

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 526 of 2007**

1. Keshav Prasad Rathore, Aged 45 years, S/o Shivram.

2. Anusuiya Bai, Aged about 42 years, D/o Shiv Ram.

3. Seeta Bai, Aged 38 years, S/o Shivram.

No. 1 to 3 are residents of Purani Basti, Janjgir.

4. Omkar Prasad, Aged 35 years, S/o Shivram, R/o Purani Basti, Janjgir, Presently residing at Development Block Korba, Tahsil and Distt. Korba, Chhattisgarh.

5. Ramabai, Aged 30 years, S/o Shivram, R/o Purani Basti, Presently residing at Siud Chouki and Tahsil Navagarh, Distt. Janjgir Champa, Chhattisgarh.

6. Hem Kunwar, Aged 72 years, Widow of Shivram, R/o Purani Basti, Janjgir, Tahsil and District Janjgir Champa, Chhattisgarh.

---Appellants/Defendants

Versus

1. Ku. Aradhana, Aged 12 years, S/o Ram Singh Rathore.

2. Gaurishankar, Aged 11 years, S/o Ram Singh Rathore.

3. Satish Kumar, Aged 9 years, R/o Ram Singh Rathore, All Minor through guardian father Ram Singh Rathore. S/o Dankeshwar Prasad Rathore, R/o Siud, Tahsil and Chouki Navagarh, Distt. Janjgir Champa, Chhattisgarh.

4. The State of Chhattisgarh, through Collector District Janjgir-Champa, Chhattisgarh.

--- Respondents/Plaintiffs

For Appellants	:	Mr. Y.C. Sharma and Mr. Sachin Nidhi, Advocates
For Respondents	:	Mr. Anand Ku. Gupta, Advocate
For State	:	Mr. Sanjeev Kumar Agrawal, P.L.

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

16/01/2020

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 by which learned first appellate Court affirmed the judgment and decree of the trial Court decreeing the suit of the plaintiffs.
2. Mr. Y.C. Sharma and Mr. Sachin Nidhi, learned counsel for the appellants/defendants would submit that both the Courts below have concurrently erred in holding that plaintiffs, being the sons and daughter of late Geetabai and grandchildren of late Shivram, are jointly entitled for 1/7th share in the suit property by recording a finding which is perverse and contrary to record, as Shivram had already given

Geetabai's share to her which she relinquished in favour of the defendants. Therefore, the second appeal deserves to be admitted by formulating substantial question of law.

3. The suit property was originally held by Buddhuram. He had only one son namely Shivram who died leaving behind two sons i.e. defendants No. 1 and 4; and four daughters i.e. defendants No. 2, 3, 5 and one Geetabai who had already died. Defendant No. 6 is the widow of late Shivram.

4. After the death of Geetabai, plaintiff, being her sons and daughter, brought a suit that they are entitled for $1/7^{\text{th}}$ share in the suit property i.e. her mother's share in the property left behind by their grandfather Shivram, to which defendants opposed by stating that Geetabai had already been given her share in the suit property which she had relinquished in favour of the defendants.

5. Learned trial Court, upon appreciation of oral and documentary evidence on record, held that Shivram received his property through his father Buddhuram therefore, it will be governed by Section 8 of the Hindu Succession Act, 1956 and defendants No. 1 to 6 and late Geetabai, being

the sons, daughters and widow of Shivram, would be his class-1 heirs and therefore, each one of them would be entitled for $1/7^{\text{th}}$ share in the suit property and the plaintiffs, being the sons and daughter of late Geetabai, would jointly inherit her mother's property i.e. $1/7^{\text{th}}$ share in the suit property which was affirmed by the first appellate Court in the appeal preferred by the defendants under Section 96 of the CPC.

6. The submission of learned counsel for the appellants/defendants that Geetabai, plaintiffs' mother, has already relinquished her share in the suit property in favour of the defendants is not supported by any written document or any oral evidence. No oral or documentary evidence has been brought on record to show that late Geetabai has relinquished her share in favour of the defendants. Both the Courts below have concurrently and rightly held that defendants have failed to prove that plaintiffs' mother Geetabai had relinquished her share in their favour, as such, the finding recorded by both the Courts below that plaintiffs would jointly succeed to her mother's share i.e. upto the extent of $1/7^{\text{th}}$ share in the suit property is a

finding of fact based on material available on record which is neither perverse nor contrary to record.

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