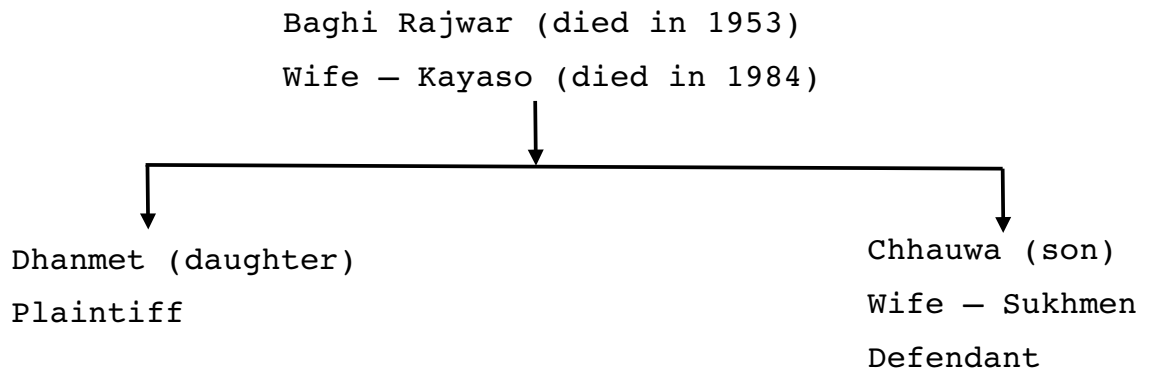
2. If so, its effect ?"

Thereafter, on 04/12/2019, following additional substantial question of law was also framed :-

"3. Whether both the Courts below failed to consider that the plaintiff is entitled to get her right through her mother under Hindu Women's Right to Property Act, 1937, even after death of her father in the year 1953 ?"

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. The following genealogical tree will demonstrate the relation between the parties :-



3. Suit property shown in Schedule 'A' attached with the plaint situated at Village Salka, Tahsil and District Surajpur was the self-acquired property of Baghi Rajwar who died in the year 1953, as per the plaint allegations, leaving behind his wife Kayaso, his son Chhauwa and his daughter Dhanmet. Thereafter, Chhauwa died issueless leaving behind his wife Sukhmen.

4. Plaintiff - Dhanmet filed a suit against the defendant - Sukhmen that after the death of her father Baghi Rajwar, the suit property was jointly succeeded by her mother Kayaso, her brother Chhauwa and herself and later on, after the death of their mother Kayaso, both plaintiff and her brother Chhauwa, were jointly cultivating the suit property, but thereafter, Chhauwa died issueless, leaving behind his wife Dhanmet (defendant) who succeeded the suit property along

with the plaintiff, but defendant preferred an appeal before the Sub-divisional Officer, Surajpur against the order dated 31/01/1996 passed by the Naib Tahsildar, and pursuant to his order dated 27/11/1996, defendant got the name of plaintiff removed altogether and instead got her name mutated in the revenue records over whole of the suit property which led to the institution of the suit by the plaintiff for $\frac{1}{2}$ share in the suit property.

5. Defendant filed her written statement and set up a plea that plaintiff has no right title over the suit property and the order of the Naib Tahsildar has rightly been set aside by the Sub-divisional Officer.

6. Learned trial Court, vide its judgment and decree dated 22/08/2003, dismissed the suit of the plaintiff holding that Baghi Rajwar died in the year 1953 that is before coming into force of the Hindu Succession Act on 17/06/1956, as such, plaintiff is not entitled to get any share in the property of her father.

7. Learned first appellate Court affirmed the judgment and decree of the trial Court and dismissed the appeal of the plaintiff vide its judgment and decree dated 30/10/2004.

8. Questioning the judgment and decree of the first appellate Court, this second appeal has been preferred by the appellant/plaintiff (now, her Lrs.) under Section 100 of the CPC wherein two substantial questions of law had been framed at first, but later on, another additional substantial question of law was formulated, all of which are set out in the opening paragraph of this judgment.

9. Mr. A.K. Prasad, learned counsel for the appellant/plaintiff would submit that both the Courts below have concurrently erred in holding that Baghi Rajwar died in the year 1953. He would also submit that even if he died in 1953, by virtue of the provisions contained under Section 3 of the Hindu Women's Right to Property Act, 1937, Kayaso i.e. mother of the plaintiff, had become the limited owner of the suit property. Kayaso died in the year 1984 i.e. after coming into force of the Hindu Succession Act, 1956, therefore, her limited right ripened into absolute right as per Section 14 of the Act of 1956, as such, after her death, plaintiff is entitled for $\frac{1}{2}$ share in the suit property.

10. Mr. Ashok Shukla, learned counsel for the respondent/defendant would support the impugned

judgment and decree and would submit that the concurrent finding recorded by both the Courts below that plaintiff's father died in the year 1953 i.e. before coming into force of the Hindu Succession Act, 1956 and he had already married much prior to that date, therefore, plaintiff would not be entitled for any share in the suit property and the second appeal deserves to be dismissed.

11. I have heard learned counsel for the parties, considered their rival submissions and perused the records.

Answer of substantial question of law No. 1 :-

12. It is the case of the defendant that Baghi Rajwar died in the year 1953 whereas it is the case of the plaintiff that he died after coming into force of the Hindu Succession Act, 1956.

13. Both the Courts below have clearly assigned valid and sufficient reasons and concurrently recorded a finding that Baghi Rajwar died in the year 1953 i.e. before coming into force of the Act of 1956 which is a finding of fact based on evidence available on record which suffers neither from perversity nor illegality, as such, the said finding is reaffirmed by this Court. The first

substantial question of law is answered in negative.

Answer to substantial question of law No. 3 :-

14. Now, the question is whether the plaintiff is entitled for any share in the suit property from her mother's side ? It is the case of the plaintiff that both the Courts below have concurrently held that her father namely Baghi Rajwar died in the year 1953 i.e. prior to coming into force of the Hindu Succession Act, 1956.

15. Suit property was the self-acquired property of plaintiff's father Baghi Rajwar. Hindu women's Right to Property Act, 1937 applies to the separate property of the male owner. As per section 3 of the Act, only when the husband dies after commencement of the Act of 1937, the widow would be entitled with respect to the property of which he dies intestate to the same share as a son and a Hindu lady becoming widow after coming into force of Hindu Women's Right to Property Act, 1937, would inherit the property of her deceased husband as a limited owner.

16. Admittedly, in this case Baghi Rajwar died in 1953 as recorded by both the Courts below and under the provisions contained in the Act of 1937, his widow Kayaso came to acquire the suit

property as a limited owner and then, after coming into force of the Hindu Succession Act, 1956, her limited right ripened into absolute right in view of Section 14 of the Act.

17. Reverting to the facts of the case, after the death of Baghi Rajwar in the year 1953, the suit property, being his self-acquired property, was succeeded by his widow Kayaso and his son Chhauwa and Kayaso's limited interest in suit property ripened into full interest after coming into force of the Hindu Succession Act, 1956. Then, after the death of Kayaso in the year 1984 approximately, her $\frac{1}{2}$ share in the suit property would again be equally divided between her son chhauwa and her daughter Dhanmet, therefore, plaintiff would be entitled for $\frac{1}{4}^{\text{th}}$ share in the suit property shown in Schedule A attached with the plaint from her mother's side. Thus, the third substantial question of law has been answered in affirmative. It is directed and ordered that plaintiff will be entitled for the separate possession of $\frac{1}{4}^{\text{th}}$ share of the suit property shown in Schedule 'A' attached with the plaint from the defendant. The partition proceeding will be done by the Collector in accordance with law.

18. The second appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

19. A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet