

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 367 of 2018

Robert Tirkey, S/o- Dhadhu, Aged about- 65 years, By Caste - Uraon, R/o- Village Jumaikela, Tahsil- Kansabel, District -Jashpur (C.G.) through General Power of Attorney Holder Ku. Anita Tirkey, D/o- Robert Tirkey, Aged about -36 years, By Caste- Uraon, R/o- Bhilai, District- Durg (C.G.)

---- Appellant

Versus

1. Roshan Kumar Tirkey, S/o- Bhinsent @ Vincent Tirkey, Aged about- 46 years, By- Caste Uraon, R/o- Village Jumaikela, Tahsil- Kansabel, District- Jashpur (C.G.) (Plaintiff)
2. Fulkeriya, W/o- Fuljens, Aged about- 67 years, By Caste - Uraon, R/o- Village - Jumaikela, Tahsil - Kansabel, District- Jashpur (C.G.)
3. State of Chhattisgarh, Through The Collector, Jashpur, District Jashpur (C.G.)

---- Respondents

For Appellant	: Mr. Sunil Sahu, Advocate
For Respondents	: Ms. Suchita Bias, Advocate on behalf of Mr. A.K. Prasad, Advocate
For State/Respondent	: Mrs. Shubha Shrivastava, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

16/09/2019

1. This appeal is preferred against the judgment/ decree dated 24th April, 2018 passed by District Judge, Jashpur (C.G.) in Civil Suit No. 2-A/2017 wherein the said Court declared 1/3rd share of respondent No.1/plaintiff in the property of Dhadhu which is mentioned in the plaint and recorded as per Ex.P-4, the total area of the land is 7.540 ha. situated in the village- Jumaikela, Tahsil- Kansabel, District- Jashpur (C.G.).

2. In the present case, the property was originally owned by Puyo and after partition between the Puyo and his sons namely Suku and Dhadhu. Said Dhadhu acquired the said property as mentioned above. Admittedly Dhadhu had two sons namely Bhinsent @ Vincent and Robert and three daughters namely Kilostika, Fulkeriya and Shanti Gresh. Admittedly Kilostika and Shanti Gresh died without having successor. Now, Dhadhu had 3 successors namely Vincent, Robert and Fulkeriya. Respondent No. 1 filed suit, claiming to be the son of Vincent which was defended by the appellant before the trial Court on the ground that Vincent was unmarried, therefore, respondent No.1 is not his son. Respondent No.1 adduced evidence of himself as Roshan Tirkey (PW-1), Romanus (PW-2), Nikodimus (PW-3) and Joseph (PW-4) and all these witnesses deposed before the trial Court in one voice that Vincent was married to Flora. Version of these witnesses is unrebutted and is supported by marriage certificate of Vincent and Flora (Ex.P-8). School certificate of Roshan, other documents and oral evidence goes to show that Vincent was married with Flora and respondent No.1- Roshan is his son therefore, there is no scope to say that Vincent was unmarried.
3. The case of appellant is solely based on the ground that Vincent was unmarried but looking to the ample, oral and documentary evidence, it is established that Vincent was married to Flora and respondent No. 1 is his son. Therefore,

ground regarding Vincent's marriage is clearly rebutted and argument advanced on behalf of the appellant is unbelievable in this ground.

4. From the record of the trial Court, it is clear that Dhadhu has two sons namely Vincent and Robert and one daughter namely Fulkeriya. Therefore, property of Dhadhu shall be divided between three successors and one share will go to respondent No.1 who is sole son of Vincent, one share will go to Robert and another one share will go to Fulkeriya.
5. On an overall assessment, it is not a case where full consideration of this appeal is required. It is simple case of partition between three successors of Dhadhu which is substantiated by record and there is no scope to interfere with the finding of the trial Court.
6. Accordingly, the appeal is liable to be and is hereby dismissed at motion stage, parties to bear their own cost.

Sd/-
(Ram Prasanna Sharma)
Judge