

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 305 of 2011**

1. Ram Prasad, S/o. Chhotau, aged about 45 years, by caste Kanwar, R/o. Village Kusmusi, Tahsil Surajpur Distt. Surguja (CG)
2. Raniya Widow of Chhotau, aged about 65 years, By Caste Kanwar, R/o. Village Kusmusi, Tahsil Surajpur Distt. Surguja (CG)

---- Appellants/Plaintiffs**Versus**

1. Chameli, Widow of Late Heerasai, aged about 40 years, by Caste Kanwar, R/o. Village Satya Nagapur, Tahsil Surajpur distt. Surguja (CG)
2. Somari D/o. Late Shri Heersai, W/o. Ghuan Kanwar, aged about 30 years, R/o. Village Kusmusi, Tahsil Surajpur Distt. Surguja (CG)
3. Bastiso D/o. Chhotau, W/o. Shyamlal, aged about 58 years, R/o. Village Kusmusi, Tahsil Surajpur distt. Surguja (CG)
4. Sunti D/o. Chhotau, aged about 40 years, W/o. Madan, by caste Kanwar, R/o. Village Mahu, Tahsil Surajpur Dist, Surguja (CG)

---Respondents/Defendants

For Appellants	: Shri Sushil Dubey and Shri Aman Upadhyaya, Advocates
For Respondents	: Not noticed

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****01.3.2021**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants herein/plaintiffs against the impugned judgment and decree dated 02.9.2011 passed by First Additional District Judge, Surajpur Distt. Surguja in Civil Appeal No.75A/2011 affirming the judgment and decree dated 30.6.2008 passed by Civil Judge Class-II, Surajpur Distt. Surguja in Civil Suit No.140A/2003 by

which the trial Court dismissed the suit of the plaintiffs.

2. Learned counsel for the appellants herein/plaintiffs submits that both the courts below have concurrently erred in dismissing the suit filed by the plaintiffs holding that the plaintiff is the title holder of only $\frac{1}{2}$ share of the suit property left by late Chhotau, by recording a finding which is perverse to the record, therefore, the appeal involves substantial question of law for determination and the appeal may be admitted for hearing by formulating substantial question of law.

3. I have heard learned counsel for the appellants and went through the record with utmost circumspection.

4. The suit property was originally held by Late Chhotau who has two sons namely Heera Sai and Ram Prasad (Plaintiff No.1), whereas defendant No.1 Chameli is widow of Late Heera Sai and defendant No.2 Somari is daughter of late Heera Sai. Defendant No.3 - Batiso and Defendant No.4 – Sunti are daughters of late Chootau. The plaintiff filed a suit that he is the exclusive title holder of the property left by his father late Chhotau and the defendants have no right over the suit property.

5. The trial Court after appreciating the oral and documentary evidence dismissed the suit of the plaintiff holding that the defendants 1 & 2 are also the title holders of $\frac{1}{2}$ share of the suit property left by late Chhotau. The said finding recorded by the trial Court has been affirmed by the first appellate court against which the plaintiff has preferred the instant second appeal.

6. The two Courts below have concurrently recorded a finding that plaintiff Ram Prasad is not an exclusive title holder of the suit property, he is title holder of only $\frac{1}{2}$ share of suit property left by his father late

Chhotau and defendants 1 & 2, wife and daughter of his late brother Heera Sai, are title holders of remaining $\frac{1}{2}$ share of the suit property. As such, the concurrent finding recorded by the two Courts below dismissing the suit as well as the appeal holding that the plaintiff Ram Prasad is the title holder of only $\frac{1}{2}$ share of the suit property, is finding of fact based on material available on record, which is neither perverse not contrary to the record and the appeal does not involves substantial questions of law.

7. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE