

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 306 of 2008**

1. Sevak, Aged about 50 years.

2. Pheru, Aged about 48 years.

Both Sons of Ghasiya Gond and cultivators of Village Kukritola, Tahsil Chhuikhadan, Distt. Rajnandgaon, Chhattisgarh.

--Appellants/Defendants No. 1 and 2

Versus

1. Smt. Bhagwati W/o Ram Dev Gond, Aged about 45 years, R/o Village Chorladih, Tahsil Chhuikhadan, Distt. Rajnandgaon, Chhattisgarh.

2. Smt. Geeta Bai, W/o Khorbhara Gond, Aged about 41 years, R/o Village Kukritola, Tahsil Chhuikhadan, Distt. Rajnandgaon, Chhattisgarh. **– Plaintiffs**

3. Arjun Ram, Sarpanch, Gram Panchayat Gatapar, R/o Village Gatapar, Tahsil Chhuikhadan, Distt. Rajnandgaon, Chhattisgarh.

4. State of Chhattisgarh, Through Collector, Rajnandgaon, Chhattisgarh.

– Defendants No. 3 and 4

--- Respondents

For Appellants :-	Mr. K.A. Ansari, Senior Advocate with Mr. R.L. Bajpayee, Advocate
For Respondents :-	Mr. Abhishek Sharma, Advocate
For State :-	Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

24/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/defendants No. 1 and 2 against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which learned trial Court decreed the suit of the plaintiffs.

2. The two plaintiffs are the daughters of Chaitibai, who had two sisters namely Fulesar and Bisanbai and the three of them were daughters of Adhraj. Plaintiffs filed a suit stating *inter alia* that the suit property was originally held by their maternal grandfather Adhraj and after his death, it was inherited by his three daughters namely Fulesar, Bisanbai and plaintiffs' mother Chaitibai. Since Bisanbai died issueless, therefore, they are entitled to inherit the property of Bisanbai to which defendants No. 1 and 2 opposed and set up a defence that the suit property was not the property of Adhiraj, but it was actually owned by Bisanbai and her husband Agnu, therefore, they being the sons of Agnu's brother i.e. nephews of Bisanbai and

Agnu, are entitled to succeed the suit property.

3. Learned trial Court, upon appreciation of oral and documentary evidence on record, decreed the suit of the plaintiffs holding that Bisanbai was the titleholder of the suit property which she inherited from her father after his death and since she died issueless, therefore, plaintiffs being the daughters of Bisanbai's sister Chaitibai would inherit the suit property by virtue of Section 15 read with Section 16 of the Hindu Succession Act, 1956. On appeal being preferred by defendants No. 1 and 2, learned first appellate Court affirmed the finding recorded by the trial Court and dismissed the appeal.

4. Mr. K.A. Ansari, learned senior counsel appearing on behalf of the appellants/defendants No. 1 and 2 would submit that the suit property was owned and held by Bisanbai and her husband Agnu, therefore, defendants No. 1 and 2, being their nephews, would inherit the suit property and though in the written statement, defendants No. 1 and 2 only pleaded that the said suit property is

continuing in the name of Agnu and an affidavit under Order 18 Rule 4 of the CPC has been filed but in paragraph 5, they have stated that the suit property belonged to Bisanbai and Agnu and it has been mutated in the names of defendants No. 1 and 2, as such, the second appeal deserves to be admitted by formulating substantial question of law in this regard.

5. Both the Courts below have clearly held that the suit property was held by Bisanbai which she inherited from her father Adhraj and thereby, decreed the suit of the plaintiffs holding that plaintiffs, being the daughters of Bisanbai's sister Chaitibai, are entitled to inherit the suit property left by Bisanbai as the defendants, even in the written statement and affidavit under Order 18 Rule 4 of the CPC did not specifically plead the suit property to be the property of Agnu. It was pleaded to be Bisanbai and Agnu's property and that was rejected by both the Courts below holding the suit property to be owned by Bisanbai only, which she inherited from her father.

6. The said finding recorded by both the Courts below that suit property was held by Bisanbai and plaintiffs, being the daughters of Bisanbai's sister Chaitibai, would inherit the suit property by virtue of Section 15 read with Section 16 of the Hindu Succession Act, 1956 is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record and it does not give rise to any substantial question of law for determination. The first appellate Court has rightly rejected the application under Order 41 Rule 27 of the CPC to take *namantaran panji* on record as additional document.

7. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet