

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.314 of 2010**

1. Dilbasiya, W/o Butai, aged about 64 years, Caste Gond, R/o Village Dumki, Tahsil Dhourpur, District Surguja (C.G.)
2. Bhagmaniya, W/o Goverdhan, aged about 62 years, R/o Badgari, Tahsil Dhourpur, District Surguja (C.G.)
3. Shila Bai, W/o Kendala, aged about 39 years, Caste Gond, R/o Asandih, Tahsil Dhourpur, District Surguja (C.G.)

(Defendants)

---- Appellants

Versus

1. Kendali, W/o late Kanam, aged about 65 years, Occupation Agriculturist,
2. Bharat, S/o Late Kanam, aged about 45 years, Occupation Agriculturist,
3. Shikari Ram, S/o late Kanam, aged about 35 years, Occupation Agriculturist,

All R/o Village Chhermuda, Post and Tahsil Dhourpur, District Surguja (C.G.)

4. Sita, D/o late Kanam, W/o Raghunath, aged about 40 years, Occupation Agriculturist, R/o Village Masma, P.S. and Tahsil Dhourpur, District Surguja (C.G.)
5. State of Chhattisgarh, Through the Collector, Surguja, Ambikapur (C.G.)

(Legal heirs of Original Plaintiff)

---- Respondents

For Appellants / Defendants: -

Mr. Sumit Singh Rathore, Advocate on behalf of
Mrs. Hamida Siddiqui, Advocate.

For Respondents No.1 to 3 / Plaintiffs : -

Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.

For Respondent No.5 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

12/01/2021

1. This second appeal preferred under Section 100 of the CPC by the appellants herein / defendants was admitted for hearing on 20-11-2013 by formulating the following substantial question of law:-

“Whether the lower appellate court was justified in reversing the judgment of the trial court only on the basis of the inferences drawn in respect of adoption of the original plaintiff by Budha?”

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

2. The suit property was originally held by two brothers Budha and Bhukhan. Budha died issue-less. The defendants are daughters of Bhukhan. It is the case of the plaintiff that since Budha died issue-less, therefore, he has been adopted by Budha during his lifetime and he took care of Budha and thus, he is entitled to have the exclusive property mentioned in Schedule A of the plaint and half of the property mentioned in Schedule B of the plaint for which he filed suit for declaration of title and partition and consequent possession. The fact of adoption is said to be 58-60 years prior to the date of filing of suit i.e. 18-10-2002. The defendants resisting the suit filed written statement and controverted the plaint allegations and specifically pleaded that the plaintiff was never adopted by Budha and he is not the adopted son of Budha and therefore he is not entitled to succeed the property of Budha. The trial Court framed seven issues including the issue as to whether the plaintiff is adopted son of Budha and answered the issue in negative holding that the plaintiff is not the adopted son of Budha which the first appellate Court reversed the judgment & decree of the trial

Court against which this second appeal has been preferred by the defendants which has been set-out in the opening paragraph of this judgment for the sake of completeness.

3. Mr. Sumit Singh Rathore, learned counsel appearing for the defendants / appellants herein, would submit that the first appellate Court is absolutely unjustified in holding that the plaintiff is adopted son of Budha as it has not been proved in accordance with law and as such, the judgment & decree of the first appellate Court deserves to be set aside. Learned counsel also submits that valid custom has not been proved.
4. Mr. Anurag Singh, learned counsel for legal heirs of the original plaintiffs No.1 to 3 / respondents No.1 to 3 herein, would support that the first appellate Court has rightly decreed the suit.
5. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the record with utmost circumspection.
6. Admittedly, the dispute relates to the property left by Budha who died issue-less. The original plaintiff claims to be adopted by Budha 58-60 years prior to the date of filing of suit i.e. prior to coming into force of the Hindu Adoption and Maintenance Act, 1956 (for short, 'the Act of 1956'). Since the Act of 1956 is not applicable and the original plaintiff has claimed to have adopted prior to coming into force of the Act of 1956 which came into force on 21st of December, 1956, the plaintiff was required to plead and establish the valid custom of adoption prevalent among them. The plaintiff was required to plead the fact of adoption as per the custom has taken place. The plaintiff in

order to plead valid custom though pleaded in paragraph 4 of the plaint that amongst them the fact of adoption was prevalent where the person has no issue and thereafter in order to establish the fact of valid custom, one witness namely, Thawla Gond (PW-4) has been examined, he has simply stated in the statement before the Court that he has seen the plaintiff residing with Budha and he also seen that Budha has been maintained by the plaintiff and they used to cultivate together and after the death of Budha, the plaintiff is cultivating the suit land. Thawla Gond (PW-4) has also stated about the ceremony that took place through the adoption of the plaintiff by Budha, but importantly, in paragraph 3 of cross-examination, Thawla Gond (PW-4) has clearly stated that the fact of adoption i.e. what he has stated in his evidence is on the basis of being tutored by the plaintiff and he has not given any such evidence of adoption before any other court. Apart from the statement of Thawla Gond (PW-4), there is no other evidence on the fact of either valid custom of adoption in their family and the said fact of custom has not been proved.

7. Apart from the above, it is quite vivid that Thawla Gond (PW-4) did not make any statement with regard to valid custom prevalent among parties as they are ab-original tribe(s). As such, the plaintiff has failed to prove the valid custom prevalent amongst them by which a person can have the privilege of adoption. The plaintiff was required to prove valid and effective custom of adoption in their family which he has failed to prove and establish. The plaintiff and other witnesses have further failed to prove the actual fact of adoption having taken place and that he (plaintiff) has been adopted in a duly constituted

ceremony and he has been treated as adopted son of Budha by one and all in the entire family of Budha. As such, the first appellate Court without appreciating the evidence available on record, particularly, the statement of Thawla Gond (PW-4) in para 4 in which he has made statement that on the basis of tutoring by the original plaintiff, he has stated the fact of adoption by Budha, decreed the suit of the plaintiff. In the considered opinion of this Court, the plaintiff has failed to prove valid custom among them regarding adoption and further failed to prove the fact of adoption of the plaintiff by Budha. The finding recorded by the first appellate Court in this regard is totally perverse and contrary to the evidence available on record. The substantial question of law is answered accordingly and judgment & decree of the first appellate Court are set aside and that of the trial Court are restored.

8. The second appeal is allowed to the extent indicated herein above. No order as to cost(s).
9. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge