

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.112 of 2009

Ashwani Kumar S/o Nain Das, Satnami, Aged about 42 years, R/o Vill. Dhamna, Tah. Patan, Distt. Durg (CG)

----- Appellant/Defendant

Versus

1. Smt.Horo Bai (died) through LR's

----- Plaintiff

1(a). Mohan Lal S/o. Rama Deshlahre, aged about 65 years,

1(b). Suresh Kumar S/o Mohan Lal, aged about 35 years, Both R/o Vill. Londi, Tah. Balod, Dist. Balod (CG)

2. State of Chhattisgarh, Through Collector, Durg (CG)

----- Respondents

For Appellants: Mr.B.P.Gupta, Advocate

For Respondent No.1(a) and 1(b):

None present though served

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

05/11/2020

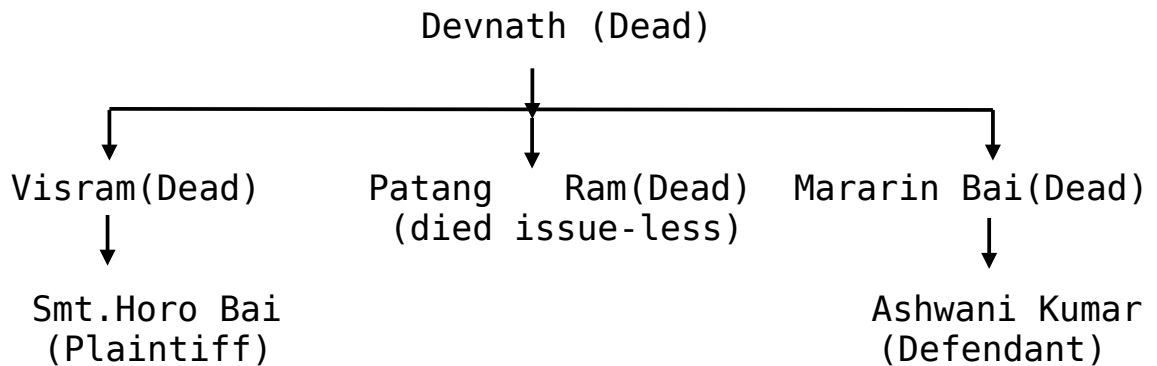
1. Proceedings of this second appeal have been taken up for final hearing through video conferencing.

2. This second appeal preferred by the sole appellant/defendant herein was admitted for final hearing on the following substantial question of law:-

“Whether the first appellate Court was justified in holding that the property of Patang Ram i.e. brother of Visram and Mararin Bai will be succeeded by LR's. of Visram exclusively, in exclusion of the LR's. Of his sister Mararin Bai ?

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

3. The following genealogical tree would demonstrate the relationship amongst the parties: -



4. The plaintiff is daughter of Visram, whereas defendant No.1 is son of Mararin Bai. Patang Ram died issueless. The dispute relates to the property left by Devnath. The plaintiff filed a suit for declaration of title and permanent injunction with regard to the suit land that though the suit land was recorded in the name of the plaintiff's father Visram and his uncle Patang Ram and they have died, but name of mother of defendant No.1 was already recorded in revenue records along with them, whereas she has already promised not to take any share in the suit land as she was not in possession of the suit land and she has died in the year 1989, but in the year 2003, defendant No.1 filed an application before the Naib-Tahsildar, Balod for entering his name in place of his mother, which she had no right and title. The Naib-Tahsildar, Balod by order dated 11.09.2003 directed his name to be

recorded along with the plaintiff leading to filing of the instant suit. It was further pleaded that as per Section 6 of the Hindu Succession Act, 1956 (hereinafter called as 'the Act of 1956'), only Visram and Patang Ram were sons of Devnath and after death of Patang Ram, notional partition between Visram and Devnath would take place and the plaintiff's father would get 2.17 acres of the land, whereas mother of defendant No.1 would get 0.73 acres of the and as such, it be declared that the plaintiff is title and possession holder of 2.17 acres of the land and defendant No.1 would be entitled for 0.73 acres of the land and decree be granted in her favour.

5. Resisting the suit, defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that the suit property is the property held by Devnath and as such, after death of Patang Ram, his mother Mararin Bai and the plaintiff's father Visram both will get 1/2 share in the suit property left by Patang Ram, apart from share in the property held by Shri Devnath and Section 8 of the Act of 1956 would be applicable and therefore, he is entitled for 1/2 share in the property left by Patang Ram along with the plaintiff.
6. The trial court upon appreciation of oral and documentary evidence available on record partly

allowed the suit and held that the plaintiff would be entitled for 1.93 acres of the land and defendant No.1 would be entitled for 0.97 acres of the land, feeling aggrieved against the judgment and decree of the trial Court, the plaintiff preferred first appeal before the first appellate Court under Section 96 of the CPC. The first appellate Court partly interfered with the judgment and decree of the trial Court and held that the plaintiff would be entitled for 2.57 acres of the land and defendant No.1 is only entitled for 0.33 decimals, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant No.1 in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment for sake of completeness.

7. Mr.B.P.Gupta, learned counsel for the appellant/defendant No.1, would submit that the first appellate Court went wrong in holding that mother of defendant No.1 would not inherit the property left by Patang Ram and it would only be inherited exclusively by the plaintiff father Visram, whereas defendant No.1's mother being the sister of Patang Ram would inherit along with plaintiff's father being Class II heir in view of Section 8 read with Section 11 of the Act of 1956. He relied upon the judgment of the Supreme

Court in the matter of **Satya Charan Dutta v. Urmila Sundari Dassi and others**¹.

8. None present for respondents No.1(a) and 1(b) though served.
9. I have heard learned counsel for the appellant/defendant and considered his submissions made hereinabove and also went through the record with utmost circumspection.
10. The suit property is admittedly held by Devnath, he had two sons namely Visram & Patang Ram and one daughter namely Mararin Bai. The suit property being coparcenary property, Devnath, Visram and Patang Ram would be coparceners, therefore, in notional partition between them, the suit land total 2.90 acres would be equally divided among Devnath, Visram and Patang Ram and each of them will get 0.96 acres of land and further Devnath's share i.e. 0.96 acre would again be divided between Visram, Patang Ram and Mararin Bai, mother of defendant No.1, thereby Visram's share would be $0.96+0.32=1.28$ and Patang Ram's share would be $0.96+0.32=1.28$ and Mararin Bai's share would be 0.33 decimals and since Patang Ram had died issueless, therefore, his share would be divided between Visram and Mararin Bai being Class-II heirs (Entry II) equally by virtue of Section 8 read with

1 AIR 1970 SC 1714

Section 11 and under Schedule-II enacted under Section 8 of the Act of 1956.

11. In order to consider the plea raised at the Bar, it would be appropriate to notice Sections 8, 11 and 19 of the Act of 1956. Section 8 of the Act of 1956 states as under:-

"8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

(a) xxx xxx xxx

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) & (d) xxx xxx xxx.

Class II

I. xxx xxx xxx

II. (1) xxx xxx xxx

(2) xxx xxx xxx

(3) brother,

(4) sister,

III to IX xxx xxx xxx."

12. Section 11 of the Act of 1956 states as under:-

"11. Distribution of property among heirs in class II of the Schedule.—The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally."

13. Section 19 of the Act of 1956 states as under:-

"19. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property,-

- (a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and
- (b) as tenants-in-common and not as joint tenants."

14. The Supreme Court in the matter of **Satya Charan Dutta**

(supra) has held that brothers and sisters of her (female Hindu) deceased husband would succeed jointly having equal share. It was further held that brother is not to be preferred to sister on the basis that brother was numbered as 3 and sister as number 4 in Entry II of Class II heirs in the schedule. It was observed as under:-

"5. We are unable to accede to the argument that the use of arabic numerals is decisive of the point whether or not the heirs specified in entry II of class II succeed simultaneously and equally. It is inconceivable that a matter of such importance should have been left to the employment of numerals alone. If the intention of the legislature was that each class of relatives shown against the arabic numerals constituted an entry express and specific provisions to that effect would have been made in the substantive sections of the Act. Indeed Section 11 says quite clearly that the property of an intestate shall be divided between the heirs specified in any one entry in Class II of the Schedule so that they share equally. That language would not be consistent with the view that the heirs shown against the arabic numerals constitute an entry within the meaning of Section 11. The Act was meant to lay down a comprehensive and uniform system of inheritance and its scheme is to prescribe a set of rules for succession to the property of male and female Hindus dying intestate. Sections 8 to 13 contain the general rules relating to succession to the property of a male Hindu including the matter of ascertainment of shares. Sections 15 and 16 contain the general rules affecting succession to the property of a female Hindu. The rules relating to preferential heirs are given in Section 10. If

the intention was to give preference among the heirs in Class II according to arabic numerals treating the same as a separate entry some provision would undoubtedly have been made in Section 11 for that purpose. As noticed before it is that section which deals with the distribution of property among heirs in class II of the Schedule. Indeed Section 11 would be wholly unnecessary if each one of the heirs mentioned in each entry of class II were to take preference to the next one in the same entry. It is also significant that in class I male and female heirs have been treated as equal. There is no reason why any distinction should have been made among the heirs in Class II on the ground of the heir being male or female. For instance, in Entry II in Class II, a brother would have preference over the sister and in his presence the later would succeed if the submission on behalf of the appellant is to be accepted. No reason or justification has been suggested for making such a distinction. Similarly on the appellant's argument the son's daughter's son should have preference over the son's daughter's daughter. That again would run counter to the whole scheme of the Act that male and female heirs should get equal treatment. It must be remembered that the Act incorporated one of the principal reforms which had become a pressing necessity owing to the changed social and economic conditions in Hindu society that in succession there should be equal distribution between male and female heirs."

15. The Supreme Court in the matter of **Krishna Minor Through his father and guardian and others v. State of Haryana and others**² has held that both brother and sister are Class II heirs and both of them are in Entry II of the Schedule enacted under Section 8 and would share the property equally in view of Section 11 of the Act. It was observed as under: -

"7. ... Another point mentioned in the written submission is that though a sister can have a such a claim, a brother cannot, and so, the

same results in discrimination. This argument is misconceived inasmuch as under the aforesaid Hindu Succession Act, both brother and sister are Class II heirs and both of them are in Entry II result of which is that because of what has been provided in Section 11 of the Act, such heirs share the property equally."

16. The Madras High Court in the matter of Thanthoni Naicker v. Kuppammal and Ors.³ laid down that the expression 'they share equally' in Section 11 refers to the individual heirs and not to any particular group of heirs as constituting one unit.

17. In the matter of Woman Govind Shindore and others v. Gopal Baburao Chakradeo and others⁴ the Full Bench of the Bombay High Court has held that in heirs in Class II there cannot be any discrimination on the ground that they are being male or female. Since the legislature has given an equal shares to the brothers and sisters, the nature of relationship of brothers and sisters must be regarded as same.

18. In view of clear legislative provisions contained in Section 11 of the Act of 1956 and in view of authoritative pronouncement by their Lordships of the Supreme Court in the above-mentioned judgments (supra), the finding of the first appellate Court that the defendant No.1's mother Mararin Bai would not succeed to the property of Patang Ram along with his brother Visram and it would exclusively be

3 AIR 1973 Madras 274

4 AIR 1984 Bombay 208

succeeded by Visram is clearly erroneous being in teeth of Entry II of the Schedule enacted under Section 8 read with Section 11 of the Act of 1956. Mararin Bai and Visram both being Class II heirs of Patang Ram both would take the property of Patang Ram equally. Accordingly, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is hereby restored by answering the substantial question of law in favour of the defendant and against the plaintiff.

19. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

20. An Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-