

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 411 of 2008**

1. Bhagirathi S/o Kejauram Kumhar, Aged about 55 years, R/o Village Gariaband, District Raipur, Chhattisgarh.
2. Kejabai Wd/o Baishakhu Kumhar, Aged about 80 years, R/o Gariaband, Distt. Raipur, Chhattisgarh.

---Appellants/Defendants**Versus**

1. Jamuna Bai (died) through LRs. :-

(a). Bhuwan S/o Tijlu, Aged about 29 years, R/o Village Kumhari, Thana Dharsiwa, District Raipur, Chhattisgarh.

--- Plaintiff

2. State of Chhattisgarh, Through the Collector, Raipur, Chhattisgarh.

--- Respondents

For Appellants	:-	Mr. Vimlesh Bajpai and Mr. Suresh Tandan, Advocates
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****06/02/2020**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/defendants under Section 100 of the CPC 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 plaintiff.

2. Mr. Vimlesh Bajpai and Mr. Suresh Tandan, learned counsel for the appellants/defendants would submit that both the Courts below have committed legal error in decreeing the suit of the plaintiff by recording a finding which is perverse and contrary to the record holding that plaintiff Jamuna Bai is entitled for $\frac{1}{2}$ share in the suit property, as such, the second appeal deserves to be admitted by formulating substantial question of law in this regard.

3. The suit property was the ancestral property of Baisakhu. Defendant No. 2 Keja Bai is the widow of Baisakhu and plaintiff Jamuna Bai is the daughter of Baisakhu and Keja Bai. Plaintiff brought a suit for declaration of title, partition and recovery of possession stating inter alia that she is entitled for $\frac{1}{2}$ share in the suit property left by her father Baisakhu and her mother defendant No. 2 is entitled for other $\frac{1}{2}$ of the suit property, being the widow of Baisakhu to which defendant No. 1 set up a plea that since plaintiff Jamuna Bai has already

relinquished her share of the suit property in favour of her son Ramesh and Ramesh and defendant No. 2 Keja Bai alienated the suit property in favour of defendant No. 1 by registered sale deed dated 20/02/1998, therefore, plaintiff is not entitled for decree as claimed by her.

4. Learned trial Court decreed the suit of the plaintiff holding that plaintiff, being the daughter of Baisakhu, would be entitled for $\frac{1}{2}$ share in the suit property and the fact of relinquishment has not been established by the defendants which learned first appellate Court also affirmed in the appeal preferred by the defendants under Section 96 of the CPC.

5. The finding recorded by both the Courts below that plaintiff, being the only daughter of Baisakhu, would be entitled for $\frac{1}{2}$ share in the suit property is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record. Likewise, the alienation made by Keja Bai and Ramesh in favour of defendant No. 1 by registered sale deed dated 20/02/1998 has rightly been declared void and it is not binding upon the plaintiff as

the fact of relinquishment of her share by the plaintiff in favour of her son Ramesh has not been found established, as such, I do not find any merit in this second appeal so as to admit it by formulating any substantial question of law.

6. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet