

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 371 of 2008**

- Sukwara Bai (Died) Through Lrs. As Per Honble Court Order Dated 05-02-2020.

1.1 - I. Sushil Kumar Sahu S/o Ram Prasad Sahu Aged About 35 Years R/o Village Siliyari, Tahsil Sarangarh, District Raigarh, Chhattisgarh.

1.2 - ii. Ramesh Kumar Sahu S/o Ram Prasad Sahu, Aged About 35 Years, R/o Village Siliyari, Tahsil Sarangarh, District Raigarh, Chhattisgarh.

Plaintiff(s)

----- Appellant(s)

Versus

1. Noni Bai W/o Chamru Sahu R/o Village Mudpar Bade, Tahsil Sarangarh, District Raigarh, Chhattisgarh.
2. Chhatram Sahu S/o Chamru Sahu R/o Village Mudpar Bade, Tahsil Sarangarh, District Raigarh, Chhattisgarh.
3. Mehtarin W/o Premlal Sahu R/o Village Mudpar Post Sarshiva, Tahsil Bilaigarh, District Raipur, Chhattisgarh.
4. Dulesrin W/o Kedali Sahu, R/o Village Tata Post Manpasar, Tahsil Bilaigarh, District Raipur, Chhattisgarh.

5. Phool Bai W/o Samelal Sahu R/o Village
Mudpar, Post Sarshiva, Tahsil Bilaigarh,
District Raipur, Chhattisgarh.

6. Ramkumari W/o Chhatosh Sahu R/o Village
Bandari, Post Bhatgaon, Tahsil Bilaigarh,
District Raipur, Chhattisgarh.

7. State Of Chhattisgarh Through Collector,
Raigarh, Chhattisgarh.

Defendants
----- Respondents

For Appellants :-Mr. Manoj Jaiswal, Adv.
For State/Respondent :-Ms. Astha Shukla, PL

Hon'ble Shri Justice Sanjay K.Agrawal
Judgment On Board

12/02/2020

1. Heard on admission and formulation of
substantial question of law in the second
appeal preferred by the appellant/plaintiff
questioning the impugned judgment and decree
passed by the first appellate Court
affirming the judgment and decree of the
trial Court dismissing the suit.

2. Mr. Manoj Jaiswal, learned counsel for the
appellant, submits that both the Courts

below have concurrently erred in holding that Exhibit P/1 i.e. copy of the birth register has not been proved in accordance with law and thereby, committed legal error in holding that the plaintiff is not daughter of Chamru, born out of his wedlock with his first wife Junia Bai by recording a finding which is perverse and contrary to the record, therefore, appeal be admitted by formulating substantial question of law for determination.

3. The suit property was originally held by Chamru. Plaintiff filed a suit that she being the daughter of Chamru born out of his wedlock with Junia Bai, is entitled to succeed his property to the extent of half share in which the defendant set up a plea that the plaintiff is not the daughter of Chamru born out of his wedlock with Junia Bai and, therefore, the suit deserves to be dismissed.

4. Learned trial Court, after evaluation and appreciation of oral and documentary evidence on record dismissed the suit by

disbelieving Exhibit P/1, copy of the birth register holding that Exhibit P/1 is not proved in accordance with law. On appeal being preferred by the plaintiff, learned first appellate Court affirmed the judgment and decree of the trial Court and dismissed the appeal against which this second appeal has been preferred by plaintiff.

5. Exhibit P/1 is a copy of the birth register in which Sukwara Bai (Pliantiff) has been shown as daughter of Chamru and date of birth has been shown as 06.08.1958, but it bears no signature of competent authority and no officer has been called to prove the said document. Even it has been held that Exhibit P/1 has not been prepared from the original register. It has not been prepared by mechanical process by copying the original document and it has not been signed by an officer, therefore, both the Courts below have declined to accept that document relying upon the judgment of **Amrita Devi and Others vs. Sripat Rai and Others**¹.

1. AIR 1962 Allahabad 111

6. After hearing learned counsel for the appellant and after going through the records and findings recorded by the two Courts below qua Exhibit P/1, I am satisfied with the findings recorded by both the Courts below holding that the plaintiff is not the daughter of Chamru born out of his wedlock with Junia Bai. The said finding recorded by both the Courts below is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record. I do not find any illegality or perversity in the said findings and even I do not find any substantial question of law for determination of this second appeal.

7. Accordingly, the second appeal is dismissed *in limine* without notice to the other side.

No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit