

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 196 of 2011**

1. Mujib Rehman S/o Late Ashiq, Aged about 40 years.
2. Mohd. Siraj S/o Late Ashiq, Aged about 38 years.
3. Smt. Rabiya W/o Late Ashiq, Aged about 60 years.

All are R/o Village Zunapara, Tahsil Baikunthpur,
Distt. Korea, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Smt. Mariyam W/o Mohd. Ishahar, Aged about 44 years.
2. Smt. Fatima D/o Mohd. Sobrati, Aged about 40 years.

Both are by Occupation Agriculturist, R/o Village Bargidih, Tahsil Lundra, Distt. Sarguja, Chhattisgarh.

3. State of Chhattisgarh, Through Collector, Korea, Chhattisgarh.

--- Respondents/Defendants

For Appellants	: -Mr. Sanjay Patel, Advocate
For Respondents 1 & 2	: -Mr. Vinod Ku. Pandey, Advocate
For State	: -Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/03/2021

1. Heard on admission and formulation of substantial question of law in this second

appeal preferred by the appellants/plaintiffs against the impugned judgment and decree passed by the first appellate Court modifying the judgment and decree of the trial Court allotting shares in the suit property which the parties are entitled to get.

2. Mr. Sanjay Patel, learned counsel for the appellants/plaintiffs, would submit that the first appellate Court has committed illegality in modifying the well-reasoned judgment of the trial Court, as such, the appeal deserves to be admitted by formulating substantial question of law.

3. Plaintiff filed a suit stating inter alia that they, being the legal heirs of son of Sobaraati namely Ashiq, are entitled to get $3/4^{\text{th}}$ share in the suit property and defendants No. 1 and 2, being the daughters of Sobaraati, would get $1/4^{\text{th}}$ share in the suit property, which the trial Court accepted and granted decree as claimed by the plaintiffs, but on appeal being preferred by defendants No. 1 and 2, learned first appellate Court modified the decree of the trial Court holding that share has not been allotted in accordance with 'Hanifi Law of Inheritance'.

4. The suit property was originally held by Sobaraati. He and his wife Najeeran Bibi both have died. They had one son namely Ashiq who has also died and plaintiffs are legal heirs of Ashiq whereas defendants No. 1 and 2 are daughters of Sobaraati and Najeeran Bibi. Parties are Sunni Muslims.

5. Learned first appellate Court has held that parties, being Sunni Muslims, are governed by 'Hanifi Law of Inheritance' and in accordance with that, widow of Sobaraati namely Najeeran Bibi, being 'sharer', would get $1/8^{\text{th}}$ share in the suit property and out of the remaining $7/8^{\text{th}}$ share, plaintiffs will be entitled to $2/3^{\text{rd}}$ share, being the legal heirs of son of Sobaraati and defendants No. 1 and 2 will be entitled to $1/3^{\text{rd}}$ share in the suit property, being the daughters of Sobaraati and accordingly, modified the judgment and decree of the trial Court.

6. The modification of the decree of the trial Court done by the first appellate Court is in accordance with the principles as contained in 'Chapter 7' of 'Hanifi Law of Inheritance' wherein it has clearly been provided that widow would be 'sharer' and would get $1/8^{\text{th}}$ share in

the property of her husband and the son and daughter would be 'residuaries' and the son would get $2/3^{\text{rd}}$ share in the remaining $7/8^{\text{th}}$ share of the property whereas the daughter would get $1/3^{\text{rd}}$ share in the remaining property.

7. As such, the said finding recorded by the first appellate Court that widow of Mohd. Sobaraati namely Najeeran Bibi would get $1/8^{\text{th}}$ share in the suit property (which she has already alienated to defendants No. 1 and 2) and plaintiffs would get $2/3^{\text{rd}}$ share in the remaining property and defendants No. 1 and 2 would jointly get $1/3^{\text{rd}}$ share in the remaining property is a finding of fact based on material available on record which is neither perverse nor contrary to law. I do not find any merit in the appeal warranting admission by formulating substantial question of law.

8. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed in limine without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge