

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.404 of 2005

Leelaram S/o Anantram (Died)

LRS:-

A. Mangal Singh S/o Leelaram, Age-45 years.

B. Shital Singh S/o Leelaram, Age-38 years.

C. Smt. Ratna D/o. Danaro Grand Daughter Leelaram, Age-30 years,
W/o Sampat Kanwar, R/o.-Bansmuda.

D. Smt. Ganga Wd/o. Danaro Prasad, Age-50 years, R/o.-Binjkot,
Tahsil-Kharsia, District-Raigarh (CG)

---- Appellants/Plaintiffs

Versus

1. Musammat Sadhani Bai, D/o. Bahiya Sidar, Age-58 years, Occupation-Former, R/o. Village-Binjkot, Tahsil-Kharsia, District-Raigarh (CG)
2. State of Chhattisgarh Through the Collector, Raigarh, District-Raigarh (CG)

---- Respondents

For Appellants/Defendants	: Mr.Akhilesh Kumar, Advocate
For Respondent No.1/Plaintiff	: Mr.F.S.Khare, Advocate
For Respondent No.2	: Ms Shivali Dubey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

30/07/2019

1. The substantial questions of law involved, formulated and to be answered in this defendant's second appeal are as under: -

“1. Whether the Courts below have erred in holding that the plaintiff Sadhani Bai is the daughter of Bahiya Sidar by ignoring the statement of Sadhani Bai herself ?

2. Whether the lower appellate Court was justified in holding that defendant Leelaram was not the son of Bahiya Sidar ?”

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

2. The suit property admittedly belonged to one Bahiya Sidar. Plaintiff-Sadhani Bai filed a suit stating inter-alia that she being the daughter of

Bahiya Sidar is entitled to inherit the property held by her father Bahiya Sidar, which defendant No.1 denied and set-up a plea that he is son of Ananatam, but Bahiya Sidar had maintained him, also got him married and kept him like son and therefore, he got his name mutated in revenue records, as such, he has inherited the suit property. The trial Court after appreciating oral and documentary evidence available on record, by its order dated 16.11.98, held that the plaintiff is daughter of Bahiya Sidar, but dismissed the suit on the ground of limitation and other grounds, which the plaintiff assailed by way of appeal, in which the first appellate Court set-aside the judgment and and decree of the trial Court and held that the plaintiff is daughter of Bahiya Sidar and is entitled to inherit the property left by her father and the suit is not barred by limitation, against the judgment and decree of the first appellate Court, this second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed by the appellants/defendant, in which, substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

3. Mr.Akhilesh Kumar, learned counsel for the appellants/defendant, would submit that the first appellate Court is absolutely unjustified in holding that the plaintiff is daughter of Bahiya Sidar and the suit is not barred by limitation. He would further submit that original defendant is son of Bahiya Sidar, therefore, he is entitled to inherit the property held by Bahiya Sidar, as such, the judgment and decree of the first appellate Court deserves to be set aside.
4. Mr.F.S.Khare, learned counsel for respondent No.1/plaintiff, would

support the impugned judgment and decree.

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the records with utmost circumspection.
6. The trial Court returned the finding that the plaintiff is daughter of Bahiya Sidar by appreciating oral and documentary evidence available on record, but ultimately dismissed the suit, which the defendant did not challenge in first appeal preferred by the plaintiff either by filing cross-appeal or cross-objection. So that finding has become final that the plaintiff is daughter of Bahiya Sidar and that has been further affirmed by the first appellate Court, as such, the finding of fact recorded by two Courts below that the plaintiff is daughter of Bahiya Sidar is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record.
7. Original defendant No.1-Leelaram in para-11 of his written statement has clearly admitted that he is not son of Bahiya Sidar, but he is his brother's son namely, Anantram and since Bahiya Sidar had maintained him like son from the age of 6-7, therefore, his name got mutated in revenue records and therefore, he is entitled to inherit the suit property, which the first appellate Court did not accept. Merely because defendant No.1 was maintained by Bahiya Sidar and also got him married, he does not become son of Bahiya Sidar unless it is proved and established that he was adopted by Bahiya Sidar in accordance with applicable law, which is absolutely lacking. There is no pleading that Bahiya Sidar had ever adopted defendant No.1 in accordance with

law, as such, there is no evidence to hold that defendant No.1 is son of Bahiya Sidar. The first appellate Court has rightly held that the plaintiff is daughter of Bahiya Sidar and is entitled to inherit the property held by her father Bahiya Sidar. I do not find any illegality or perversity in the finding recorded by the first appellate Court. The substantial questions of law are answered in favour of the plaintiff and against defendant No.1.

8. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).
9. Decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-