

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on :10.07.2020****Order delivered on:15.07.2020****Second Appeal No.306 of 2009**

Jaleshwar, S/o Dhruv Kumar Verma, Aged about 30 years, R/o Village Munglatola, Tahsil – Saja, Distt.Durg (CG)

----- Appellant/Plaintiff**Versus**

1. Padum Singh, Aged about 4 years, Minor, Through-Natural Guardian Mother Usha Bai

2. Usha Bai W/o Komal Singh, Aged about 26 years,

Both R/o Village Munglatola, P.S. & Tahsil – Saja, Dist-t.Durg (CG)

----- Respondents/Defendants

For Appellant/Plaintiff:

Mr.Prafull Bharat, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. Heard this second appeal on admission and formulation of substantial question of law preferred by the appellant/plaintiff.
2. By the impugned judgment and decree, the first appellate Court has dismissed the appeal preferred by the appellant/plaintiff affirming the judgment and decree of the trial Court dismissing the suit.
3. Mr.Prafull Bharat, learned counsel for the appellant/plaintiff, would submit that both the

Courts below concurrently erred in holding that the plaintiff has failed to prove that defendant No.1 is not his son, by recording a finding which is perverse to record and appeal involves substantial question of law for determination.

4. The plaintiff brought a suit that defendant No.1 is not his son out of his wedlock with defendant No.2 and therefore, declaration to that effect be granted and certificate issued to that effect also be declared null and void, in which defendants No.1 and 2 jointly filed written statement stating inter-alia that the plaintiff has committed forcibly sexual intercourse with defendant No.2, against which, FIR dated 29.3.2000 was lodged for offence under Section 376 of the IPC, in which the plaintiff was acquitted on 9.3.2002, but in the meanwhile, on 08.11.2000, defendant No.1 gave birth to defendant No.2 and consequently, his father's name was recorded as Jaleshwar/plaintiff. Name was recorded with the consent and leave of the plaintiff, as such, the suit deserves to be dismissed.

5. The defendants while concluding the final argument submitted written synopsis before the trial Court, in which they consented for DNA profiling, but the plaintiff did not prefer any application for DNA

profiling and ultimately, the suit was dismissed. In first appeal preferred, at belated stage the plaintiff made an application for DNA profiling, which was rejected by the first appellate Court on the ground that no sufficient cause has been shown for huge delay in making application for DNA profiling. The first appellate Court also dismissed the appeal holding that no medical evidence has been brought on record to prove that defendant No.1 is not son of the plaintiff, against which, this second appeal has been preferred.

6. It is quite proved that though the defendants consented for DNA profiling at the time of final argument in writing, yet the plaintiff did not take a call even after dismissal of the suit and while preferring an appeal he did not make an application for DNA profiling right in time and filed an application belatedly without giving any reasonable cause for delay in filing the said application, as such, both the Courts below have rightly dismissed the suit of the plaintiff for want of medical evidence / legal evidence to hold that defendant No.1 is not his son. I do not find any illegality or perversity in the said finding. No substantial question of law is involved in this second appeal.

7. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-