

HIGH COURT OF CHHATTISGARH AT BILASPURSecond Appeal No. 150 of 2005

Rameshwar Prasad, S/o Late Kanhaiya Lal, aged about 38 years,
caste Brahman, R/o. Vill. Jhabar, Tah. Pendraroad, Distt. Bilaspur
(C.G.)

(Defendant)
---- Appellant

Versus

1. Tara Bai, W/o late Kanhaiya Lal, aged about 45 years,
2. Vijay Shankar, S/o late Kanhaiya Lal, aged about 23 years,

Both are caste Brahman, R/o Vill. Jhabar, Tah. Pendraroad, Distt.
Bilaspur (C.G.)

(Plaintiffs)
---- Respondents

For Appellant/Defendant:	Mr. Rakesh Pandey, Advocate.
For Respondents/Plaintiffs:	Mrs. Ranjana Jaiswal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

12/07/2019

1. This second appeal preferred by the appellant / defendant was admitted for final hearing on following substantial question of law:-

“Whether the Courts below committed an error of law in holding that the defendant/ appellant- Rameshwar Prasad was an illegitimate child of deceased Kanhaiyalal Tiwari and the finding in this regard is perverse?”

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

2. The plaintiffs / respondents herein filed a suit for declaration of title and possession stating *inter alia* that plaintiff No. 1 is the widow of late Shri Kanhaiyalal and plaintiff No. 2 is the son of late Shri Kanhaiyalal and the suit property was inherited by late Shri Kanhaiyalal from his grandfather. Shri Kanhaiyalal died in the year 1965 and after his death, they have inherited the suit property. Defendant, who is the son

of Dukhani Bai out of illicit relationship with late Shri Kanhaiyalal, had got his name mutated in the revenue records. It is the case of the plaintiffs that the defendant has no right and title over the suit property, as such, decree for declaration and possession be granted in their favour.

3. The defendant filed his written statement controverting the allegations made in the plaint stating *inter alia* that he is son of late Shri Kanhaiyalal out of his relationship with Dukhani Bai, he has right and title over the suit property and therefore the suit be dismissed with cost(s).
4. The trial Court after appreciating oral and documentary evidence available on record, decreed the suit holding that no marriage was solemnized between Dukhani Bai and late Shri Kanhaiyalal, as such, the defendant being an illegitimate child is not entitled to inherit the property of late Shri Kanhaiyalal. The first appellate Court dismissed the appeal preferred by the defendant. Feeling aggrieved against the judgment and decree of the first appellate Court, this second appeal has been preferred by the appellant/ defendant under Section 100 of the CPC in which the substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
5. Mr. Rakesh Pandey, learned counsel for the appellant/ defendant submits that both the Courts below were absolutely unjustified in granting decree in favour of the plaintiffs ignoring the provisions contained in Section 16 of the Hindu Marriage Act, 1955 (in short 'Act of 1955'), as such, the second appeal deserves to be allowed. He relied upon the judgment of the Supreme Court in the matters of Jinia

Keotin v. Kumar Sitaram Manjhi¹, Bharatha Matha & Another v. R. Vijaya Renganathan² and Neelamma v. Sarojamma³.

6. Mrs. Ranjana Jaiswal, learned counsel for the respondents/ plaintiffs would support the impugned judgment and decree.
7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
8. The question for consideration would be whether the appellant/ defendant is an illegitimate son of deceased Kanhaiyalal within the meaning of Section 8 of the Act of 1955 read with Schedule of the Hindu Succession Act, 1956.
9. The question so raised is no longer res integra and stands authoritatively decided by the Madhya Pradesh High Court in the matter of Reshamlal Baswan v. Balwant Singh Jwalasingh Punjabi & Others⁴ in which the question was whether illegitimate son is the son within the meaning of Section 8 of the Hindu Succession Act, 1956. *Gulab C. Gupta, J.* speaking for the Madhya Pradesh High Court has clearly held that children born to married woman from illicit relationship are not entitled to the benefit under Section 16 of the Act. It was further held that benefit under Section 16 is available only when there is a marriage but same is hit by Section 11. It was observed as under:-

“4. Marriage Laws Amendment Act, 1976 provided legitimacy to children of a marriage hit by Section 11 of Hindu Marriage Act. It provides a procedure for getting a marriage declared void if it contravenes one of the conditions of Section 5 of the said Act. The conditions under which a marriage is said to be void are those

1 2003 (1) SCC 730

2 2010(11)SCC483

3 2006(9)SCC612

4 1994 MPLJ 446

mentioned in clauses (i), (iv) and (v) of [Section 5](#) of the said Act. Marriage between parties having a spouse living at the time of marriage is hit by this provision. This provision has been interpreted to mean that there must be a marriage, which would be hit by the provisions of this Act and would not cover a relationship resulting from any other arrangement than the marriage. That is the reason why it has been held in *M. Muthayya v. Kamu and Ors.*, AIR 1981 NOC 172, that in those cases where there is no proof of solemnisation of marriage, the provision in [Section 16](#) is not attracted.

6. The decision of Bombay High Court in *Laxmibai's case* (supra), of course, supports the contention advanced by the learned counsel for the appellant. The question for consideration of the court was the impact of Section 16(1) and 16(3) of the Hindu Marriage Act read with the provision of Section 8 of the Hindu Succession Act. It has already been noticed that Section 16 deals with the offsprings of marriage, which is void. The Court was of the opinion that 1976 amendment of the Hindu Marriage Act takes away and eclipses general rule that the offspring of a marriage, which is null and void ipso jure is illegitimate. According to the Court, this was common law doctrine, inevitably resulting in the effect of bastardising children and has been superseded by this provision. Considering the effect of this amendment, in the context of Section 8, clause (a) of the Hindu Succession Act, the Court held that illegitimate children now given legitimacy would be included within the meaning of 'son' and 'daughter' in the Schedule to the Hindu Succession Act. The Court, therefore, held that though the lady would not be the widow, her sons and daughters would be included within the meaning of the term in Section 8 read with the schedule. A close reading of this decision would indicate that it was the effect of 1976 amendment of Section 16 of the Hindu Marriage Act that made the difference. If the said amendment had not been there or any particular case was not governed by the said amendment, the learned Judge would not have decided in the same manner. Since 1976 amendment does not apply to the facts and circumstances of the case before this Court, this judgment cannot be of any help to the appellant. In fact, *Dadu v. Raghunath*, AIR 1976 Bombay 176, is the case before the amendment and holds on a detailed consideration of provisions, that illegitimate sons even of a Sudra would not be included within the meaning of the word 'son' or 'daughter' appearing in Schedule to Hindu Succession Act. Learned Judge had noticed that before 1956, legitimate children of a Sudra had enjoyed the status of an heir and, therefore, it observed surprisingly that an otherwise dynamic legislation should have extinguished the intestate succession rights of illegitimate sons of Sudras. Regrettable it may be, but since it was intended, it should be accepted as our national discipline. Sentiments howsoever strong cannot justify transgressing the limits of

judicial discipline. This being a direct case on the point should, if at all, conclude the matter.

8. Then, it is also not correct to say that the word 'son' has not been defined anywhere. It has, of course, not been defined in the Hindu Succession Act, 1956, but every word need not be defined in the statute itself. The General Clauses Act defines 'son' and includes only the adopted son. In case the illegitimate son was also included within this definition, a corresponding amendment would have been made in the definition given in the General Clauses Act.

9. In view of the discussion aforesaid, this Court is unable to hold that the appellant, even as an illegitimate son is a 'son' for purposes of Section 8 read with schedule to the Hindu Succession Act and, has, therefore, right to succeed to the properties of late Baswan. In the opinion of this Court, he is not a 'son' within the meaning of the term and, therefore, not an heir to Baswan. The appeal accordingly fails and is dismissed, but without any order as to costs."

10. Their Lordships of the Supreme Court in Jinia Keotin (supra), Bharatha Matha (supra) and Neelamma (supra) have held that illegitimate children out of wedlock of void marriage are entitled to succeed to the self acquired property of their parents under Section 16(3) of the Act of 1956. In the matter of Revanasiddappa & Anr v. Mallikarjun & Ors⁵, their Lordships of the Supreme Court have referred the matter to larger Bench doubting the correctness of the principles of law laid down in Jinia Keotin (supra), Bharatha Matha (supra) and Neelamma (supra) opining that in ancestral property also, illegitimate children are entitled to succeed.
11. Reverting to the facts of the present case in light of principles of law laid down by the Madhya Pradesh High Court in Balwantsingh Jwalasingh Punjabi (supra), it is quite vivid that both the Courts have clearly held that the Defendant is the son of Kanhaiyalal out of his illicit relationship with Dukhani Bai and there is no marriage performed at all between Kanhaiyalal and Dukhani Bai either in customary form or

otherwise. The defendant in his written statement has not pleaded that marriage was ever performed between Kanhaiyalal and Dukhani Bai and only pleaded that Kanhaiyalal after death of his wife first kept Dukhani Bai as his wife and they were living together as husband and wife as it has already been held that in order to attract Section 16(3) of the Act of 1955, performance of marriage is necessary, but it should be hit by Section 11 of the Act of 1956, therefore the principle of law laid down in Balwantsingh Jwalasingh Punjabi (supra) would apply in full force in the instant case, as no marriage at all was solemnized between Kanhaiyalal and Dukhani Bai and defendant is their son out of their cohabitation, therefore, principles of law laid down in Jinia Keotin, Bharatha Matha and Neelamma (supra) would not apply and the defendant is not illegitimate child of Kanhaiyalal for the purpose of Section 16(3) of the Act of 1955 and both the Courts are absolutely justified in decreeing the suit of the plaintiffs holding that the defendant / appellant has no right / title over the suit land. The finding so recorded is neither perverse nor contrary to record.

12. In view of the aforesaid factual legal position, this Court is unable to hold that the concurrent finding recorded by two Courts below are perverse and contrary to the record warranting interference by this Court under Section 100 of the CPC. The substantial question of law is answered in favour of the plaintiffs and against the defendant.
13. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).
14. Decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge