

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.279 of 2008Judgment reserved on: 11-2-2020Judgment delivered on: 14-2-2020

1. Smt. Milvanteen Bai, 55 yrs., Wd/o Late Gwal
2. Smt. Ramkumari Bai, 30 yrs., Wd/o Rameshwar Yadav

Vill. Jamgaon, PC No.158, RIC Nawapara, Teh. Abhanpur, Raipur  
 (Plaintiffs)  
 ---- Appellants

Versus

1. Devkibai, 42 yrs., W/o Konda, Behind Petrol Pump, Abhanpur, Raipur
  2. State of Chhattisgarh, By Collector, Raipur
- (Defendants)  
 ---- Respondents

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 For Appellants: Mr. Raja Sharma, Advocate.  
 For Respondent No.1: Mr. Somnath Verma, Advocate.  
 For Respondent No.2 / State: -  
 Mr. Aakash Pandey, Panel Lawyer.  
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Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Judgment

1. This second appeal preferred by the plaintiffs under Section 100 of the CPC has been admitted by formulating the following substantial questions of law for determination:

“(1) Whether the Courts below have committed serious error or law by non-suiting the plaintiff in particular plaintiff No.2 in spite of admission in para 19 of the written statement that the plaintiff No.2 being the daughter of Gwal is entitled to succeed to the property of late Gwal?

(2) Whether the pleadings of adoption raised by the defendant No.1 has been proved in accordance with the

requirement of a valid adoption under Sections 6 & 11 of Hindu Adoption and Maintenance Act, 1956?”

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

2. The suit property was held by one Gwal Yadav. Plaintiff No.1 claims to be his first wife married in chudi form and plaintiff No.2 claims to be daughter out of the wedlock of Gwal with plaintiff No.1, whereas defendant No.1 claims that he is adopted daughter of Gwal. Plaintiff No.1 claiming to be the wife of Gwal married in chudi form with Gwal and plaintiff No.2 daughter of Gwal out of his marriage with plaintiff No.1 filed a suit for declaration of title and declaring the entry in naamantaran panji dated 28-3-1994 as unsustainable and bad in law in which defendant No.1 claimed to be the adopted daughter of Gwal. The trial Court after appreciation of oral and documentary evidence on record dismissed the suit that plaintiff No.1 has failed to prove herself to be the legal heir of Gwal being wife, but simultaneously, also held that defendant No.1 has also failed to prove herself to be the adopted daughter of Gwal against which the plaintiffs preferred first appeal which has also been dismissed by the first appellate Court and against which this second appeal has been preferred in which substantial questions of law have been formulated which have been set-out in the opening paragraph of this judgment.

3. Mr. Raja Sharma, learned counsel appearing for the appellants herein / plaintiffs, would submit that since defendant No.1 has admitted in para 19 of her written statement that she is daughter of Gwal, therefore, she is entitled to succeed the property of late Gwal. He would further

submit that the second substantial question of law would not arise for consideration, as defendant No.1 has not preferred any cross-objection.

4. Mr. Somnath Verma, learned counsel appearing for respondent No.1 herein / defendant No.1, would submit that there is no such specific admission by defendant No.1 in the written statement, as the plaintiffs are required to prove that Gwal had married plaintiff No.1 and plaintiff No.2 is daughter of Gwal out of his wedlock with plaintiff No.1 and as such, the fact of marriage has not been proved strictly. Moreover, plaintiff No.1 has not entered into the witness box and the fact of marriage has not been proved. Therefore, the plaintiffs cannot succeed unless the fact of marriage is proved strictly.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. Plaintiff No.1 in paragraph 6 of the plaint claimed to be the wife of Gwal married in chudi form and further pleaded that out of her wedlock with Gwal, plaintiff No.2 was born which defendant No.1 replied that plaintiff No.1 is second wife of Gwal, but did not admit the fact of marriage of plaintiff No.1 with Gwal in chudi form. Plaintiff No.1 did not enter into the witness box to prove the fact of marriage, only her daughter Ramkumari entered into the witness box. In para 5 of the examination-in-chief though Ramkumari (PW-1) has stated that her father Gwal married with her mother, wrongly mentioned as Devki Bai, in chudi form, whereas it should be Milvanteen Bai. As such, the fact of marriage of Milvanteen Bai with Gwal is not at all established. Therefore, plaintiff No.2 born with the cohabitation of Gwal with Milvanteen Bai

cannot be said to be the illegitimate child for the purpose of Section 16(3) of the Hindu Succession Act, 1956.

7. The Madhya Pradesh High Court in the matter of Reshamlal Baswan vs. Balwant Singh Jwalasingh Punjabi and Others<sup>1</sup> dealt with the question, whether illegitimate son is the son within the meaning of Section 8 of the Hindu Succession Act, 1956. Gulab C. Gupta, J. speaking for the Madhya Pradesh High Court has clearly held that children born to married woman from illicit relationship are not entitled to the benefit under Section 16 of the Act. It was further held that benefit under Section 16 is available only when there is a marriage, but same is hit by Section 11. It was observed as under:-

“4. Marriage Laws Amendment Act, 1976 provided legitimacy to children of a marriage hit by Section 11 of Hindu Marriage Act. It provides a procedure for getting a marriage declared void if it contravenes one of the conditions of Section 5 of the said Act. The conditions under which a marriage is said to be void are those mentioned in clauses (i), (iv) and (v) of Section 5 of the said Act. Marriage between parties having a spouse living at the time of marriage is hit by this provision. This provision has been interpreted to mean that there must be a marriage, which would be hit by the provisions of this Act and would not cover a relationship resulting from any other arrangement than the marriage. That is the reason why it has been held in *M. Muthayya v. Kamu and Ors.*, AIR 1981 NOC 172, that in those cases where there is no proof of solemnisation of marriage, the provision in Section 16 is not attracted.

6. The decision of Bombay High Court in *Laxmibai's case* (supra), of course, supports the contention advanced by the learned counsel for the appellant. The question for consideration of the court was the impact of Section 16(1) and 16(3) of the Hindu Marriage Act read with the provision of Section 8 of the Hindu Succession Act. It has already been noticed that Section 16 deals with the offsprings of marriage, which is void. The Court was of the

1 1994 MPLJ 446

opinion that 1976 amendment of the Hindu Marriage Act takes away and eclipses general rule that the offspring of a marriage, which is null and void ipso jure is illegitimate. According to the Court, this was common law doctrine, inevitably resulting in the effect of bastardising children and has been superseded by this provision. Considering the effect of this amendment, in the context of Section 8, clause (a) of the Hindu Succession Act, the Court held that illegitimate children now given legitimacy would be included within the meaning of 'son' and 'daughter' in the Schedule to the Hindu Succession Act. The Court, therefore, held that though the lady would not be the widow, her sons and daughters would be included within the meaning of the term in Section 8 read with the schedule. A close reading of this decision would indicate that it was the effect of 1976 amendment of Section 16 of the Hindu Marriage Act that made the difference. If the said amendment had not been there or any particular case was not governed by the said amendment, the learned Judge would not have decided in the same manner. Since 1976 amendment does not apply to the facts and circumstances of the case before this Court, this judgment cannot be of any help to the appellant. In fact, *Dadu v. Raghunath*, AIR 1976 Bombay 176, is the case before the amendment and holds on a detailed consideration of provisions, that illegitimate sons even of a Sudra would not be included within the meaning of the word 'son' or 'daughter' appearing in Schedule to Hindu Succession Act. Learned Judge had noticed that before 1956, legitimate children of a Sudra had enjoyed the status of an heir and, therefore, it observed surprisingly that an otherwise dynamic legislation should have extinguished the intestate succession rights of illegitimate sons of Sudras. Regrettable it may be, but since it was intended, it should be accepted as our national discipline. Sentiments howsoever strong cannot justify transgressing the limits of judicial discipline. This being a direct case on the point should, if at all, conclude the matter.

8. Then, it is also not correct to say that the word 'son' has not been defined anywhere. It has, of course, not been defined in the Hindu Succession Act, 1956, but every word need not be defined in the statute itself. The General Clauses Act defines 'son' and includes only the adopted son. In case the illegitimate son was also included within this definition, a corresponding amendment would have been made in the definition given in the General Clauses Act.

9. In view of the discussion aforesaid, this Court is unable to hold that the appellant, even as an illegitimate son is a 'son' for purposes of Section 8 read with schedule to the Hindu Succession Act and, has, therefore, right to succeed to the properties of late Baswan. In the opinion of this Court, he is not a 'son' within the meaning of the term and, therefore, not an heir to Baswan. The appeal accordingly fails and is dismissed, but without any order as to costs."

8. As such, plaintiff No.2 not being the illegitimate daughter of Gwal would not succeed to the property of Gwal by virtue of Section 16(3) of the Hindu Succession Act, 1956 in absence of proof of marriage of plaintiff No.1 with Gwal. The argument of Mr. Raja Sharma, learned counsel appearing for the plaintiffs / appellants herein, that it has been admitted by defendant No.1 in paragraph 19 of her written statement, would also be of no use, as though defendant No.1 has said plaintiff No.2 to be the daughter of Gwal, but it must be pleaded and established by the plaintiffs that she is even the illegitimate child of Gwal being born of Gwal & Milvanteen Bai out of their wedlock, as such, the fact of marriage has to be proved, then only she would succeed to the property of Gwal by virtue of Section 16(3) of the Hindu Succession Act as she has not pleaded and established. Therefore, plaintiff No.2 having born out of the illicit relationship of Milvanteen Bai with Gwal with no marriage, would not be a daughter and she would not succeed to the property of Gwal by virtue of Section 16(3) of the Hindu Succession Act, 1956.
9. In view of the above, substantial question of law No.1 is answered accordingly and in view of the submissions of learned counsel for the parties, substantial question of law No.2 does not deserve to be

considered. The appeal being devoid of merit is liable to be and is hereby dismissed. No order as to cost(s).

10. Decree be drawn-up accordingly.

Sd/-  
(Sanjay K. Agrawal)  
Judge

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