

HIGH COURT OF CHHATTISGARH, BILASPUR
Second Appeal No.2 of 2010

1. Dundul (died) through LR's
 - 1a. Dikeshwar S/o Late Shivram, 08 years
 - 1b. Pallavi D/o Late Shivram, 05 years,
 Both represented through grandmother appellant No.2
 Subli W/o Late Dundul"
2. Subli, W/o Dundul, 40 years, Caste – Mahara,
 All R/o. Village-Kumhali, Tahsil – Jagdalpur,
 Distt. Bastar-(CG)

(Defendants)

----- Appellants

Versus

1. Turu (died) through LR's
 - 1a. Shankar S/o Dishay, 40 years
 - 1b. Radha D/o Dishay, 50 years
 Both resident of Village – Kumhali, Tahsil-
 Jagdalpur, Distt. Bastar
2. State of Chhattisgarh, Through – Collector Bastar,
 Jagdalpur, Distt. Bastar-(CG)

----- Plaintiff

----- Respondents

 For Appellants/Defendants: Mr.Prafull Bharat, Advocate
 For Respondent No.2/State: Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/09/2020

1. Heard this second appeal preferred by the
 appellants/defendants on the question of admission
 and formulation of substantial question of law.
2. By the impugned judgment and decree, the first

appellate Court dismissed the appeal preferred by the defendants affirming the judgment and decree of the trial Court decreeing the suit.

3. Mr. Prafull Bharat, learned counsel for the appellants/defendants, would submit that both the Courts below were absolutely unjustified in decreeing the suit of the plaintiff holding that plaintiff-Turu has succeeded the property of Gagra & Kanhai and defendant No.1-Dundul is not adopted son of Kanhai and has not perfected his title by way of adverse possession, as such, the appeal involves substantial question of law for determination.

4. The suit property was originally held by Gagra and Kanhai. Kanhai died issueless. Plaintiff-Turu is sole daughter of Gagra. It is the case of the plaintiff that she is sole legal heir of Gagra & Kanhai and defendant No.1 is not adopted son of Kanhai, rather he was servant kept by Kanhai, but after death of Kanhai, defendant No.1 claiming himself to be adopted son of Kanhai got his name jointly recorded with the plaintiff and subsequently filed an application under Section 178 of the Madhya Pradesh Land Revenue Code, 1959 which led to filing of the suit for declaration of title that she is exclusive owner of the suit land,

delivery of possession and for declaring the order dated 22.3.2002 passed by the Naib-Tahsildar as null and void, in which defendants set-up a plea of adoption by Kanhai and he being adopted son of Kanhai his name was jointly recorded with the plaintiff and partition of holdings has already been directed, therefore, the suit deserves to be dismissed.

5. The trial Court upon appreciation of oral and documentary evidence available on record decreed the suit holding that the plaintiff is sole daughter of Gagra and since Kanhai died issueless, therefore, she would also succeed the property of Kanhai and defendant No.1 is not adopted son of Kanhai. On appeal being preferred, the first appellate Court affirmed that finding.

6. Two Courts below have concurrently and rightly held that fact of adoption has not been proved by defendant No.1 by leading evidence of appropriate nature, as such, defendant No.1 ought to have proved the fact of adoption by Kanhai. It was also held concurrently by two Courts below that defendant No.1 has also not pleaded fully and established the plea of adverse possession, rather both the pleas of adoption and adverse possession cannot stand together, as such, finding recorded by

two Courts below that the defendant No.1 has failed to prove the fact of adoption by Kanhai & adoption has not been established. The said finding is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record.

7. I do not find any merit in this second appeal. The second appeal deserves to be and is hereby dismissed at the admission stage itself without notice to other side.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-