

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on:22/07/2020****Judgment delivered on:10/08/2020****Second Appeal No.366 of 2008**

1. Sevak Ram S/o Phoolchand, aged about 19 years;
2. Kewal Ram S/o Phool Chand, aged about 15 years;
No.2 Minor, through guardian brother Sevak Ram S/o Phool Chand;
Both resident of Nandiya Khurd, R.I. Chhuriya, Tahsil & District Rajnandgaon (CG)

----- Appellants/Defendants**Versus**

1. Soniya Bai W/o Aanand Ram, aged about 51 years,
Resident of Village Bijepara, R.I. Chhuriya, Tahsil & District Rajnandgaon (CG)

----- Plaintiff

2. State of Chhattisgarh, through Collector, Rajnandgaon (CG)

----- Respondents

For Appellants/Defendants	: Mr.Manoj Chauhan, Advocate appears on behalf of Mr.R.N.Jha, Advocate
For Res.No.1/Plaintiff	: Mr.Pallav Mishra, Advocate
For Respondent No.2/State	: Ms Veena Nair, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. This second appeal has been taken-up for final hearing through video conference.
2. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the defendants is as under:-

"Whether the first appellate Court was

justified in recording a finding which is perverse and contrary to the record holding that only plaintiff – Soniya Bai is entitled to succeed the suit property of her mother Chaiti Bai in exclusion of defendants No.1 and 2 ?”

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

3. The suit property bearing Khasra No.189 area 2.80 acres of land situated at village Nandiya Khurd, District Rajnandgaon was owned by one Dularram. He died leaving no male issue except female issue/daughter Chaiti Bai. After death of said Dularram, the suit land was recorded in the name of his daughter Chaiti Bai. Plaintiff-Soniya Bai is daughter of Chaiti Bai. Chaiti Bai was married with one Jhariyar and after death of Jhariyar, Chaiti Bai is said to have married with Fulchand in chudi form, but in revenue records, name of Chaiti Bai remained recorded and she remained in cultivating possession of the suit land. After death of Chaiti Bai, Fulchand married with defendant No.3-Laxmi Bai in chudi form and the dispute of possession over the suit land commenced, for which meeting of village panchayat was convened and it was settled that half of the suit land

owned by Chaiti Bai will remain in possession of Fulchand and half will be in possession of the plaintiff. Fulchand died on 2.8.87, but during his life-time, Fulchand got his name recorded in revenue records in Khasra Nos.189/1 and 189/2 area 1.40 acres and also got it partitioned by the order of Naib-Tahsildar leading to filing of suit for declaration of title and for recovery of possession with regard to the land bearing Khasra No.181/1 area 1.40 acres of land stating inter-alia that she is title-holder of the suit land and as such, entitled for declaration of possession which defendants No.1 and 2 are unauthorizedly in possession. They have no right and title over the suit land as it is her mother's property and defendants No.1 and 2 being at all steps are not entitled to inherit the property left by her mother Chaiti Bai.

4. Resisting the suit, defendants No.1 and 2 filed their written statement and denied the averments made in the plaint stating inter-alia that during life-time of Chaiti Bai partition took place between Chaiti Bai and Fulchand, in which the land bearing Khasra No.181/1 area 1.40 acres was given to Fulchand and he was in possession pursuant to the said partition and also that partition has already made by the revenue Court,

as such, the defendants are title-holders of Khasra No.181/1 area 1.40 acres and consequently, they are in cultivating possession over the suit land for a fairly long time, as such, the plaintiff has no right over the suit land and the suit deserves to be dismissed.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 28.11.2006, dismissed the suit holding that since Chaiti Bai had married with Fulchand, father of defendants No.1 & 2 and remained in possession of half of 1.40 acres of land during his life-time, therefore, defendants No.1 and 2 would also succeed to the property of Chaiti Bai/Fulchand. On appeal being preferred by the plaintiff, the first appellate Court by the impugned judgment and decree reversed the judgment and decree of the trial Court holding that Chaiti Bai was exclusive owner of the suit property and Fulchand and his sons defendants No.1 and 2 cannot succeed to the property left by Chaiti Bai and allowed the appeal and decreed the suit in favour of the plaintiff. Feeling aggrieved and dissatisfied with the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial question

of law has been formulated, which has been set-out in the opening paragraph of this judgment for sake of completeness.

6. Mr. R. N. Jha, learned counsel for the appellants/defendants No.1 and 2 in his written submission submitted that the trial Court is absolutely justified in dismissing the suit filed by the plaintiff, however, the first appellate Court is absolutely unjustified in reversing that finding. He would further submit that Fulchand being second husband of Chaiti Bai had become absolute owner of the suit land bearing Khasra No.181/1 area 1.40 acres of land by virtue of partition held between the plaintiff's mother and Fulchand which could not be challenged by the plaintiff and therefore, on the death of Fulchand, defendants No.1 and 2 being sons of Fulchand would inherit the property and consequently, the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court, as such, the judgment and decree of the first appellate Court deserves to be set aside and that of the trial Court be restored.

7. Mr. Pallav Mishra, learned counsel for respondent No.1/plaintiff, would submit that admittedly defendants No.1 and 2 are step-sons of Chaiti Bai

being born to Fulchand out of his wedlock with Laxmi Bai, therefore, step-sons are not covered under Section 15(1)(a) of the Hindu Succession Act, 1956 (hereinafter called as 'the Act of 1956') and therefore, the first appellate Court is absolutely justified in reversing the judgment and decree of the trial Court and granting decree in favour of the plaintiff.

8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

9. As noticed hereinabove, the suit property was originally held by Dularram and Chaiti Bai was his daughter, who married with Jhariyar and out of their wedlock, they were blessed with Soniya-plaintiff herein. After death of Jhariyar though Chaiti Bai married with Fulchand, but after death of Chaiti Bai, Fulchand again married with Laxmi Bai and out of their wedlock in chudi form, defendants No.1 and 2 were born. So far as Chaiti Bai is concerned, defendants No.1 & 2 are her step-sons. It is also not in dispute that the property was the property of female Hindu namely Chaiti Bai, plaintiff's mother.

10. Sections 15 and 16 of the Act of 1956 state as

under:-

"Section 15. General rules of succession in the case of female Hindus.-(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Sec.16-

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (C) thirdly, upon the mother and father
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-sec.(1),-

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to, in Sub-sec.(1) in the order specified therein, but upon the heirs of the father; and
- (c) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in Sub-sec. (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu.- The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestates property among those heirs shall take place according to the following rules, namely:

Rule 1.-Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously.

Rule 2.-If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) to section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."

11. Sections 15 and 16 of the Act of 1956 deal with succession to the female Hindu in respect of property wherein she has absolute right. This is first statutory provision dealing with succession to the property of female Hindu. Clause (a) of sub-section (1) read with clause (a) and (b) of sub-section (2) of Section 16 of the Act of 1956 recognizes that rule of simultaneous succession to the extent that husband is entitled to succeed along with sons and daughters, if any and also recognizes the doctrine of representation to the extent that children of pre-deceased son or daughter to be entitled to succeed along with sons, daughters and husband of deceased female Hindu. If a female Hindu leaves any sons, daughters or husband, they would take the property to the exclusion of

father. A son or daughter would mean such as born from female Hindu and does not include step-son or step-daughter.

- 12.** The Supreme Court in the matter of Lachman Singh v. Kirpa Singh and others¹ has clearly held that the word "sons" in clause (a) of Section 15(1) of the Act of 1956 does not include "step-sons" i.e. sons of the husband of the female dying intestate by another wife. It was further held that a step-son dying intestate does not inherit share in her property simultaneously with her son. It was observed as under:-

"3...But under the Act a step-son of a female dying intestate is an heir and that is so because the family headed by a male is considered as a social unit. If a step-son does not fall within the scope of the expression 'sons' in clause (a) of S. 15(1) of the Act, he is sure to fall under clause (b) thereof being an heir of the husband. The word 'sons' in clause (a) of S. 15 (1) of the Act includes (i) sons born out of the womb of a female by the same husband or by different husbands including illegitimate sons too in view of S. 3(j) of the Act and (ii) adopted sons who are deemed to be sons for purposes of inheritance. Children of any predeceased son or adopted son also fall within the meaning of the expression 'sons'. If Parliament had felt that the word 'sons' should include 'step-sons' also it would have said so in express terms. We should remember that under the Hindu law as it stood prior to the coming into force of the Act, a step-son, i.e., a son of the husband of a female by another wife did not simultaneously succeed to the stridhana of the female on her dying intestate. In that case the son born out of

1 AIR 1987 SC 1616

her womb had precedence over a step-son. Parliament would have made express provision in the Act if it intended that there should be such a radical departure from the past. We are of the view that the word 'sons' in clause (a) of S. 15 (1) of the Act does not include 'step-sons' and that step-sons fall in the category of the heirs of the husband referred to in clause (b) thereof.

6.....We fell that neither of these reasons is correct. The words 'sons and daughters and the husband in clause (a) of S. 15 (1) only mean 'sons and daughters.... and the husband' of the deceased. They cannot be 'sons and daughters and the husband of any body else.... When once a property becomes the absolute property of a female Hindu it shall devolve first on her children (including children of the predeceased son and daughter) as provided in S. 15 (1) (a) of the Act and then on other heirs subject only to the limited change introduced in S. 15 (2) of the Act. The step-sons or step-daughters will come in as heirs only under clause (b) of S. 15 (1) or under clause (b) of S. 15 (2) of the Act. We do not, therefore, agree with the reasons given by the Allahabad High Court in support of its decision. We disagree with this decision."

- 13.** Similarly, the Madhya Pradesh High Court in the matter of Holiya v. Yashoda² has clearly held that the expression 'son' in Section 15 (1) (a) of the Act does not include a step-son and also relied upon the Mulla's Principles of Hindu Law in which it is stated with reference to Section 15 of the Hindu Succession Act that a step-son is not entitled as a son to inherit to step mother's property as one of the heirs under this entry, but he can succeed to her mother's

property as an heir of her husband under Entry B.

14. The principle of law laid down in Holiya (supra) was followed by the Madhya Pradesh in the matter of Reshamlal v. Bhagwant Singh³ in which it has been held that under Section 15(1) (a) of the Act of 1956, step-son is not included in laws of succession to the property as it follows the natural inclination of men and women.

15. Reverting to the facts of the present case in the light of principles of law flowing from the aforesaid decisions of the Supreme Court and the Madhya Pradesh High Court, it is quite vivid that 'step-son' is not included within the meaning of Section 15(1)(a) of the Act of 1956 and therefore, defendants No.1 and 2 being step-sons of Chaiti Bai would not succeed to the property of Chaiti Bai. In the instant case, admittedly and undisputedly, after death of Jhariyar, Chaiti Bai married with Fulchand, but after death of Chaiti Bai, Fulchand being former husband of Chaiti Bai married with Laxmi Bai (defendant No.3) in chudi form and out of their wedlock, defendants No.1 and 2 were born, as such, defendants No.1 and 2 being sons of Fulchand out of his wedlock with Laxmi Bai, they (defendants No.1 and 2) would definitely be 'step-

sons'. Since the property is exclusively the property of Chaiti Bai, defendants No.1 and 2 would not succeed to the property of Chaiti Bai along with Soniya Bai, who is admittedly the daughter of Chaiti Bai, therefore, plaintiff-Soniya Bai being only daughter of Chaiti Bai under Section 15(1)(a) of the Act of 1956 would succeed to the entire property left by Chaiti Bai in exclusion of defendants No.1 and 2.

16. In view of above-stated finding, the first appellate Court has rightly held that plaintiff-Soniya Bai is entitled to succeed the entire property left by Chaiti Bai and defendants No.1 & 2 being step-sons of Chaiti Bai would not succeed to the property of Chaiti Bai. I do not find any perversity or illegality in the said finding. The first appellate Court is absolutely justified in decreeing the suit of the plaintiff by reversing the judgment and decree of the trial Court.

17. Consequently, the second appeal deserves to be and is hereby dismissed answering the substantial question in favour of the plaintiff and against the defendants. There shall be no order as to cost(s).

18. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-