

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 292 of 2006**

Kali Bai D/o Mahaveer, Aged about 62 years, By
Caste Panika, R/o Village Fulwari, P.O. and
Tahsil Lormi, Distt. Bilaspur, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Narottam, Aged about 54 years, S/o Adhari, Caste Panika, R/o Village Fulwari, P.O. and Tahsil Lormi, Distt. Bilaspur, Chhattisgarh.
2. Narayan, Aged about 53 years, S/o Adhari, Caste Panika, R/o Village Fulwari, P.O. and Tahsil Lormi, Distt. Bilaspur, Chhattisgarh.
3. Munni Bai, Aged about 56 years, D/o Adhari, Caste Panika, R/o Village Fulwari, P.O. and Tahsil Lormi, Distt. Bilaspur, Chhattisgarh.
4. Chhunni Bai, D/o Adhari (died) thr. Lrs. :-
 - A. Bisahu Ram s/o Gajdhar, Aged about 58 years, R/o Village Patharri, Post Office and Police Station Lormi, Tahsil Lormi, Distt. Mungeli, Chhattisgarh.
 - B. Smt. Kala Bai W/o Mahesh Ram, Aged about 35 years, R/o Bhedagarh, Police Station Kukdur, Tahsil Pandaria, Distt. Kabirdham, Chhattisgarh.
 - C. Smt. Jala Bai W/o Tulsiram, Aged about 30 years, R/o Kodwa-Godan, Police Station Kukdur, Tahsil Pandaria, Distt. Kabirdham, Chhattisgarh.
 - D. Smt. Jal Bai W/o Anil Kumar, Aged about 28 years, R/o Village Singhanpuri, Police Station

Chilfi, Tahsil Lormi, Distt. Mungeli, Chhattisgarh.

E. Ku.Mandakini D/o Bisahuram, Aged about 18 years, R/o Village Patharri, Post Office and Police Station Lormi, Tahsil Lormi, Distt. Mungeli, Chhattisgarh.

F. Arun Kumar S/o Bisahu Ram, Aged about 15 years, minor through legal guardian father Bisahu Ram, R/o Village Patharri, Post Office and Police Station Lormi, Tahsil Lormi, Distt. Mungeli, Chhattisgarh.

5. Mantora Bai, Aged about 45 years, D/o Late Adhari, Caste Panika, R/o Village Fulwari, P.O. and Tahsil Lormi, Distt. Bilaspur, Chhattisgarh.

6. Mohan S/o Ramadhar (died) through Lrs. :-

(I) Dasari Bai W/o Mohanlal (died and deleted).

(ii). Bhuvan S/o Mohan Lal, Aged about 47 years.

(iii). Deelesh S/o Mohan Lal, Aged about 42 years.

All R/o Village Fulwari, Post and Tahsil Lormi, Distt. Mungeli, Chhattisgarh.

7. State of Chhattisgarh, acting through Collector, Bilaspur, Chhattisgarh.

--- Respondents/Defendants

For Appellant :- Mr. Bharat Rajput, Advocate

For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15/06/2021

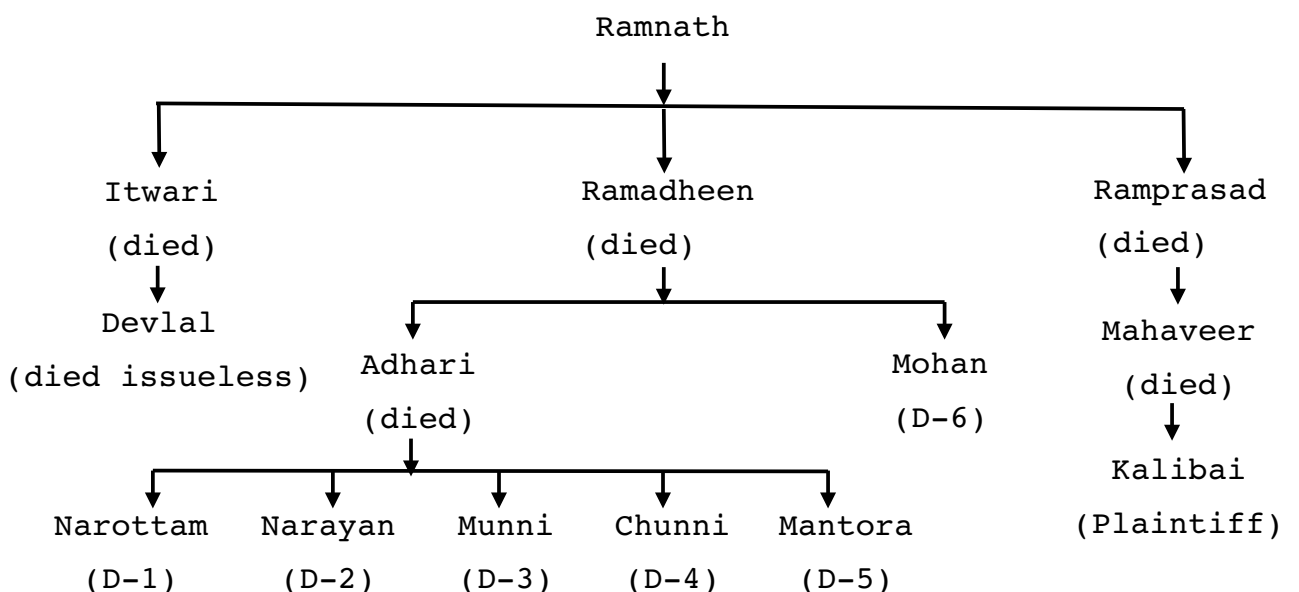
1. This second appeal preferred by the appellant/plaintiff was admitted for hearing on 06/09/2006 by formulating the following two substantial question of law :-

“(A) Whether the learned trial Court as well as the appellate court have given a proper interpretation to the provisions of Section 14 of the Hindu Succession Act ?

(B) Whether the findings of both the Courts below are justified that since the death of original owner Ramnath took place before coming into force of the Hindu Succession Act, 1956, the appellant/plaintiff can not be treated as entitled to any share therein ?”

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

2. The following genealogical tree will demonstrate the relationship between the parties :-



3. The suit property admeasuring 9.02 acres situated at Village Fulwari, Tahsil Lormi, District Mungeli was originally held by one Ramnath. He had three sons namely Itwari, Ramadheen and Ramprasad. Itwari had a son namely Devlal, who died issueless. Ramadheen had two sons namely Adhari and Mohan. Adhari died leaving behind his sons and daughters who are defendants No. 1 to 5 and Mohan is defendant No. 6. Similarly, Ramprasad had one son Mahaveer, who was assassinated in the year 1946 and left behind his sole daughter namely Kalibai, who is the plaintiff.
4. Plaintiff – Kalibai filed an application under Section 178 of Chhattisgarh Land Revenue Code, 1959 for partition of the suit property as after the death of Itwari, the suit property was held jointly by defendants' grandfather Ramadheen as well as plaintiff's grandfather Ramprasad. The tahsildar by order dated 15/01/1991 directed for partition of the suit property in three parts and allotted 1/3rd share of the suit property in favour of the plaintiff. Kalibai then preferred an appeal before the S.D.O. stating that since

Devlal i.e. son of Itwari had died issueless, therefore, plaintiff being the successors-in-interest of Ramprasad as well as defendants being successors-in-interest of Ramadheen, both will be entitled for $\frac{1}{2}$ share in the suit property, which the S.D.O. also did not accept and dismissed the appeal on 30/05/1991 against which Kalibai preferred a revision before the Commissioner, who by order dated 01/01/1996 (Ex. P/5) reserved the liberty in favour of Kalibai to raise the question of title before the jurisdictional Court.

5. Thereafter, a civil suit for declaration of title and partition was filed by the plaintiff – Kalibai claiming $\frac{1}{2}$ share in the suit property stating that the suit property belonged to her great-grandfather Ramnath, who had three sons namely Itwari, Ramadheen and Ramprasad and since Itwari's son namely Devlal died issueless and plaintiff is the sole surviving heir of Ramprasad and defendants are successors-in-interest of Ramadheen, therefore, she (plaintiff) as well as the defendants, both are entitled for $\frac{1}{2}$ share in the suit property.

6. Resisting the suit, defendants filed their written statement wherein they have admitted that the suit property was held by their great-grandfather Ramnath, but they took up a plea of partition of the suit property amongst them and prayed for the suit to be dismissed.
7. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit vide its judgment and decree dated 04/11/2004 dismissed the suit finding no merit, which was affirmed by the first appellate Court in the appeal preferred by the appellant/plaintiff. Feeling aggrieved by the impugned judgment and decree dated 19/04/2006 passed by the first appellate Court, the instant second appeal under Section 100 of CPC has been preferred by the appellant/plaintiff in which two substantial questions have been formulated and set out in the opening paragraph of this judgment.
8. Mr. Bharat Rajput, learned counsel for the appellant/plaintiff, would submit it is not in dispute that the suit property was held by Ramnath and he had three sons namely Itwari, Ramadheen and Ramprasad. It is also not in

dispute that Itwari died issueless and plaintiff is the sole surviving heir of Ramprasad and defendants are successors-in-interest of Ramadheen. As such, both the plaintiff as well as defendants will take $\frac{1}{2}$ share in the suit property, but both the Courts below have committed grave legal error in dismissing the suit and not granting $\frac{1}{2}$ share in the suit property in favour of the plaintiff. Therefore, the appeal be allowed by setting aside the judgment and decree passed by both the Courts below.

9. None appeared for respondents/defendants No. 1 to 6, though served.
10. I have heard learned counsel for the plaintiff, considered his submission and went through the record with utmost circumspection.
11. Plaintiff claimed that the suit property admeasuring 9.02 acres was held by her great-grandfather Ramnath which was also admitted by the defendants in their written statement. It is also not in dispute that Ramnath had three sons namely Itwari, Ramadheen and Ramprasad; and that Itwari's only son namely Devlal died issueless

and defendants are the successors-in-interest of Ramadheen as well as plaintiff is the sole surviving heir of the only son of Ramprasad namely Mahaveer, who was assassinated in the year 1946, as the said facts have been admitted by Mohanlal (D.W. 1) in his cross-examination before the trial Court. Not only this, in a partition proceeding initiated by the plaintiff under Section 178 of the Land Revenue Code, the suit property is shown to be originally held by Ramnath. The only dispute is whether plaintiff is entitled for $\frac{1}{2}$ share in the suit property as claimed by her or for $\frac{1}{3}^{\text{rd}}$ share in the suit property as held by the revenue authorities. Since, $\frac{1}{3}^{\text{rd}}$ share was allotted to the plaintiff by the S.D.O. and the question of title was raised by the Commissioner, therefore, plaintiff filed the suit for declaration of title and partition claiming $\frac{1}{2}$ share in the suit property.

12. The only question for consideration herein is whether plaintiff is entitled for $\frac{1}{3}^{\text{rd}}$ share in the suit property as held by the revenue authorities in the partition proceedings initiated by the plaintiff or if she is entitled

for $\frac{1}{2}$ share in the suit property as claimed by her.

13. Plaintiff Kalibai herself has been examined as P.W. 1 and in her cross-examination she has clearly stated that she is entitled for $\frac{1}{2}$ share in the suit property as the suit property was originally held by her great-grandfather Ramnath who had three sons namely Itwari, Ramadheen and Ramprasad. Since Itwari's son namely Devlal died issueless and since defendants are the successors-in-interest of Ramadheen and plaintiff is the only successor-in-interest of Ramprasad, therefore, she as well as defendants, both will get $\frac{1}{2}$ share in the suit property. She has refuted the defence taken by the defendants and stated that no partition took place between the three brothers i.e. Itwari, Ramadheen and Ramprasad with regard to the suit property. Moreover, nothing has been extracted to establish the fact of partition. Tangu (P.W. 2) has also been examined on behalf of the plaintiff and he has also stated on oath that Itwari, Ramadheen and Ramprasad were brothers and Itwari's son died issueless and plaintiff is the sole surviving heir of Ramadheen and

defendants are the successors-in-interest of Ramprasad.

14. On behalf of the defendants, defendant No. 6 namely Mohanlal (D.W. 1) has been examined who has also clearly admitted in paragraph 3 of his cross-examination that the suit property was held by Ramnath and out of his three sons, Itwari's son died issueless, defendants are the successors-in-interest of Ramadheen and plaintiff is the daughter of Mahaveer, who was the son of Ramprasad. Though Mohanlal (D.W. 1) refuted the fact that plaintiff and defendants both will get $\frac{1}{2}$ share in the suit property.

15. In support of her claim, plaintiff has filed the document Exhibit P/1 which is a copy of Adhikar Abhilekh which is maintained on the basis of Jamabandi of 1954-55 wherein plaintiff's name is also recorded along with the names of the defendants. Similarly, she has also filed Exhibits P/3 and P/4 which are copies of Exhibit P/1 and the name of the plaintiff is duly been recorded along with the defendants and Exhibit P/5 is the order of the Commissioner in which she has been held entitled for $\frac{1}{3}^{\text{rd}}$ share in the suit property.

16. Thus, it is established on record that suit property was originally held by one Ramnath and it was succeeded by his three sons namely Itwari, Ramadheen and Ramprasad. Since Itwari died issueless and defendants are the successors-in-interest of Ramadheen and plaintiff is the only daughter of Ramprasad's son namely Mahaveer, who was assassinated in the year 1946, both plaintiff as well as defendants will get $\frac{1}{2}$ share in the suit property, being the only surviving heirs of Ramnath's sons Ramprasad and Ramadheen which has been duly established from the oral and documentary evidence on record. In view of the above-stated findings, the conclusion/findings of the two Courts below based on Section 14 of Hindu Succession Act, 1956 is erroneous. As such, both the Courts below have committed grave legal error in dismissing the suit of the plaintiff and not granting $\frac{1}{2}$ share in the suit property to the plaintiff.

17. In view of the aforesaid finding recorded herein-above, the judgment and decree passed by both the Courts below are hereby set aside by answering the substantial questions of law in

favour of the plaintiff and it is held that plaintiff is entitled to get $\frac{1}{2}$ share in the suit property as shown in Schedule 'A' appended with the plaint and is entitled for separate possession of her share in the suit property in the partition proceedings to be done by the Collector/any other officer authorized by him on his behalf in accordance with law.

18. It is ordered and decreed that plaintiff will be entitled for $\frac{1}{2}$ (one-half) share in the suit property shown in Schedule 'A' of the plaint and she will be entitled for separate possession of the said property in the partition proceeding conducted by the Collector/any other Revenue officer authorized by him in accordance with law on his behalf.

19. Accordingly, the second appeal is allowed to the extent indicated herein-above. No cost(s).

20. Decree be drawn-up accordingly and Schedule 'A' appended with the plaint be made part of the decree.

Sd/-
(Sanjay K. Agrawal)
Judge