

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 374 of 2008**

Kallu S/o Ram Singh, Aged 30years, Agriculturist,
R/o Basinjhor, Tahsil Kawardha, District
Kabirdham, Chattisgarh.

--- Appellant/Defendants No. 1

Versus

1. Bhuneshwar S/o Sakharam (died) through Lrs. :-
(i) Rekha Bai D/o Late Bhuneshwar W/o Dinesh, Aged
35 Years.

(ii) Sevati D/o Bhuneshwar, Aged about 33 years.

(iii) Sewak Sahu S/o Bhuneshwar, Aged 31 years.

All are R/o Basinjohari, Tahsil Kawardha, District
Kabirdham, Chhattisgarh. **(Lrs. of Plaintiff No. 1)**

2. Bundkunwar W/o Late Sawal, Aged 60 years,
Agriculturist, R/o Basinjohari, Tahsil Kawardha,
District Kabirdham, Chhattisgarh. **(Plaintiff No. 2)**

3. Sia Bai W/o Ram Kumar, Aged 45 years,
Agriculturist, R/o Kherbana, Tahsil Kawardha,
District Kabirdham, Chhattisgarh. **(Plaintiff No. 3)**

4. Jethu S/o Jagdev (died) through Lrs. :-

(i) Meena Sahu D/o Late Jethu.

(ii) Seema Sahu D/o Late Jethu.

(iii) Gadbad Ram Sahu S/o Late Jethu.

(iv) Amrika Bai Sahu D/o Late jethu.

All are R/o Khera Near Kuruwa, Tahsil Kawardha,
District Kabirdham, Chhattisgarh.

(Lrs. Of Defendant No. 2)

5. Chatur S/o Late Sawal, Aged about 35 years,
Agriculturist, R/o Basinjohri, Tahsil Kawardha,
District Kabirdham, Chhattisgarh. **(Plaintiff No. 4)**

6. Pyarelal, S/o Late Sawal, Aged about 32 years, Agriculturist, R/o Basinjohari, Tahsil Kawardha, District Kabirdham, Chhattisgarh. (**Plaintiff No. 5**)

7. State of Chhattisgarh, Through Collector, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

--- Respondents

For Appellants	:- Mr. Rajeev Shrivastava and Mr. Malay Shrivastava, Advocates
For State	:- Ms. Shivali Dubey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/defendant No. 1 under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court partly reversing the judgment and decree of the trial Court dismissing the suit of the plaintiffs.

2. Mr. Malay Shrivastava, learned counsel for the appellant/defendant No. 1 would submit that the first appellate Court is absolutely unjustified in holding that plaintiff No. 1 Bhuneshwar would be entitled for $\frac{1}{2}$ share in the suit land held by Dhansirbai admeasuring 3.02 acres in total and $\frac{1}{4}$ share in the property shown in Schedule 'D' appended with the plaint by recording a finding which is perverse and contrary to the record, as

Such, the appeal deserves to be admitted by formulating substantial question of law for determination.

3. Sakharam had three sons namely Bhuneshwar (Plaintiff No. 1), Sawal and Balaram. Plaintiff No. 2 Bundkunwar is the widow of Sawal and plaintiff No. 3, 4 and 5 are the sons and daughter of Sawal. The dispute herein relates to the property held by Balaram which was inherited by her widow Dhansir and after her death, it was inherited by her only daughter Budhwantin who has also died. Defendant No. 1 is the husband of Budhwantin and son-in-law of Dhansir.

4. Plaintiffs filed a suit for declaration of title, partition and possession over the suit land admeasuring 3.02 acres in total and the property shown in Schedule 'A', 'C' and 'D' of the plaint stating that since, the suit land, being held by Balaram and thereafter his widow Dhansir, was succeeded by their only daughter Budhwantin who has also died, plaintiffs being the legal heirs of Dhansir, would now inherit the suit land as they are also in possession of the said suit land to which defendant No. 1 opposed by filing his written statement and further filing counter-claim claiming the suit land by way of inheritance and by Will

dated 01/06/2006 allegedly executed by Dhansir in favour of defendant No. 1.

5. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit and decreed the counter-claim and defendant No. 1 was declared to be the successor in interest of Dhansir against which plaintiffs preferred an appeal under Section 96 of the CPC wherein learned first appellate Court partly interfered with the judgment and decree of the trial Court and affirmed the decree granting counter-claim, but so far as the suit land admeasuring 3.02 acres is concerned, it was held that plaintiff No. 1 is entitled for $\frac{1}{2}$ share in the suit land and $\frac{1}{4}$ share in the property shown in Schedule 'D' of the plaint, being the Class II heir of Dhansir as per Section 15 (1) (b) of the Hindu Succession Act, 1956.

6. Admittedly, the suit land was held by Balaram and after his death, it was inherited by his widow Dhansir and thereafter, her daughter Budhwantin, but since, Budhwantin also died, the suit land would revert to the heirs of the husband of Dhansir under Section 15(1)(b) of the Act of 1956. The other plaintiffs excluding plaintiff No. 1 are the widow, daughter and sons of Sawal, though they are Class II heirs, but they are covered by Entry IV,

therefore, the first appellate Court has held that only plaintiff No. 1 Bhuneshwar, being Class I heir of Balaram i.e. husband of Dhansir, would get $\frac{1}{2}$ share in the suit land admeasuring 3.02 acres in total. In that view of the matter, the first appellate Court is absolutely justified in holding that only plaintiff No. 1 would be entitled for $\frac{1}{2}$ share in the suit land admeasuring 3.02 acres in total and $\frac{1}{4}$ share in the property shown in Schedule 'D' appended with the plaint which is neither perverse nor contrary to the record and does not give rise to any substantial question of law for determination.

7. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(S).

Sd/-

(Sanjay K. Agrawal)
Judge

Harneet