

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 282 of 2005**

Sahadan, S/o Bhajan Ram, aged about 60 years, by caste Gond, occupation cultivation, resident of Village Masga, Tahsil and P.S. Dhourpur, District Surguja (C.G.)

----Appellant/Plaintiff

Versus

1. Kendi Bai, Wd/o Bhajan Ram, aged about 70 years, by caste Gond, resident of Village Masga, Police Station and Tahsil Dhourpur, District Surguja (C.G.)
2. The State of Chhattisgarh, through the Collector, Surguja (C.G.)
3. Laxmi Bai, W/o Shivnarayan, aged 40 years, by caste Gond, resident of Village Masga, Police Station and Tahsil Dhourpur, District Surguja (C.G.)

----Respondents/defendants.

For Appellant	: Mr. Sunil Tripathi, Advocate.
For Respondents	: None as appeal yet not admitted.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

20/02/2019

(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 filed a suit for declaration of title and injunction stating *inter alia* the parties are Gond by caste and in their gond caste widow doesn't have right to property and she cannot alienate the property and she has only right to maintain the suit property as the plaintiff is son of late Bhajan Ram and defendant No. 1 is widow of late Bhajan Ram.

(3) Trial Court dismissed the suit. First appeal preferred thereagainst was also dismissed, against which instant second appeal has been preferred.

(4) Mr. Sunil Tripathi, learned counsel appearing for the appellant/plaintiff would submit that both the courts below are unjustified in holding that the widow / defendant No. 1 has right to property and she can alienate the suit property by recording finding which are perverse and contrary to the record and that give rise a substantial question of law for determination in this appeal.

(5) I have heard learned counsel appearing for the appellant, considered his submissions and perused the record of both the courts below with utmost circumspection.

(6) In a suit filed by plaintiff / son against defendant No.1/widow mother, both the courts below have concurrently recorded a finding that the plaintiff has failed to plead and establish the valid custom in which the widow / defendant No.1 has only right to maintain from the suit property and she has no right of property and she cannot alienate the suit property, valid custom depriving the widow / defendant No. 1 has to pleaded and proved by leading appropriate legal evidence, which the plaintiff has failed to establish. The said finding is a 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.

(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*.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

¹ (2018) 11 SCC 77

² (2018) 12 SCC 681

