

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 536 of 2007**

1. Nand Kumar Bande, aged about 55 years, S/o Late Visbanta
2. Atmaram Bande, aged about 49 years, S/o late Visbanta
3. Om Prakash Bande, aged about 45 years, S/o Late Visbanta.
4. Kailash Bande, Aged about 42 years, S/o Late Visbanta.
1 to 4 R/o Village- Umaria, Tahsil- Arang, District- Raipur (C.G.)
5. Rampyari, age about 65 years, W/o Shri Bhagwani Markande, R/o Village Dondekurd, Vidhansabha, Tahsil- Dharsinva, District Raipur, C.G.
6. Devantin, aged about 63 years, W/o Shri Jeevarakhan Gilhare, R/o Village- Karmandi, Tahsil-Arang, District Raipur, C.G.
7. Pushpa, aged about 52 years, W/o Shri Ram Kumar Gayakwad, R/o village- Kosumkhutta, Tahsil- Arang, District- Raipur, C.G.
8. Uttra, aged about 39 years, W/o shri Vijay Kumar, R/o village- Khadwa, Tahsil- Abhanpur, District- Raipur, C.G.

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1. Tara Chand S/o Ramadhin Satnami, Aged about 35 years
2. Dilip Kumar S/o Ramadhin Satnami Aged about 33 years
3. Vinod Kumar S/o Ramadhin Satnami aged about 31 years
4. Vishnu s/o Ramadin Satnami aged about 29 years
5. Chot Satnami S/o Ramadhin Satnami aged about 26 years.
6. All R/o Gram- Umaria, Patwari-Hulka No.67, Tahsil-District- Raipur, C.G.

---- Respondents

For Appellant/s : Mr. Yogesh Pandey, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****30/01/2020**

1. Heard on admission.
2. This appeal is directed against impugned judgment and decree dated 25.08.2007 passed by 10th Additional District Judge, F.T.C., Raipur in Civil Appeal No.07-A of 2007, whereby the learned lower Appellate Court dismissed the plaintiff's appeal, affirming judgment and decree passed by the trial Court whereby plaintiff's suit has been dismissed.

3. Appellant-plaintiff filed a suit seeking declaration that sale deed dated 15.04.1986, executed by Sauhadra Bai was null and void on the pleadings inter alia that plaintiff's uncle Lala Satnami was first married to Puna Bai. They were issueless. Lala Satnami then performed second marriage in '*Churi*' (चूड़ी) form, with Sauhadra Bai. It was pleaded that out of wedlock of Lala Satnami with Sauhadra Bai, Hem Kumar was born. Property in dispute was purchased in the name of Hem Kumar by his father Lala Satnami. Later on, Hem Kumar also died. Sauhadra Bai, claimed herself to be sole successor of the property in dispute. Plaintiff's case was that Sauhadra Bai did not acquire any title in respect of property in dispute after death of Hem Kumar because she was not the legitimate wife of Lala Satnami. Further case of the plaintiff was validly adopted son of Lala Satnami and Sauhadra Bai did not acquire any title or interest in the property of Hem Kumar, the sale deed was null and void and it was the plaintiff and his father alone who were entitled to succeed to the property.
4. Plaintiff's case was resisted by the defendants and according to defendants, as property in dispute was held in ownership and title by Hem Kumar who died during his minority, according to the law of Succession, the property would devolve upon his mother Sauhadra Bai and thus Sauhadra Bai acquired valid title by way of succession.
5. Both the Courts below as held that the sale deed is valid as Sauhadra Bai acquired valid title.
6. Learned counsel for the appellant would argue that the Courts below have committed gross illegality and perversity in holding that Sauhadra Bai acquired title in respect of the property. According to learned counsel for the appellant, Sauhadra Bai being illegitimate wife of Lala Satnami, could not claim title through devolution by way of succession in respect of property held by Hem Kumar. Next submission is that the appellant's plea that he was validly adopted son of Lala Satnami was proved by clinching evidence but the Courts below have ignored to draw proper conclusion on the evidence of adoption in accordance with law.
7. Even if it is accepted that marriage between Lala Satnami and Sauhadra Bai was not valid, undisputedly, Hem Kumar was born out of wedlock of Lala Satnami with Sauhadra Bai. If that be so, upon death of Hem Kumar, his property would devolve in accordance with provisions contained in Section 8

of the Hindu Succession Act. The mother Sauhadra Bai is class-1 heir and therefore, she would take the property to the exclusion of her husband and son, if any because both are included as class -2 heir and not class 1. For the sake of argument, even if it is accepted that appellant was duly adopted, in that case also, at the most appellant would acquire the status of class-2 heir and not class-1 heir under the Schedule appended to the Hindu Succession Act. As per Section 8 of the Hindu Succession Act, the General rules of succession in the case of males that the property of a male Hindu dying intestate shall devolve according to the provisions of that Chapter; firstly, upon the heirs, being the relatives specified in class-1 of the Schedule. In the category of class-1 heirs, mother of Hem Kumar alone stands. Neither the father nor brother are classified as class-1 heir. Therefore, entire property of Hem Kumar would devolve on Sauhadra Bai, the father or the brother having no claim of succession along with mother of the deceased.

8. In view of the aforesaid clear legal position, the plaintiff's suit was misconceived. As upon death of Hem Kumar, his mother Sauhadra Bai succeeded to property of Hem Kumar, acquired valid title and therefore, sale deed executed by her on 15.04.1986 cannot be said to be without title. Consequently, there is no merit in this appeal as no substantial question of law is involved. Therefore, this appeal is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge