

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 47 of 2008**

Panchu Satnami S/o Bairkhan, Aged about 46 years,
Occupation Cultivator, R/o Banjhi Mouha, Tahsil
Kawardha, District Kabirdham, Chhattisgarh.

-- Appellant/Defendant No. 1

Versus

1. Ful Bai D/o Bairkhan, Aged about 45 years, R/o
Kosmanda, Post Jhirouni, Tahsil Kawardha,
District Kabirdham, Chhattisgarh. **– Plaintiff**
2. Baiskhiya D/o Bairkhan, Aged about years, R/o
Banjhi Mouha, Tahsil Kawardha, District
Kabirdham, Chhattisgarh. **– Defendant No. 2**
3. State of Chhattisgarh, through Collector,
Kawardha, District Kabirdham, Chhattisgarh.

--- Respondents

For Appellant	: Mr. Malay Shrivastava, Advocate
For Respondent No. 1	: Mr. Sudhir Verma, Advocate
For State	: Mr. Ravi Bhagat, Deputy Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

01/10/2019

1. The two substantial questions of law involved,
formulated and to be answered in this second
appeal preferred by the appellant/defendant No. 1
state as under:

"A. Whether in view of the testimony of Beniram D.W.2 and the admission by the respondent No. 1/plaintiff, both the Courts below ought to have held that respondent No. 1/plaintiff had received a sum of Rs. 2,500/- as her share in partition ?

B. If yes, whether the appeal deserves to be allowed on this count ?"

(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. Suit property bearing Khasra No. 58/2 admeasuring 0.05 acre situated at village Banjhi Mouha, Tahsil Kawardha, District Kabirdham was originally held by Bairkhan Satnami who had one son namely Panchu Satnami i.e. defendant No. 1 and two daughters namely Ful Bai and Baiskhiya i.e. plaintiff and defendant No. 2 respectively.
3. Plaintiff – Ful Bai filed a civil suit for declaration of title, partition and possession stating *inter alia* that she is entitled for 1/3rd

share in the suit property as it was the self-acquired property of her father Bairkhan.

4. By filing their written statement, defendants No. 1 and 2 set up a plea that plaintiff and defendant No. 2 both have relinquished their share in favour of defendant No. 1 by taking a sum of ₹ 2,500 /- and therefore, plaintiff is not entitled for decree as claimed by her.
5. Learned trial Court, upon consideration of oral and documentary evidence on record, vide judgment and decree dated 10/05/2007, decreed the suit of the plaintiff by holding that plaintiff is entitled for $1/3^{\text{rd}}$ share in the suit property as it was the self-acquired property of her father Bairkhan and moreover, it has also not been proved that plaintiff and defendant No. 2 have relinquished their share in favour of defendant No. 1.
6. Against the judgment and decree passed by the trial Court, defendant No. 1 preferred an appeal under Section 96 of the CPC wherein learned first appellate Court, by its judgment and decree dated 11/06/2007, affirmed to the findings recorded by the trial Court and dismissed the appeal of defendant No. 1, being aggrieved by which, this

second appeal has been preferred by defendant No. 1/appellant herein in which two substantial questions of law have been framed on 06/02/2008 and have been set out in the opening paragraph of this judgment.

7. Mr. Malay Shrivastava, learned counsel appearing for the appellant/defendant No. 1 would submit that both the Courts below have concurrently erred in holding that plaintiff has not relinquished her share in the suit property in favour of defendant No. 1, as such, the judgment and decree passed by both the Courts are liable to be set aside and the second appeal deserves to be allowed.

8. Mr. Sudhir Verma, learned counsel appearing for respondent No. 1/plaintiff would support the impugned judgment and decree and would submit that the second appeal deserves to be dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

10. It is not in dispute that the suit property was the self-acquired property of Bairkhan, as such,

both the Courts below have rightly concluded that since the suit property is the self-acquired property of Bairkhan, therefore, plaintiff and defendant No. 2 as well as defendant No. 1, being the daughters and son of Bairkhan respectively, are all entitled for $1/3^{\text{rd}}$ share each in the suit property.

11. With regard to the plea raised by defendant No. 1 that plaintiff and defendant No. 2 have relinquished their share in favour of defendant No. 1, both the Courts below have concurrently held that there is no evidence on record, either oral or documentary, to establish the fact of relinquishment made by plaintiff and defendant No. 2 in favour of defendant No. 1. and consequently, decreed the suit of the plaintiff.

12. In this regard that defendant No. 1 has taken through the statements of plaintiff and defendant No. 2 but could not point out any admission or evidence in which they have admitted the fact of relinquishing their share in the suit property in favour of defendant No. 1. Thus, the finding recorded by both the Courts below that plaintiff has not relinquished her share in the suit property in favour of defendant No. 1 is a

pure and simple finding of fact which is based on evidence available on record which is neither perverse nor contrary to record.

13. The second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

Harneet