

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.370 of 2008

1. Smt. Shikha Biswas, aged about 32 years, W/o Mathan,
2. Pushpa, aged about 50 years, W/o Late Nishikant Samaddar

Both R/o Village P.V. No. 4, P.H. No. 24, Thana and Tahsil Pakhanjore, Distt. U.B. Kanker.

(Plaintiffs)
---- Appellants

Versus

1. Smt. Sefali Mistri, W/o Kartik, Mother's Name Late Smt. Kusum, Samaddar
2. Smt. Geeta Sarkar, W/o Chitto Sarkar, Mother's Name Late Smt. Kusum, Samaddar

Both R/o P.V. No. 9, P.H. No. 4, Thana and Tahsil Pakhanjore, Distt. U.B. Kanker.

3. Tahsildar, Tahsil Pakhanjore, Kanker.
4. Sub Divisional Officer, (R), Pakhanjore, Distt. U.B. Kanker.
5. The State of Chhattisgarh, through Collector, Kanker.

(Defendants)
---- Respondents

For Appellants/Plaintiffs: -

Mr. Parag Kotecha and Mr. Shalvik Tiwari, Advocates.

For Respondents No.1 and 2 / Defendants: -

None present, though served.

For Respondents No.3, 4 and 5 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

03/02/2020

1. This plaintiffs' second appeal under Section 100 of the CPC was admitted for hearing by formulating the following substantial question of law: -

“Whether in view of the admitted position that plaintiff No.1 Smt. Shikha Vishwas is a daughter of Nishikant, the son of Mahendra, the plaintiff No.1 shall be entitled to a share in the suit property?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The suit property was originally held by Mahendra Samaddar. He had one son Nishikant Samaddar and two daughters Sefali and Geeta Rani, defendants No.1 and 2, respectively. Plaintiff No.1 is daughter from first wife of Nishikant Samaddar and plaintiff No.2 is second wife of Nishikant Samaddar. They claimed that the suit property is originally held by Nishikant Samaddar in his exclusive right and the order of the Sub-Divisional Officer (Revenue) be declared null and void in which the defendants setup the plea that the suit land is not the exclusive property of the plaintiffs, they are also shareholders as such the suit is liable to be dismissed.
3. The trial Court after appreciation of oral and documentary evidence on record dismissed the suit holding that the plaintiffs have failed to prove their exclusive title over the suit land and the first appellate court in appeal has affirmed the same against which this second appeal has been preferred in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
4. Mr. Shalvik Tiwari, learned counsel appearing for the appellants herein / plaintiffs, would submit that plaintiff No.1 being the daughter of Nishikant Samaddar from his first wife will be entitled for declaration of title and at least $\frac{1}{3}$ share in the suit property, as the property was the self-acquired property of Mahendra Samaddar and both the Courts below have committed legal error in dismissing the suit and appeal. Even otherwise, though decree of declaration of title is not claimed, but plaintiff No.1 is entitled for at least $\frac{1}{3}$ share in the property.
5. None present for respondents No.1 & 2 herein / defendants No.1 & 2, though served.

6. I have heard learned counsel for the parties present and considered their rival submissions and also went through the record with utmost circumspection.
7. Both the Courts below have dismissed the suit of the plaintiff holding that it is the self-acquired property of Mahendra Samaddar and defendants No.1 & 2, admittedly, being the daughters of Mahendra Samaddar are the persons entitled to the property of their father. Therefore, no decree for exclusive title can be granted in favour of plaintiff No.1 specifically. But the fact remains that no evidence has been laid on behalf of the plaintiffs, neither the plaintiffs have entered into the witness box nor any other witness was examined on their behalf. As such, both the Courts below have rightly dismissed the suit and appeal holding that the plaintiffs have failed to prove that they are entitled for exclusive title of the suit property and the substantial question of law framed that they are entitled for share in the suit property also cannot be decided in absence of any evidence on behalf of the plaintiffs. The substantial question of law is answered accordingly and the second appeal deserves to be and is hereby dismissed. However, the plaintiffs are at liberty to work out the remedy available to them in accordance with law. No order as to cost(s).
8. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge