

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.113 of 2010**

1. Alwish Ekka (died) through LR's

1(i) Anand Ekka son of late Alwish Ekka, aged about 48 years,

(ii) Deepak Ekka son of late Alwish Ekka, aged about 45 years,

Both are resident of village – Rengle (Baliyatoli), Post-Rengle, Tahsil-Bagicha, District-Jashpur (CG)

2. Vijay Ekka, S/o Binku, aged about 40 years, R/o Village Rampur, Tahsil Lailunga, Distt. Raigarh (CG)

3. Smt. Melani Sukro (died and deleted)

----- Appellants/Plaintiffs

Versus

1. Mini, D/o Benjamin, aged about 56 years, Caste Uraon, R/o Village Rengle (Baniyatoli), Tah. Bagicha, Distt.- Jashpur (CG)

2. Jyoti Ekka, D/o Matiyus, aged about 42 years,

3. Balamdeena, S/o Matiyus, aged about 40 years,

4. Firisha, D/o Matiyus, aged about 38 years,

5. Rajesh, S/o Matiyus, aged about 35 years,

No.2 to 5 R/o Village Upga Gusgutri, Tahsil Bagicha, Distt. Jashpur (CG)

6. State of Chhattisgarh, Through the Collector, Jashpur

----- Respondents/Defendants

For Appellants/Plaintiffs:

Mr. J. K. Saxena, Advocate

For Respondents No.1 and 5/Defendants:

None present

For Respondent No.6/State:

Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

16/02/2021

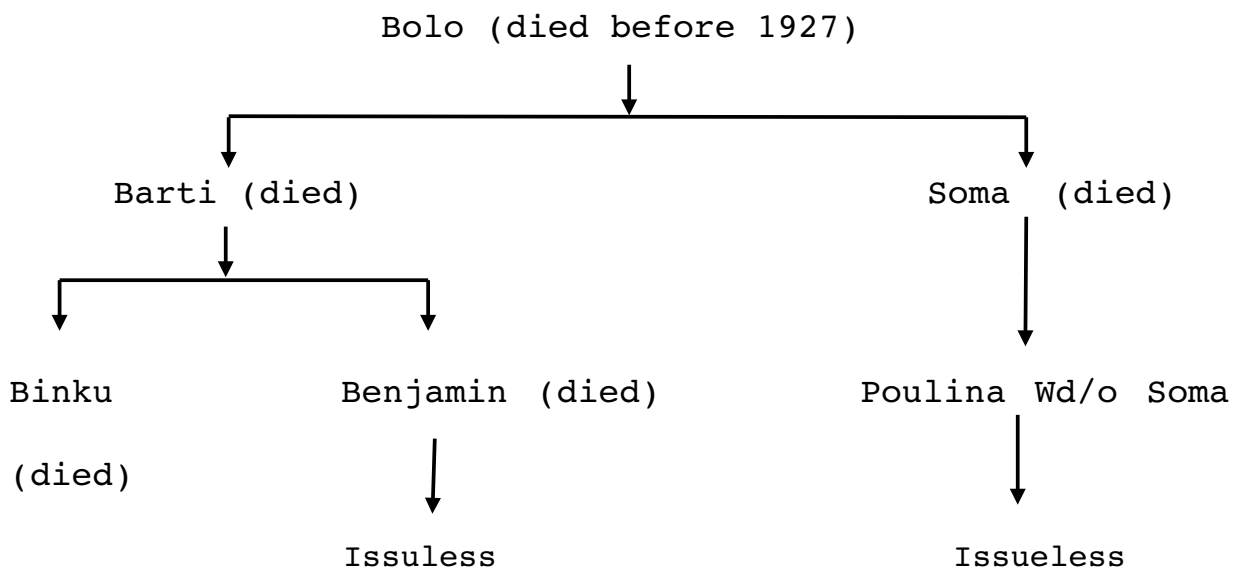
1. The substantial question of law involved, formulated

and to be answered in this second appeal preferred by the appellants/plaintiffs is as under:-

"Whether finding relating to the $\frac{1}{2}$ share to the respondents No.1 to 5 of lower Appellate Court is perverse ?"

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

2. The following genealogical tree would demonstrate relationship among the parties:-



3. Barti had two sons i.e. Binku and Benjamin. According to plaintiff-Binku, Benjamin died issueless. Original plaintiff-Binku (who died during pendency of the suit) filed a suit for declaration of title and confirmation of possession stating inter-alia that the suit property was held by Barti, he is son of Barti and defendant No.1-Fulmani was former wife of Benjamin. It is alleged that after death of her husband Benjamin,

defendant No.1-Fulmani entered into marriage with one Matiyus and defendant No.2-Mini is daughter out of her wedlock with Matiyus and therefore, Mini and Fulmani both are not entitled to succeed the property of Benjamin. Parties are Uraon (Scheduled Tribe) by caste. In that view of the matter, the plaintiff claimed decree for declaration of exclusive title, confirmation of possession and the order passed by the Tahsildar, Bagicha in revenue proceedings for mutation be declared void.

4. Resisting the suit, the defendants No.1 and 2 filed their written statement and denied the averments made in the plaint stating inter-alia that defendant No.2-Mini is daughter of Benjamin out of his wedlock with defendant No.1-Fulmani and therefore, she is entitled to succeed the suit property and her name has rightly been entered into in revenue records.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 30.9.2009, decreed the suit, against which, the defendants preferred first appeal before the first appellate Court. The first appellate Court by the impugned judgment and decree reversed the judgment and decree of the trial Court holding that defendant No.2-Mini is daughter of Benjamin out of his

wedlock with defendant No.1-Fulmani merely relying upon Baptism Certificate (Ex.D-5) issued by Catholic Church, Dibrugarh, Assam. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which one substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment for sake of completeness.

6. Mr.J.K.Saxena, learned counsel for the appellants/plaintiffs that the first appellate Court has failed to consider the plea that Ex.D-5 has not been proved in accordance with law, it does not bear a date and even otherwise, it is being private document, it ought to have been proved by the person who has executed the document. Merely because the document has been produced and exhibited, it does not dispense with the prove of that document and on the basis of other documents, it cannot be held that defendant No.2-Mini is daughter of Benjamin out of his wedlock with Fulmani, first wife of Benjamin, therefore, she has no right and title over the suit property.

7. None present for respondents/defendants though served.

8. I have heard learned counsel for the appellants/plaintiffs, considered his submissions made

hereinabove and went through the records with utmost circumspection.

9. The trial Court has framed the issue as to whether the suit property is held by original plaintiff Binku. Defendant No.2-Mini got her name recorded in revenue records claiming to be daughter of Benjamin out of his wedlock with her mother Fulmani. The trial Court framed the issue as to whether defendant No.2-Mini is daughter of Benjamin born out of wedlock of Benjamin with Fulmani or her marriage with Matiyus, but the trial Court did not record any specific finding, however, the first appellate Court has clearly recorded a finding that defendant No.2-Mini is daughter of Benjamin out of his wedlock with Fulmani and therefore, the suit has been decreed. The first appellate Court relied upon Ex.D-5, which is Baptism Certificate issued by Catholic Church, Dibrugarh, Assam.

10. A careful perusal of Ex.D-5 would show that it is Baptism Certificate issued by Catholic Church, Dibrugarh, Assam, but no date has been mentioned in this certificate and the person who has issued this certificate has also not been examined to prove the said document. The person who has issued Baptism Certificate (Ex.D-5) ought to have been examined to

prove the said document. Merely because document has been marked and exhibited, it cannot be held that it has been proved in accordance with law.

11. Similarly, the first appellate Court has relied upon earlier revenue records in which name of Mini has been recorded as daughter of Benjamin. It is well established law that mutation entries do not confer any right, title or interest over the land, it is only for keeping the records up-to-date and to collect the land revenue. Except the aforesaid documents, no other documents have been brought on record and except self-serving statement of Mini, no other oral evidence has been brought on record to establish that she is daughter of Benjamin out of his wedlock with Fulmani, as such, the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court by recording a finding which is perverse to record.

12. Accordingly, the impugned judgment and decree passed by the first appellate Court is hereby set-aside and that of the trial Court is hereby restored by answering the substantial question of law in favour of the plaintiffs and against the defendants.

13. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear

their own cost(s).

14. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-