

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 107 of 2008****Judgment reserved on 02.09.2020****Judgment delivered on 17.09.2020**

1. Budhram, S/o. Late Jaljeet Gond, Occupation
Agriculture R/o Village Pasla, Tahsil
Baikunthpur, District Koriya (C.G.)

2. Jaggu Singh (Dead) Through : Legal heirs

2.a Shanti Bai, D/o. Late Jaggu Singh, W/o.
Devnarayan Singh, aged about 35 years, R/o.
Salka, Tah. Baikunthpur, District Koria (C.G.)

2.b Kamta (wrongly mentioned as Kanta D/o. Late
Jaggu Singh), S/o. Late Jaggu Singh, aged
about 32 years, R/o. Salka, Tah. Baikunthpur,
District Koriya (C.G.)

2.c Banarsi, S/o Jaggu Singh (wrongly written as
D/o. Late Jaggu Singh), aged about 33 years, R/o
Pasla, Tah. Baikunthpur, District Koria (C.G.)

2.d Munni Bai, D/o. Late Jaggu Singh, W/o.
Rajmohan Gond, R/o. Kochila, Tah. Baikunthpur,
District Koria (C.G.)

2.e Daiya Bai, D/o. Late Jaggu Singh, W/o.
Rambatu Gond, R/o. Salka, Tah. Baikunthpur,
District Koria (C.G.)

---- Appellants/Plaintiffs.

Versus

1. Jan Sai (since deceased) through Lrs:-

1.A. Ganga, W/o late Santosh Kumar, D/o Late Jan
Sai, aged about 35 years, R/o Amapara,
Tahsil Baikunthpur, District Koria (C.G.)

1.B. Parwati, D/o Late Jan Sai, W/o Fuleshwar,
aged about 28 years, R/o Village – Kaluwa, Tahsil
and District Surajpur (C.G.)

1.C Prem Kumar, W/o Shivdhari, D/o Late Jan Sai, aged about 45 years, R/o Village – Nawapara, District Koria (C.G.)

1.D. Fulmat Bai, Wd/o Late Jan Sai, aged about 70 years, R/o Village – Palsa, Tahsil – Patna, District Koria (C.G.)

2. Ram Sai (since deceased) through Lrs:-

2.a. Dhanmat, W/o late Ram Sai, aged about 55 years,

2.b. Lal Sai, W/o late Ram Sai, aged about 45 years,

2.c. Sant, S/o Late Dharma, aged about 25 years,

2.d. Anju, D/o Late Dharma, aged about 26 years,

2.f. Maanmati, W/o Lal Sai, aged about 35 years,

All R/o Village – Robo, Post- Saraiganna, P.S. – Baikunthpur, District Koria (C.G.)

3. Bifaiya Bai (deleted)

4. Heera Sai, S/o. Late Bira Gond (wrongly written as Pria Gond), R/o. Village – Jampani, Tahsil Baikunthpur, District Koria (C.G.)

5. Mst. Ghuran Bai, D/o. Late Bira Gond (Wrongly written as Pira Gond), W/o. Shivmangal Singh Gond, R/o. Village – Fatakpur, Post Gudapara (Shreenagar), Tah. Surajpur, District Surguja (C.G.)

6. Mst. Munni Bai (deleted).

7. The State of Chhattisgarh, Through Collector, Koria (C.G.)

----- Respondents/defendants.

For Appellants : Shri A.K. Prasad, Advocate.

For Respondents No. 1(b), 2(b), 2(c), 2(d), 2(f), 4 & 6
: Shri Ashok Kumar Shukla, Advocate.

For Respondent No. 7 : Dr.Veena Nair, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment [C.A.V.]

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by plaintiffs/legal heirs of original plaintiff herein states as under:

“Whether the first appellate Court was justified in reversing the judgment and decree of the trial Court after having held that defendants No. 1 to 3 are sons of Jai Singh and not the sons of Patraj Singh by recording a finding which is perverse and contrary to record ?

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

(2) The dispute relates to the suit land situated at village Pasla, Tahsil Baikunthpur, District Korla admeasuring 14.96 acres [6.052 hectare]. The civil suit was instituted by original plaintiff- Jaljeet [who died during pendency of suit] stating inter alia that his father Patraj Singh Gond, during survey settlement, was granted patta in respect of the suit land and he died in the year 1940 and his grandmother maintained him as his mother Fulmet Bai left the village after death of his father and started residing with one Jai Singh, who was working as village servant (Harwaha) in the house of Patraj Singh Gond and out of their illicit relationship, defendants No. 1 to 3 namely

Jan Sai, Ram Sai & Beera Sai were born. He further pleaded that Jai Singh also died in the year 1942-43 and thereafter again his mother Fulmet Bai came to village Pasla and started residing with him as she became hapless and helpless after death of Jai Singh and he [original plaintiff - Jaljeet Gond] allowed her mother - Fulmet Bai and her three sons (defendants No. 1 to 3 namely Jan Sai, Ram Sai and Beera Sai) to stay with him and on that account, names of defendants No. 1 to 3, being uterine brothers, suit land came to be recorded in the revenue records jointly being sons of Patraj Singh Gond but they have no right & title over the suit land. Thereafter, taking advantage of recording their names in the revenue records, defendants No. 1 to 3 filed application for partition under Section 178 of the Chhattisgarh Land Revenue Code, 1959 before the Tahsildar and the Tahsildair, on the objection, adjourned the dispute giving them time to get the title adjudicated leading to filing of the suit. It was finally prayed that plaintiff is only the son of Patraj Singh Gond to whom suit property belonged and defendants No. 1 to 3 are not sons of Patraj Singh Gond out of his wedlock with Fulmet Bai and if any semblance of right they have, they deemed to have been extinguished by doctrine of adverse possession and his exclusive, uninterrupted, continuous and peaceful possession be declared over the suit land by appropriate decree.

(3) Resisting the suit, defendants No. 1 & 2 filed their joint written statement stating *inter alia* that Patraj Singh Gond & Jaisingh were close relatives and they have jointly acquired the suit property at village Pasla and Patraj Singh died in the year 1940 whereas Jai Singh died in the year 1942 and survey settlement took place in the year 1944-1945 and in the year 1947-48, bandobast patta was granted. It was further pleaded that Fulmet Bai, who was wife of Patraj Singh and mother of the plaintiff, after the death of Patraj Singh started living with their father Jai Singh as a Keep (रखैल पत्नी) and both are residing together at village Bheed and therefore, Jai Singh also became Bhumiswami of the the suit property. The defendants No. 1 & 2, by way of amendment dated 18.12.1997, paragraph 17-B was inserted in the written statement stating that their father was late Jai Singh and, therefore, they are entitled for $\frac{1}{2}$ share in the suit property.

(4) The defendant No. 3- Beerasai separately filed the written statement and admitted the claim of the plaintiff and stated that he and defendants No. 1 & 2 are the sons of Jai Singh, out of relationship of Fulmet Bai (mother of the plaintiff) with their father Jai Singh and plaintiff is the sole owner of the property left by Patraj Singh and he has no right and title over the suit land.

(5) The trial Court, upon appreciation of oral and

documentary evidence available on record, by its judgment dated 19.12.1997, decreed the suit holding that original plaintiff - Jaljeet Gond is the only son of late Shri Patraj Singh Gond and the suit property was the exclusive property of late Patraj Singh; and defendants No. 1 to 3 are the sons of Jai Singh and not the sons of Patraj Singh and it is the exclusive property of original plaintiff - Jaljeet Gond, being the son of late Patraj Singh and defendants No. 1 to 3 have no right and title over the suit property. It was also held that the suit property was not jointly acquired by Patraj Singh and Jai Singh.

(6) Feeling aggrieved and dissatisfied with the judgment & decree of the trial Court, the defendants No. 1 & 2 preferred first appeal under Section 96 of the Code of Civil Procedure before the First appellate Court. The First Appellate Court, upon re-appreciation of oral and documentary evidence available on record, held that defendants are not sons of Patraj Singh but partly allowed the appeal and held that defendants No. 1 to 3 are also entitled for $\frac{1}{2}$ share in the suit property and also granted permanent injunction in part in favour of the plaintiff.

(7) Questioning the judgment & decree of the first appellate Court, the plaintiff has preferred instant second appeal, in which substantial question of law has already been formulated and set out in opening paragraph of the

judgment for sake of convenience.

(8) Mr. A.K. Prasad, learned counsel appearing for the appellants/plaintiffs would submit that the first appellate Court went wrong in holding that defendants No. 1 to 3 are also entitled for $\frac{1}{2}$ share in the suit property after having held that defendants No. 1 to 3 are not the sons of Patraj Singh but sons of Jai Singh by holding that suit property was jointly acquired by Patraj Singh and Jai Singh by recording a finding, which is absolutely perverse to the record. He would further submit that merely because the names of the original plaintiff and defendants No. 1 to 3 were jointly recorded in the revenue records would not confer any title to the defendants No. 1 to 3 as neither joint acquisition nor any joint possession over the suit land was proved by defendants No. 1 to 3, as such, judgment & decree passed by the first appellate Court to the extent of granting $\frac{1}{2}$ share in the suit property to defendants No. 1 to 3 are liable to be set aside and appeal deserves to be allowed in part.

(9) On the other hand, Shri Ashok Kumar Shukla, learned counsel appearing for Respondents No. 1(b), 2(b), 2(c), 2(d), 2(f), 4 & 6 would submit that the first appellate Court has rightly granted $\frac{1}{2}$ share in the suit property to the defendants No. 1 to 3 as the suit property was jointly acquired by father of defendants No. 1 to 3 namely Jai

Singh along with Patraj Singh, as such, $\frac{1}{2}$ share in the suit property granted to defendants No. 1 & 2 cannot be taken exception by the plaintiff in second appeal, as such, the appeal deserves to be dismissed.

(10) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(11) Admittedly, original plaintiff – Jaljeet Gond is the son of Patraj Singh. Fulmet Bai was his married wife. Patraj Singh died in the year 1940 and after the death of Patraj Singh, Fulmet Bai left plaintiff – Jaljeet Gond with his grandmother at village Pasla and went to village Bhadi and started living with one Jai Singh as his keep (रखैल पत्नी) and out of cohabitation with Jai Singh, gave birth to three children namely Jan Sai, Ram Sai & Beera Sai (died), defendants No. 1 to 3 herein, thereafter, Jai Singh also died in the year 1942-43 and again Fulmet Bai came alongwith her three sons i.e. Jan Sai, Ram Sai & Beera Sai (defendants No. 1 to 3) at village Pasla and started residing with plaintiff Jaljeet Gond and he allowed her mother and her three sons to stay with him. Bandobast patta was granted in the year 1947-48 and thereafter the suit lands, names of plaintiff and defendants No. 1 to 3 was jointly recorded in revenue records and taking

advantage of jointly recording their names alongwith the plaintiff of suit land in the revenue records, when the defendants No. 1 to 3 applied for partition, dispute arose between the parties and the suit was filed by the plaintiff stating that the suit property is his father's exclusive property, in which, his uterine brothers i.e. defendants No. 1 to 3 have no right, title and interest and declaration be granted that defendants are not sons of Patraj Singh and his possession be confirmed.

(11-A) Defendants No. 1 & 2, in their separate written statement, have admitted the fact that plaintiff's mother – Fulmet Bai though started residing with their father Jai Singh as his keep (रखैल पत्नी) and in-fact no marriage has ever taken place between Jai Singh & Fulmet Bai. By way of amendment (paragraph 17-B) introduced on 18.12.1997, the defendants No. 1 & 2 admitted that their father is Jai Singh and pleaded the suit property was jointly acquired by their father Jai Singh and Patraj Singh, therefore, they are entitled for half share in the suit property. Defendant No. 3 – Beera Sai supported the claim of the plaintiff stating that he and defendants No. 1 & 2 are the sons of Jai Singh.

(12) The trial Court by its judgment & decree has clearly held that the defendants No. 1 & 3 are the sons of Jai Singh out of his relationship with Fulmet Bai (plaintiff's

mother) , as such, they are not the sons of Patraj Singh (plaintiff's father) and further held that mere recording of the names in the revenue records showing the defendants No. 1 to 3 as sons of Patraj Singh will not confer any title to them as the suit property is the exclusive property of Patraj Singh only and decreed the suit to the extent of holding that original plaintiff – Jaljeet Singh is only the successor of the property shown in paragraph two of the plaint and the defendants No. 1 to 3 are not the sons of Patraj Singh Gond and accordingly confirmed the exclusive possession of the plaintiff over the suit land.

(13) The first appellate Court also concurred with the finding the defendants No. 1 to 3 are not the sons of Patraj Singh, rather they are sons of Jai Singh. Apart from this, the point which deserves to be noticed here that even marriage of Fulmet Bai (plaintiff's mother) with Jai Singh was never solemnized but they were living together and out of their wedlock, the defendants No. 1 to 3 were borne as the Fulmet Bai was a keep of Jai Singh.

(14) The Madhya Pradesh High Court in the matter of **Reshamlal Baswan v. Balwant Singh Jwalasingh Punjabi**¹ has clearly held that children borne to married woman from illicit relationship is not entitled to benefit under Section 16 of the Hindu Marriage Act and benefit of Section 16 of the Hindu Marriage Act is available only where there

1 1994 MPLJ 446

is marriage but not hit by section 11 of the Hindu Marriage Act and held as under:-

"6. The decision of Bombay High Court in **Laxmibai Nagappa Matiwadar and others v. Limbabai Nagappa Matiwadar**², 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, 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 right 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, 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."

(15) As such, since the defendants are the sons of Jai Singh out of illicit relationship with Fulmet Bai and no marriage of Jai Singh was ever solemnized with Fulmet Bai, therefore, they are not even the illegitimate children/sons of Jai Singh for the purpose of Section 16(3) of the Hindu Marriage Act, 1956 (henceforth "Act of 1956"). As such, the findings of the two courts below holding that defendants No. 1 to 3 are not the sons of Patraj Singh out of his wedlock with Fulmet Bai is a finding of fact based on material available on record and it is hereby **reaffirmed**.

(16) The first appellate Court interfered with the

judgment & decree of the trial Court decreeing the suit in favour of the plaintiff merely on the ground that though the defendants No. 1 to 3 are the sons of Jaisingh with Fulmet Bai but since settlement held in the year 1948, the suit property came to be recorded jointly in the name of plaintiff and defendants and in 1954-1995 Adhikar Abhilekh panji (Ex.D-7), it came to be recorded jointly and, therefore, the defendants are the Bhumiswami of the suit property alongwith the plaintiff. Name of the plaintiff and defendants have been recorded in the Adhikar abhilekh (Ex.D-7) followed by document Ex.P-8 and it has also been recorded that they all are the sons of Patiraj Singh Gond, whereas two courts below have rightly recorded and this Court has also re-affirmed the said finding in preceding paragraphs holding that defendants are not the sons of Patraj Singh and they are the illegitimate sons of Jai Singh. Thus, though the name of plaintiff and defendants have been recorded in the revenue records as sons of Patiraj Singh but in view of the findings recorded by two courts below and of this Court that defendants are not the sons of Patraj Singh, Adhikar Abhilekh Panji 1954-55 (Ex. P-7) & Jamabandi/Record of Rights (Ex.P-8) cannot be further relied upon to hold that the suit property was jointly acquired by Patraj Singh and Jai Singh.

(17) The finding recorded by the first appellate Court that the suit property was jointly recorded in the name of

Jai Singh and Patraj Singh Gond is not borne out from the record as both are the residents of different villages and it has also been held that since the Patiraj Singh died leaving behind Fulmet Bai as his widow, she joined the company of Jai Singh at village Bheed and they give birth to defendants No. 1 to 3 without marriage, as such, they are not illegitimate children for the purpose of Section 16(3) of the Hindu Marriage Act, but thereafter, she again joined the plaintiff – Jaljeet Singh Gond and plaintiff in all magnanimity allowed her mother along with his three uterine brothers i.e. defendants No. 1 to 3 to stay with him, thus, it cannot be held that the suit property was jointly acquired by Patraj Singh and Jai Singh. Even otherwise, defendants No. 1 to 3 being children of Jai Singh out of illicit relationship with Fulmet Bai will even not be illegitimate sons for the purpose of Section 16 (3) of the Hindu Marriage Act.

(18) In the matter of **Muddasani Venkata Narsaiah (D) Th. Lrs.v. Muddasani Sarojana**³, their Lordships of the Supreme Court clearly held that entry of possession in some revenue records simplicitor does not give any right to a person concerned to retain possession of the property and pointed out the significance and effect of revenue entry.

(19) Likewise, the Supreme Court in the matter of **Prahlad**

3 (2016) 12 SCC 288

Pradhan v. Sonu Kumhar⁴ has held that the entries in the revenue records do not confer title to a property, nor they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question.

(20) In light of above-stated principles of law, it is clear that merely recording the joint names of plaintiff and defendants No. 1 to 3 in the revenue records, it cannot be held that it was jointly acquired by Patraj Singh and Jai Singh as no oral and documentary has been brought on record except documents Ex.D-7 & D-8 and those documents have even not been proved by examining any revenue officer and no witness of the village has been examined to demonstrate that at any point of time, it was jointly acquired by Patraj Singh and Jai Singh. Merely because, defendants came from their village along with Fulmet Bai to village Pasla and joined the company of plaintiff – Jaljeet Singh and thereby their names came to be jointly recorded in the revenue records along with the plaintiff, it cannot be held that the suit property was jointly acquired by them particularly when it has been alleged that Jai Singh was working with Patraj Singh as Harwaha (village servant) and it has also been held that defendants No. 1 to 3 are even not the illegitimate sons of Jai Singh under Section 16(3) of the Act of 1956, as such, the finding recorded by the

4 (2019) 10 SCC 259

first appellate that the suit property was jointly acquired by Patraj Singh Gond and Jai Singh and since the revenue records were jointly recorded the names of plaintiff and defendants No. 1 to 3, they were joint owner of the suit property is a finding, which are not borne out from the record and it is a finding, which is perverse to the record and liable to be set aside.

(21) The first appellate Court has also drawn adverse inference against the plaintiff from the fact that the plaintiff has made alternative prayer in paragraph 19(अ) (1) of the plaint claiming that in case the plaintiff is not found full owner of the suit property, he should be granted $\frac{1}{2}$ share in the suit property. It is well settled law that party to the suit is entitled to take alternative plea, which is permissible under the law, but it cannot take any inconsistent and destructive plea. However, taking the alternative plea by the plaintiff, would not confer any right or ground to the other side to argue that by taking alternative plea, the plaintiff has admitted the title of defendants. Barring the parties to take alternative pleading would promote multiplicity of the proceedings and allowing the parties to take alternative pleading would avoid the multiplicity of the proceedings, therefore, the adverse inference drawn by the first appellate Court on account of alternative pleading taken by the plaintiff is also clearly impermissible and unsustainable as well.

(22) The first appellate Court has also taken note of the plea of adverse possession taken by the plaintiff holding that plaintiff has failed to prove the ouster of the defendants from the suit land, again it was alternative plea taken by the plaintiff, which the trial Court has not considered and granted and, therefore, the first appellate Court was not required to deliberate upon the said issue, which was not brought before the first appellate Court as a point for determination and, thus, finding recorded by the first appellate Court in this regard is totally unnecessary. The first appellate Court has granted decree for declaration of title and partition to the plaintiff as well as defendants, which was never claimed by either parties to the dispute. The plaintiff only claimed the relief of declaration that plaintiff is legal heir of Patraj Singh and defendants No.1 to 3 are not the legal heirs of Patraj Singh and confirmation of possession, whereas the first appellate Court has exceeded its jurisdiction by granting relief of declaration of title to the plaintiff as well as defendants and further granted relief of permanent injunction, which was not prayed for, as such, both the reliefs were never claimed by the plaintiff as well defendants.

(23) Consequently, judgment and decree of the first appellate Court to the extent of holding that defendants

are also entitled for $\frac{1}{2}$ share in the suit property and granting injunction of $\frac{1}{2}$ share in the suit property in favour of plaintiff is totally contrary and facts and law available on the record and to that extent judgment & decree of the first appellate Court is set aside and that of trial Court is restored in toto.

(24) The second appeal is allowed to the extent indicated hereinabove.

(25) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

