

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 328 of 2009**

1. Ramchandra, aged 40 years,
2. Kumarsingh, aged 35 years,
3. Lachhanlal, aged 30 years,
4. Shanker lal, aged 20 years,

All sons of Madanlal, Resident of village Parsuli,
P.O. Khertha Bazar, Tahsil Dondi Lohara, District
Durg (C.G.)

-----Appellants/plaintiffs

Versus

1. Mannalal, aged 42 years, son of Bisahu,
Resident of village Asara Sirpur, P.c. no. 9, Post
Khertha Bazar, Tahsil Dondi Lohara, District Durg
(C.G.)
2. State of Chhattisgarh, Through the Collector,
Durg (C.G.)

-----Respondents/defendants.

For Appellants : Shri Vinod Kumar Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/8/2020

(1) Proceedings of the matter have been taken up
through video conferencing.

(2) Heard on the question of admission and formulation
of substantial question of law in a second appeal
preferred by the appellants/plaintiffs.

(3) By the impugned judgment, first appellate Court has dismissed the appeal preferred by the appellants/plaintiffs affirming the judgment and decree of the trial Court dismissing the suit.

(4) Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below are absolutely unjustified in holding that plaintiffs' father Madan Lal is not the son of Pawara Bai and Jotkunwar was the daughter of Pawara Bai and the suit is barred by principle of *res judicata* as contained in Section 11 of the CPC by recording a finding, which is perverse to the record.

(5) The suit property was originally held by Pawara Bai. Plaintiffs claimed that their grandfather – Ramnath purchased the suit property on 25.7.1955 in the name of Pawara Bai from Heeralal @ Asharam but no documentary evidence or registered sale deed was filed to demonstrate the aforesaid fact. On the other hand, trial Court has clearly come to the conclusion the suit as framed and filed is barred by principle of *res judicata* as on the same subject matter and between the same parties, plaintiffs' father – Madan Lal had filed a Civil Suit being Civil Suit No. 29-A/79 in the court of Civil Judge, Class -2 Balod and that civil suit is

dismissed on merits on 15.12.1980 and resultant decree is Exs. D-3 & D-4 and, therefore, the suit is hit by principle of *res judicata* as contained in Section 11 of the CPC. In an appeal preferred by the plaintiffs under Section 96 of the CPC there-against, learned first appellate court affirmed the judgment and decree of the trial court by dismissing the appeal.

(6) Both the courts below have clearly & concurrently recorded a finding that plaintiffs' father Madan Lal was not the son of Pawara Bai and Jotkuwar is only the daughter of Pawara Bai and defendant No. 1 - Mannalal is the son of Jotkunwar. The said findings recorded by both the courts below and finding on plea of *res judicata* are the finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(7) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side. No costs.

Sd/-
(Sanjay K. Agrawal)
Judge

