

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.301 of 2010**

1. Sant Kumar , age 37 years, Caste Kewat, S/o. Nanhuram, R/o. Village Bharridah, Post Marvahi, Tahsil Pendra Road, Distt. Bilaspur (CG)
2. Virendra Kumar, age 32 years, Caste Kewat, S/o. Nanhuram, R/o. Village Bharridah, Post Marvahi, Tahsil Pendra Road, Distt. Bilaspur (CG)
3. Mahendra Kumar, aged 28 years, Caste Kewat, S/o. Nanhuram, R/o. Village Bharridah, Post Marvahi, Tahsil Pendra Road, Distt. Bilaspur (CG)

---- Appellants/Plaintiffs**Versus**

1. Lalchand, age 47 years, Caste Kewat, S/o. Sardari, R/o. Village Bharridand, Post Marwahi, Tahsil Pendra road, Distt. Bilaspur (CG)
2. Lalman, age 40 years, Caste Kewat, S/o. Sardari, R/o. Village Bharridand, Post Marwahi, Tahsil Pendra road, Distt. Bilaspur (CG)
3. Tejman, age 38 years, Caste Kewat, S/o. Sardari, R/o. Village Bharridand, Post Marwahi, Tahsil Pendra road, Distt. Bilaspur (CG)
4. Khemchand, age 34 years, Caste Kewat, S/o. Sardari, R/o. Village Bharridand, Post Marwahi, Tahsil Pendra road, Distt. Bilaspur (CG)
5. Tijiya Bai, age 50 years, Caste Kewat, W/o. Tiwari Kewat, R/o. Village Lohari, tahsil Penda Road, Distt. Bilaspur (CG)
6. State of MP (Now Chhattisgarh) through the Collector, Distt. Bilaspur (CG)

---- Respondents/Defendants

For Appellants	:Shri Rakesh Pandey, Advocate
For Respondent	: Not noticed.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****27.8.2020.**

1. Proceedings of this matter have been taken up for admission through Video Conferencing.

2. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/plaintiffs against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial Court by which the trial Court has dismissed the suit of the plaintiffs.

3. Learned counsel for the appellants/plaintiffs submits that both the courts below have concurrently erred in dismissing the suit of the plaintiffs by recording a finding which is perverse to the record as decree for permanent injunction ought to have been granted, therefore, the appeal deserves to be admitted by formulating substantial question of law.

4. I have heard learned counsel for the appellant and perused the records of the Courts below.

5. Tewari Kewat had one son Nanhuram. The plaintiffs are successor in interest of Nanhuram. Tewari Kewat had two daughters namely Chogni Bai and Tijiya Bai. Defendants 1 to 4 are successors of Chogni Bai and Defendant No.5 is Tijiya Bai. The plaintiffs filed a suit that the suit property is the self acquired property of their grand father Tewari Kewat and he has executed a will in their favour and therefore, the defendants have no right, title and interest therefore, decree for permanent injunction be granted in their favour. This suit of the plaintiffs was dismissed by the trial Court holding that the plaintiffs

failed to prove that suit property was self-acquired property of Tewari Kewat and further held that the plaintiffs and the defendants both are successors of Tewari Kewat and Tewari Kewat had no right to execute a will in favour of the plaintiffs and both the parties are entitled for partition of suit property, therefore, decree for permanent injunction cannot be granted in favour of the plaintiffs which has been affirmed by the first appellate Court by impugned judgment.

6. The findings recorded by both the Courts below about the nature of suit property i.e. the ancestral property in the hands of Tewari Kewat, their grand father and both parties have succeeded the suit property left by Tewari Kewat, as such, Tewari Kewat had no right to execute a will in favour of the plaintiffs and as such both Courts below have rightly not granted decree for permanent injunction in their favour, which is neither perverse nor contrary to the record and the appeal does not involve any substantial question of law for determination.

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