

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.59 of 2007

1. Bagar Mal, S/o late Ram Pratap, Aged about 45 years
2. Fatko Bai, W/o late Ram Pratap, Aged about 65 years

Both are by profession agriculturists, R/o Village Rakeli, Thana & Tahsil Ambikapur, Distt. Sarguja (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Dhanni, S/o late Jugeshwar Ram, Aged about 30 years,
2. Laxman, S/o late Jugeshwar Ram, aged about 20 years,
3. Putparhin Bai, W/o late Jugeshwar Ram, Aged about 47 years
4. Gendi, S/o late Ram Pratap, Aged about 46 years
5. Ganjha Ram, S/o late Ram Pratap, Aged about 36 years
6. Lal Ram, S/o Late Ram Pratap, Aged about 42 years

All are the R/o Village Rakeli, Thana & Tahsil Ambikapur, Distt. Sarguja (C.G.)

7. State of Chhattisgarh, Through Collector, Sarguja (C.G.)
- (Defendants)
---- Respondents

For Appellants: Mr. Anurag Verma, Advocate.

For Respondents No.1 to 4 and 6: -

None present, though served.

For Respondent No.5: Mr. Vaibhav Agrawal, Advocate, on behalf of
Mr. Om Prakash Agrawal, Advocate.

For Respondent No.7 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

07/01/2020

1. This second appeal preferred by the plaintiffs was admitted on the

following substantial question of law: -

“Whether reversal of the judgment and decree passed by 5th Civil Judge, Class-II, Ambikapur in Civil Suit No.192-A/2004 on the ground that the plaintiffs had failed to establish that they are the sons of Rampratap through Phadko Bai is perverse?”

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

2. The suit property was originally held by one Rampratap. Bagarmal – plaintiff No.1 and Fatko Bai – plaintiff No.2 claiming themselves to be son and wife of late Rampratap filed suit for declaration of title and permanent injunction stating inter alia that the defendants being sons and daughters of second wife of Rampratap namely, Sukhdaiya are interfering with their possession and therefore injunction be granted after declaring their title over the suit land which the defendants disputed by filing written statement and pleading that the plaintiffs are not son and wife of Rampratap, whereas, the defendants being sons and daughters of Rampratap out of his wedlock with Sukhdaiya, the plaintiffs are not entitled for decree as claimed.
3. The trial Court after appreciating oral and documentary evidence on record held that the plaintiffs are son and wife of Rampratap relying upon Exs.P-7 to P-11 which the first appellate Court reversed holding that the plaintiffs are not son and wife of Rampratap and further held that the plaintiffs are not entitled for decree and allowed the appeal against which this second appeal has been preferred by the plaintiffs under Section 100 of the CPC in which

substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

4. Mr. Anurag Verma, learned counsel appearing for the appellants herein / plaintiffs, would submit that the first appellate Court is absolutely unjustified in holding that the plaintiffs are not son and widow of late Rampratap by reversing the finding recorded on issue No.1, as such, it could not have allowed the appeal by dismissing the suit. Therefore, judgment & decree of the first appellate Court deserve to be set-aside by restoring judgment & decree of the trial Court.
5. Mr. Vaibhav Agrawal, Advocate, appearing on behalf of Mr. Om Prakash Agrawal, learned counsel for respondent No.5 herein / defendant No.3, would support the impugned judgment & decree.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. The trial Court framed an issue with regard to the fact as to whether the plaintiffs are son and widow of late Rampratap to whom the property belonged and reached to a finding on the basis of Exs.P-7 to P-11 which are copies of voters lists that the plaintiffs are son and widow of Rampratap and also specifically recorded a finding that the defendants are sons and daughters of Rampratap out of his wedlock with his second wife Sukhdaiya and clearly held that first wife of Rampratap is Fatko Bai and plaintiff No.1 is son of Rampratap through Fatko Bai which the first appellate Court has

reversed disbelieving the voters lists (Exs.P-7 to P-11). Ex.P-1 is copy of order passed in revision petition preferred by Rampratap against plaintiff No.1 against the order granting maintenance, whereas Ex.P-2 is the order passed under Section 488 of the CrPC by which the Magistrate has passed order directing enforcement of order dated 1-9-1955 against Rampratap. Similarly, Exs.P-7 to P-11 are copies of voter lists in which plaintiff No.1 is shown as son of Rampratap and plaintiff No.2 is shown as widow of Rampratap which the trial Court accepted as admissible in evidence, but the first appellate Court reversed the said finding that it has not been proved by the persons who have made entry in the voter lists.

8. Section 35 of the Indian Evidence Act, 1872, states as under: -

“35. Relevancy of entry in public record or an electronic record made in performance of duty.—An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, it itself a relevant fact.”

9. Under Section 35 of the Evidence Act, when it is the duty of public officer to make some entries in any public or other official book, it is admissible in evidence to prove the truth of facts entered as well as the fact that the entries were made by the officer. The principle is that it should be public enquiry, a public document and made by public officer; in performance of public duty specially enjoined by law (per Lord Blackburn in C.F. Sturla v. Freccia¹ and Lilley v. Pettit².)

1 (1850) 5 App Cas 623, 644

2 (1946) 1 All ER 593

10. In the matter of State of Bihar v. Radha Krishna Singh³, their Lordships of the Supreme Court laid down the following three conditions to be fulfilled before a document can be held to be admissible under Section 35 of the Evidence Act: -

(1) the document must be in the nature of an entry in any public or other official book, register or record;

(2) it must state a fact in issue or a relevant fact; and

(3) the entry must be made by a public servant in the discharge of his official duties or in performance of his duties specially enjoyed by the law of the country in which the relevant entry is kept.

11. The reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high. (See Brij Mohan Singh v. Priya Brat Narain Sinha and others⁴ and Ram Prasad Sharma v. The State of Bihar⁵.)

12. The Orissa High Court in the matter of Raghunath Behera v. Balaram Behera and another⁶ has clearly held that electoral roll being a public document is admissible evidence and it is not necessary to prove source of information on the basis whereof facts stated in the roll were recorded, nor is it necessary that the person

3 AIR 1983 SC 684

4 AIR 1965 SC 282

5 AIR 1970 SC 326

6 AIR 1996 Orissa 38

who prepared electoral roll has to be examined. It was further held that they are entitled to the extraordinary degree of confidence partly because they are required by law to be kept, and partly because their contents are of public interest and notoriety; but principally because they are made under the sanction of oath of office, or at least under that of official duty by accredited agents appointed for that purpose.

13. Likewise, in the matter of Chitru Devi v. Smt. Ram Dei and others⁷, the Himachal Pradesh High Court in paragraph 23 has clearly held that the electoral roll is a public document and admissible in evidence unless it is rebutted by cogent and reliable evidence. The plaintiff has failed to rebut the entries recorded in the electoral roll and on the basis of the documentary evidence proved on record. As such, it is established position on record that entry in public record / voters' list is prepared by the competent official of the election department in the discharge of his official duties which is admissible under Section 35 of the Indian Evidence Act, 1872 and if it is not challenged before the competent authority in any proceedings, voters list is admissible and reliable in evidence.
14. In the instant case, no evidence was led by the defendants to demonstrate that after preparation of voters list, it was challenged in accordance with law. Even otherwise, no evidence has been brought on record to assail that piece of evidence available on record. Exs.P-1 & P-2 are copies of order sheets recorded, one is of Criminal Revision No.64/1957 (Rampratap v. Bagarmal) and

⁷ AIR 2002 HP 59

another is of Misc. Criminal Case No.44/190 (Bagarmal v. Rampratap), between the parties in which order dated 1-9-1955 passed under Section 488 of the CrPC is sought to be enforced which demonstrates relationship of Bagarmal and Rampratap as son and father and it was passed way back on 1-9-1955 and as such, the plaintiffs have been able to prove that they are son and wife of deceased Rampratap and are entitled to inherit the property of Rampratap. Therefore, the first appellate Court is absolutely unjustified in setting aside judgment & decree of the trial Court by recording a finding qua relationship which is perverse to the record ignoring the admissible evidence Exs.P-1 & P-2 and Exs.P-7 to P-11 making judgment and decree valuable. The substantial question of law is answered in favour of the plaintiffs and against the defendants and it is held that the plaintiffs are son & wife of Rampratap. Judgment & decree of the first appellate Court is set-aside and that of the trial Court is restored.

15. In the result, the second appeal is allowed leaving the parties to bear their own cost(s).

16. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge