

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.311 of 2009

Kejuram, S/o Gopal, aged about 61 years, R/o Village Loharsi, Tahsil Pamgarh, District Janjgir-Champa (C.G.)

(Defendant)
---- Appellant

Versus

1. Parmeshwari Bai, W/o Gorelal Yadav (daughter of Lalha), aged about 52 years, R/o Village Meau, Tahsil Pamgarh, District Janjgir-Champa (C.G.)

(Plaintiff)

2. State of Chhattisgarh, acting through Collector, Janjgir-Champa (C.G.)

---- Respondents

For Appellant: Mr. K.A. Ansari, Senior Advocate with Mrs. Meera Ansari, Advocate.

For Respondent No.1: None present though served.

For Respondent No.2 / State: -

Mr. Sunil Otvani, Additional Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

13/08/2020

1. Proceedings of this matter have been taken-up through video conferencing.
2. Heard on admission and formulation of substantial question of law in this second appeal preferred by defendant No.1.
3. By the impugned judgment, the first appellate Court has dismissed the appeal preferred by defendant No.1 affirming the judgment & decree of the trial Court.
4. Mr. K.A. Ansari, learned Senior Counsel appearing for the appellant

herein / defendant No.1, would submit that the first appellate Court has also committed legal error in holding that defendant No.1 is not entitled to inherit the property of Lalha along with the plaintiff by recording a finding perverse to the record and the appeal involves substantial question of law for determination and as such, be admitted for hearing.

5. The plaintiff is daughter of Lalha out of his wedlock with Amil Kunwar, whereas defendant No.1 is son of Gopal Yadav and Gopal Yadav was earlier married with Amil Kunwar. Smt. Amil Kunwar after death of Gopal Yadav, married Lalha – plaintiff's father. The dispute arose with regard to the property jointly recorded in the name of Lalha and his father Jhukuwa vide Ex.P-5. The plaintiff claimed that she being the only daughter of Lalha would inherit the property of her father in exclusion of defendant No.1 and as defendant No.1 has illegally got his name mutated in the revenue records, therefore, she is entitled for declaration of title. Defendant No.1 has taken the plea that the suit property was purchased from the income of his father Gopal Yadav's ancestral property and it is his father's property and as such, he has also share in the said property and his name has also been recorded in the revenue records. The trial Court upon appreciation of oral and documentary evidence available on record decreed the suit holding that the plaintiff being the daughter of Lalha and Amil Kunwar is the exclusive owner of the suit property and defendant No.1 has no right and title over the suit land which has been affirmed by the first appellate Court in the appeal preferred by defendant No.1.
6. The suit property was admittedly recorded in the name of Lalha and his father Jhukuwa and Parmeshwari Bai – the plaintiff herein, is the sole

daughter of Lalha out of his wedlock with Amil Kunwar. Amil Kunwar was earlier married with Gopal Yadav – defendant No.1's father and after death of Gopal Yadav, Amil Kunwar married with Lalha – plaintiff's father.

7. As held by the two Courts below, the suit property was the property held by Lalha and so far as Lalha is concerned, defendant No.1 would be at the most the step-son of his wife Amil Kunwar with his earlier husband Gopal Yadav and it has not been established to be purchased from the income of Gopal Yadav – father of defendant No.1 and therefore it has rightly been held by the two Courts below that defendant No.1 will not inherit the property of Lalha and only the plaintiff will inherit the property of her father Lalha. The said finding is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. The second appeal being devoid of merit is liable to be and is accordingly dismissed, *in limine*. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge