

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.283 of 2010**

1. Maniram, S/o Jagrasai Goand, aged about 50 years.

2. Subhash Ram, S/o Jagrasai Goand, aged about 45 years,

Both are R/o Vill. Madneswarpur, Tahsil Ambikapur, District Sarguja (C.G.)

(Defendants)
---- Appellants

Versus

1. Jolo (Dead) Through LRs

1(a) Jagdish, S/o Late Jolo, aged about 50 years

1(b) Pannuram, S/o Late Jolo, aged about 45 years

1(c) Dilbandhu, D/o Late Jolo, aged about 40 years

All are R/o Village Maneshwarpur, Tahsil Rajpur, Distt. Balrampur (C.G.)

2. Dhana, S/o Gadour Goand, aged about 58 years,

3. A) Durjan Ram, S/o Late Budhan Goand, aged about 40 years,

3.B) Devlochni, W/o Late Birjanram, aged about 30 years,

3.C) Kapil, S/o Birjan, aged about 20 years,

3.D) Rajesh, S/o Late Birjan, aged about 16 years,

3.E) Basant, S/o Late Birjan, aged about 14 years,

3.F) Tuneshwari, D/o Late Birjan, aged about 7 years,

All Minor Through their Natural Guardian mother,

All R/o Village Padniya, alias Mandeshwarpur, Thana Dhaupur, District Sarguja.

4. Nanki, S/o Dharma Goand, aged about 58 years,

5. Mankuwar, S/o Dharma Goand, aged about 52 years,

6. Bargahin, S/o Ram Goand, aged about 56 years,

All R/o Vill. Madneshwarpur, Thana Rajpur, Tahsil Ambikapur, District Sarguja (C.G.)

7. A) Hemraj, S/o Late Dhaniram, aged about 35 years,

7.B) Fulkunwar, W/o Late Dhaniram, aged about 50 years,

7.C) Bhagatram, S/o Late Bagar Sai, aged about 50 years,

7.D) Mus. Fulkunwar, W/o Bagar Sai, aged about 60 years,

8. Jagar Sai, S/o Kanwal Sai, aged about 62 years,

All Caste Goand, R/o Vill. Madneswar, Tahsil Ambikapur, District Sarguja (C.G.)

9. State of Chhattisgarh, through Collector, Sarguja (Ambikapur) (C.G.)

---- Respondents

For Appellants / Defendants: -

Mr. Awadh Tripathi and Mr. Vivek Tripathi, Advocates.

For Respondents No.1 to 8: -

Mr. Rahul Mishra, Advocate.

For Respondent No.9 / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/02/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by defendants No.1 & 2.
2. By the impugned judgment, the first appellate Court has dismissed the appeal preferred by the appellants herein / defendants No.1 & 2 affirming the judgment & decree of the trial Court decreeing the suit.
3. Mr. Vivek Tripathi, learned counsel appearing for the appellants herein / defendants No.1 & 2, would submit that both the Courts below were unjustified in disbelieving the adoption deed Exs.D-10(C) & D-11(C) executed by Bhagmaniya in favour of defendants No.1 & 2 adopting them as their sons, by recording a finding which is perverse to the record and as such, the appeal involves substantial question of law and it be formulated

accordingly.

4. Ratiya had four sons namely, Aalamsai, Kawalsai, Ram and Laxman. The suit relates to the property left by Laxman & Bhagmaniya as they died issue-less. Laxman died earlier to his wife Bhagmaniya and Bhagmaniya died on 9-2-1985. Legal representatives of Aalamsai and others brought a suit with regard to the property left by Laxman & Bhagmaniya stating inter alia that they have equal share with the defendants, as Bhagmaniya died issue-less and there is no adoption deed, whereas defendants No.1 & 2 setup a plea that since Bhagmaniya had executed adoption deed on 8-2-1985 and she died on the next day i.e. on 9-2-1985, as such, being the adopted sons, they will take the entire property of Bhagmaniya and the plaintiffs are not entitled to inherit the property of Bhagmaniya along with them. The trial Court decreed the suit and held that it was the property of Bhagmaniya and the plaintiffs are her husband's legal heirs being his brother's sons and daughters, defendants No.1 & 2 are also legal heirs of her husband and the adoption deed has not been proved in accordance with law. The adoption deed is said to have been executed by Bhagmaniya on 8-2-1985, on that day, she was confined to bed and was unable to move and on the next day i.e. 9-2-1985, Bhagmaniya died. By recording that finding, the trial Court disbelieved the adoption deed allegedly executed by Bhagmaniya in favour of defendants No.1 & 2 and that was followed by the first appellate Court. The finding recorded by the Courts below holding that the defendants have failed to prove valid adoption in their favour by Bhagmaniya and further failed to prove Exs.D-10(C) and D-11(C)

in their favour is a finding of fact based on the material available on record. The finding recorded by the two Courts below on the question of adoption deed is a correct finding, as there is ample evidence available on record that Bhagmaniya was confined to bed on the date of execution of adoption deed i.e. 8-2-1985 and on the next day i.e. 9-2-1985, she died. As such, the finding recorded by the two Courts below in regard to adoption of defendants No.1 & 2 is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. I do not find any merit much less substantial question of law in this second appeal, it deserves to be and is accordingly dismissed *in limine*. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma