

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.486 of 2012**

Manharan, S/o. Budharam Suryavanshi, Aged About-41 years, R/o Ashok Nagar Gudipara Road, Power House, Raipur, Near Bajrang Mandir, Raipur (CG)

----- Appellant/Defendant No.1

Versus

1. Jamuna Bai, W/o. Budhram Suryavanshi, Aged About-60 years,

2. Indira Bai, W/o Patiram Suryavanshi, Aged About-32 years,

Both the respondents are R/o. Village-Amsena, Tehsil-Takhatpur, District-Bilaspur (CG)

3. Mogra Bai W/o. Manharan Suryavanshi, Aged About-35 years, R/o. Village-Kadaar, Tehsil-Belha, District-Bilaspur (CG)

----- Plaintiffs

4. State of Chhattisgarh, through Collector Bilaspur

----- Defendant No.2

5. Dr. Jitendra Agrawal, S/o Naval Kishore Agrawal, Aged About-36 years, R/o. Tikrapara, Ramdas Nagar, Tehsil & District-Bilaspur (CG)

----- Respondents/Defendant No.3

For Appellant/Defendant No.1:

Mr. Sarfaraz Khan and Ms Deepali Pandey,
Advocates

For Respondents No.1 to 3/Plaintiffs:

Mr. Somnath Verma, Advocate

For Respondent No.4/State:

Mr. Sanjay Pathak, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

9/3/2021

1. The substantial question of law involved, formulated

and to be answered in this second appeal preferred by the appellant/defendant No.1 is as under:-

“Whether, the respondents No.1 to 3/plaintiffs have any legal right to claim in the property of late Budhram, when the marriage of respondent No.1/plaintiff No.1 (Jamuna Bai) with late Budhram was not solemnized as per Section 7 of the Hindu Marriage Act, 1955?”

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

2. The suit property was originally held by Budhram.

Budhram was married with Bhuri Bai and out of their wedlock, defendant No.1-Manharan was born. Unfortunately, Budhram's first wife i.e. Bhuri Bai died and thereafter Budhram is said to have entered into second marriage in Chudi form to plaintiff No.1-Jamuna Bai and plaintiffs No.2 and 3 are daughters born out of his wedlock with Jamuna Bai. The plaintiffs filed a suit that the suit property being the property of Budhram, each of the plaintiffs will have 1/4 share and defendant No.1 will have 1/4 share in the suit property.

3. Resisting the suit, defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that plaintiff No.1-Jamuna Bai is not legally wedded wife of Budhram, therefore, the

plaintiffs would not succeed any share in the property of Budhram.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 22.11.2011, held that after death of Bhuri Bai, said Budhram has solemnized second marriage with plaintiff No.1-Jamuna Bai in Chudi form and plaintiffs No.2 and 3 are daughters out of their wedlock in Chudi form and as such, all four will get 1/4 share in the suit property. On appeal being preferred, the first appellate Court dismissed the appeal by affirming the judgment and decree of the trial Court, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant No.1, in which one substantial question of law has been formulated, which has been set-out in opening paragraph of this judgment for sake of completeness.

5. Ms Deepali Pandey, learned counsel for the appellant/defendant No.1, would submit that both the Courts below concurrently erred in holding that marriage of Budhram with plaintiff No.1-Jamuna Bai was solemnized in accordance with the provisions contained in Section 7 of the Hindu Marriage Act, 1955 (hereinafter called as 'the Act of 1955') as it was

never solemnized by taking seven steps by the bridegroom and the bride jointly before the sacred fire as per sub-section (2) of Section 7 of the Act of 1955, as such, the plaintiffs would not succeed to the property of Budhram and the judgment and decree passed by the trial Court as affirmed by the first appellate Court deserves to be set aside.

6. On the other hand, Mr. Somnath Verma, learned counsel for respondents No.1 to 3/plaintiffs, would submit that no plea was ever taken in written statement that marriage of Jamuna Bai with Budhram was not solemnized in accordance with Section 7 of the Act of 1955. Even otherwise, defendant No.1 in his examination before the trial Court has admitted that marriage of Budhram was solemnized with Jamuna Bai in Chudi form, otherwise, appropriate defence would have been taken and no new plea can be allowed to be taken for the first time before second appellate stage, as such, the second appeal deserves to be dismissed.

7. I have heard learned counsel appearing for the parties, considered their submissions made hereinabove and also went through the records with utmost circumspection.

8. It is not in dispute that Budhram firstly married with Bhuri Bai and defendant No.1 is his son out of their

wedlock and after death of Bhuri Bai, Budhram is said to have entered into second marriage with plaintiff No.1-Jamuna Bai and out of their wedlock, plaintiffs No.2 and 3 are born and accordingly, each of the plaintiffs claimed 1/4 share in the suit property, which was disputed by defendant No.1. It is correct to say that defendant No.1 did not take any plea regarding the validity of marriage of Jamuna Bai with Budhram in accordance with Section 7 of the Act of 1955 except plea in para-4 of his written statement that plaintiff No.1-Jamuna Bai is not legally wedded wife of Budhram.

9. The trial Court after appreciating oral and documentary evidence available on record in para-7 of its judgment has clearly recorded the admission of defendant No.1 that Budhram has entered into second marriage with plaintiff No.1-Jamuna Bai in Chudi form after death of his first wife Bhuri Bai and also recorded that defendant No.1 did not question even second marriage of Budhram with plaintiff No.1-Jamuna Bai and also recorded a finding that marriage of Budhram with Jamuna Bai has not been declared void by any of the Court, as such, plaintiffs No.2 and 3 are legitimate daughters of Budhram out of his wedlock with Jamuna Bai. Even, the first appellate Court in

para-18 of its judgment has clearly recorded a finding that marriage entered by Budhram with Jamuna Bai in Chudi form cannot be said to be marriage performed in contravention of the provisions contained in Section 7 of the Act of 1955. It has further been held by the first appellate Court that marriage in Chudi form is prevalent in their custom. It has also been held that Jamuna Bai is legally wedded wife of Budhram and the plaintiffs are also legal heirs of Budhram and they will also succeed to the property of Budhram, as such, both the Courts below have rightly held that plaintiff No.1-Jamuna Bai is legally wedded wife of Budhram and further held that marriage of Budhram with Jamuna Bai was never questioned by defendant No.1 in his written statement before the trial Court, therefore, new plea cannot be allowed to be taken in second appellate stage that too collaterally, as such, both the Courts below have rightly held that Jamuna Bai is legally wedded wife of Budhram and all four will get 1/4 share in the suit property. I do not find any illegality or perversity in finding recorded by two Courts below. The substantial question of law is answered in favour of the plaintiffs and against defendant No.1.

10. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their

own cost(s).

11. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-