

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 110 of 2020**

1. Manmati D/o Ram Narayan Aged About 55 Years R/o Village Pendarkhi, Police Station Jaynagar, Tahsil And District Surajpur Chhattisgarh.
2. Shrinath Yadav S/o Ramyar Yadav Aged About 33 Years Caste Ahir, R/o Village Pendarkhi, Police Station Jaynagar, Tahsil And District Surajpur Chhattisgarh.
3. Lalita Prasad Yadav S/o Ram Narayan Yadav Aged About 50 Years Caste Ahir, R/o Village Satpata Police Station Vishrampur, Tahsil And District Surajpur Chhattisgarh.

---- Appellants**Versus**

- Shobhawati D/o Late Bhagwat W/o Shivram Yadav Aged About 40 Years Caste Ahir R/o Village Jamdei, Police Station Jaynagar Tahsil And District Surajpur Chhattisgarh.

---- Respondent

For Appellants	:	Mr. Ashok Kumar Shukla, Adv.
For Respondent	:	None present.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Rajani Dubey

Order On Board**23/11/2020**

1. This appeal arises out of the trial Court (Family Court) order dated 13.02.2020 whereby defendant No. 1's application under Section 11 and under Order 7 Rule 10 CPC have been rejected.
2. Facts of the case, in brief, are that in an earlier suit preferred by Jagdish and others wherein plaintiff Manmati was arrayed as defendant No. 10, a compromise decree was passed on 07.05.2006 in the Court of Civil Judge Class II, Pratappur, District-Surajpur treating Manmati as daughter of Bhagwat. In the present suit filed before the Family Court respondent No. 1 Shobhawati has prayed for issuance of declaration that she is the daughter of Late Bhagwat and Manmati is not the daughter of Late Bhagwat. Thus, the present suit is barred by *res-judicata*.
3. Learned counsel for the appellants submits that in the earlier suit

decree has been passed by treating Manmati as daughter of Bhagwat, therefore, any declaration contrary to the said decree would be hit by *res-judicata*. It is also argued that the earlier suit has been decided by Civil Judge Class-II, Pratappur, therefore, the present suit could have been preferred before the said Court and not before the Court at Surajpur.

4. Having heard counsel for the appellants we are of the considered view that the appeal must fail on both the counts. For the first count it is to be seen that the earlier suit was not decided after full trial as it was a compromise decree. Moreover, the present plaintiff Shobhawati was not a party in the earlier suit. Even otherwise, the earlier suit dealt with a dispute of civil nature relating to some property whereas the present suit now tried by the Family Court involves issue of legitimacy of the appellant No. 1 vis-a-vis respondent/plaintiff, as to who is the daughter of Late Bhagwat. This dispute could not have been decided earlier by the Civil Judge Class-II as such dispute can only be decided by Family Court in view of Section 7 (1) explanation (e) of the Family Court Act, 1984.

5. In so far as the second objection is concerned, the same does not survive for consideration because the single bench of this Court in WP 227 No. 44/2020 decided on 29.01.2020 has already held that the present suit would be cognizable by Family Court. Thus, it is only the Family Court at Surajpur and not any other Court has jurisdiction to decide the present case.

6. The appeal has no substance, the same deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
JUDGE

Sd/-
(Rajani Dubey)
JUDGE