

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 178 of 2008**

1. Lakshani Bai W/o Late Ude Ram, Aged about 57 years.

2. Rikeshvar S/o Late Ude Ram, Aged about 40 years.

3. Narayan S/o Late Ude Ram, Aged about 28 years.

All Residents of Village Bardeori, Tahsil Kanker, District North Bastar, Kanker, Chhattisgarh.

---Appellants/Defendants

Versus

1. Smt. Sukhanteen @ Sukhbatl D/o Thanvar, Aged about 62 years, R/o Village Bardeori, Tahsil Kanker, District North Bastar, Kanker, Chhattisgarh.

--- Plaintiff

2. State of Chhattisgarh, through Collector Kanker, District North Bastar, Kanker, Chhattisgarh.

--- Respondents

For Appellants	:-	Mr. R.N. Jha, Advocate
For State	:-	Mr. Anshuman Rabra, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28/01/2020

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 questioning the impugned judgment and

decree by which the first appellate Court allowed the appeal preferred by the plaintiff and set aside the judgment and decree of the trial Court dismissing the suit of the plaintiff.

2. Mr. R.N. Jha, learned counsel for the appellants/defendants would submit that the first appellate Court has erred in holding that plaintiff would be entitled for $\frac{1}{2}$ share in the suit property by recording a finding which is perverse and contrary to the record, as such, the second appeal deserves to be admitted for hearing by formulating substantial question of law in this regard.

3. The suit property was originally held by Thanvar who succeeded it as his ancestral property. Thanvar had three wives. Plaintiff – Sukhantin is the daughter of Thanvar born with his second wife namely Devkunwar Bai. Defendants are the widow and sons of deceased Ude Ram, who was the son of Thanvar born with his first wife Budhyarin. Thanvar's third wife died issueless.

4. Plaintiff filed a suit for declaration of title and partition stating that she, being the daughter of Thanvar born out of his wedlock with his second wife, is entitled for $\frac{1}{2}$ share in the

suit property to which defendants refuted and the trial Court ultimately dismissed the suit of the plaintiff, but the first appellate Court reversed the judgment and decree of the trial Court and allowed the appeal of the plaintiff holding that since third wife of Thanvar died issueless, therefore, plaintiff being the daughter of Thanvar born out of his wedlock with his second wife and defendants being the legal heirs of Ude ram who is the son of Thanvar born out of his wedlock with his first wife, both are entitled for $\frac{1}{2}$ share in the suit property.

5. As noticed herein-above that the suit property was the ancestral property of Thanvar who had three wives. Plaintiff is the daughter of Thanvar born with his second wife and defendants are the widow and sons of Late Ude ram who was the son of Thanvar born with his first wife. Third wife of Thanvar died issueless. Therefore, both plaintiff as well as defendants would succeed to $\frac{1}{2}$ share in the suit property left by Thanvar. Even if plaintiff is the daughter of Thanvar with his second wife Devkunwar Bai, she would still be entitled to inherit the suit property of her father by virtue of Section 16(3) of the Hindu

Marriage Act, 1955. Therefore, the first appellate Court is absolutely justified in granting $\frac{1}{2}$ share in the suit property to the plaintiff which is neither perverse nor contrary to record and does not give rise to any substantial question of law in this regard.

6. 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