

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.380 of 2009

Ram Bai D/o Late Shri Ram Prasad, Aged about 43 years, R/o Village-Bagra, Tehsil-Pendra Road, District-Bilaspur (CG)

----- Appellant/Plaintiff

Versus

1. Dhan Singh, S/o Jal Lal Singh Gond, Aged about 51 years, R/o Village-Bagra, Tehsil-Pendra Road, District-Bilaspur (CG)
2. Govind Lal S/o Jai Lal Singh Gond, Aged about 46 years, R/o Village-Bagra, Tehsil-Pendra Road, District-Bilaspur (CG)
3. Jawahar Lal, S/o Jai Lal Singh Gond, Aged about 41 years, R/o Village-Bagra, Tehsil-Pendra Road, District-Bilaspur (CG)
4. Varkarin Bai, D/o Jai Lal Singh Gond, Aged about 56 years, R/o Village-Bagra, Tehsil-Pendra Road, District-Bilaspur (CG)

----- Defendants

5. State of Chhattisgarh Through Collector, District-Bilaspur (CG)

----- Respondents

For Appellant / Plaintiff:-

Mr.Om Kukreja, Advocate

For Respondent No.5 / State: -

Ms Veena Nair, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/07/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard this second appeal on the question of admission and formulation of substantial question of law preferred by the appellant/plaintiff.
3. By the impugned judgment and decree, the first appellate Court has dismissed the appeal preferred

by the plaintiff affirming the judgment and decree of the trial Court dismissing the suit for declaration of title and permanent injunction.

4. Mr. Om Kukreja, learned counsel for the appellant/plaintiff, would submit that both the Courts below are absolutely unjustified in holding that the plaintiff is not successor-in-interest of Shivprasad to whom the suit property belonged and recorded in revenue record of 1927-28, by recording a finding which is perverse to record.

5. The suit property was originally held by Shivprasad and duly recorded in revenue records. One Nankuniya Bai was earlier married with Hansaram @ Mansa. After death of Hansaram, said Nankuniya Bai married with Sitaram in chudi form. Ramprasad was son of Sitaram and the plaintiff is daughter of Ramprasad. The plaintiff brought a suit that Sitaram had purchased the suit property from his own income in the name of Shivprasad and therefore, she is successor-in-interest and title-holder of the suit property. The trial Court dismissed the suit holding that the plaintiff is not successor-in-interest of Shivprasad as Nankuniya Bai had two sons namely Shivprasad and Jankunwar. Shiv Prasad died issueless and the plaintiff being daughter of Ramprasad cannot succeed the suit property. The first appellate Court also affirmed the finding

recorded by the trial Court.

6. Both the Courts below have rightly and concurrently held that the suit property was held by Shivprasad and the plaintiff is daughter of Ramprasad and alleged granddaughter of Sitram, as such, she is not successor-in-interest of Shivprasad and further held that at the time of institution of suit on 26.10.99 the Benami Transactions (Prohibition) Act, 1988 (hereinafter called as 'the Act of 1988') had already come into force by which the plea of benami is not permissible to be raised and the suit is barred by Section 4 of the Act of 1988. Such a finding recorded by two Courts below is finding of fact based on evidence available on record. It is neither perverse nor contrary to record. I do not find any illegality or perversity in the said finding and even I do not find any substantial question of law for determination of 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/-