

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.445 of 2012**

1. Baghbali, S/o Pardeshi Ram Sahu, aged about 42 years.
2. Samaru S/o Pardeshi Ram Sahu, aged about 40 years.
3. Suruj Bai W/o Pardeshi Ram Sahu, aged about 65 years.
4. Baghwantin Bai, D/o Pardeshi Ram Sahu, aged about 33 years.
5. Kaushliya Bai, D/o Pardeshi Ram Sahu, aged about 29 years.

All are residents of village Kritbandha, Post Office & Police Station Pipariya, Tahsil Kawardha, Dist. Kabeerdham (CG)

---- Appellants/Plaintiffs

Versus

1. Mangtin Bai, W/o Tilak Ram Sahu, aged about 40 years, R/o village Kunwamalgi, Police Station & Tahsil Pandariya, Dist. Kabeerdham (CG)
2. Fekan Bai, W/o Tularam Sahu, aged about 38 years, Occupation Agriculture, R/o village Sonpuri, Police Station & Tahsil Kawardha, District Kabeerdham (CG)
3. Ramratan, S/o Bigaduram Chandrakar, aged about 30 years, Occupation Agriculture.
4. Vishram, S/o Bigaduram Chandrakar, aged about 31 years, Occupation Agriculture.

Respondents No.3 & 4 are residents of village Kritbandha, Police Station & Tahsil Kawardha, District Kabeerdham (CG)

5. Khoru, S/o Gajanand Chandrakar, aged about 50 years.
6. Alkhu S/o Gajanand Chandrakar, aged about 48 years.
7. Devmati Bai, W/o Lakhanlal Chandrakar, aged about 60 years.

Respondents No.5 to 7 are residents of village Koylari, Police Station & Tahsil Kawardha, District Kabeerdham (CG)

8. State of Chhattisgarh, through the Collector, District Kabeerdham (CG)

9. Inderraj Singh, S/o Shyamsingh Parihar, aged about 36 years, R/o village Bhatruse, Police Station Kunda, Tahsil Pandariya, District Kabeerdham (CG)

----- Respondents/Defendants

For Appellants/Plaintiffs:

Mr.Rajeev Shrivastava and Mr.Saurabh
Sahu, Advocates

For Respondents No.1, 2 4 and 5/Defendants No.1, 2, 4 & 5:

Mr.Rakesh Pandey, Advocate

For Respondent No.8/State:

Mr.Anshuman Rabra, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

10/3/2021

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 the Courts below are justified in holding that the plaintiffs have failed to establish their relationship with Bakhariya particularly in light of admission of defendant No.3 to 7 and 9 and there being no specific denial of defendants No.1 & 2 in respect of the same ?”

[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 Buddhu. He had only one son Bakhariya. Bakhariya had succeeded the suit land held by Buddhu being his son. It is not in dispute that Gombi Bai was wife of Bakhariya and he

has two daughters out of his wedlock with Gomti Bai i.e., defendants No.1 and 2. The plaintiffs filed a suit stating that plaintiffs No.1 and 2 are sons of Pardeshi and plaintiffs No.4 and 5 are daughters of Pardeshi, whereas plaintiff No.3 is wife of Pardeshi. It is their father case that Pardeshi's mother i.e. Chandan Kunwar was married with Bakhariya and out of their wedlock, they have born, as such, they are entitled for declaration of title, partition and permanent injunction and alienation made by defendants No.1 and 2 in favour of defendants No.3 to 7 be declared void.

3. Resisting the suit, defendants No.1 and 2 filed their written statement and denied the averments made in the plaint stating inter-alia that Bakhariya has only married with their mother Gomti Bai and he has never married with Chandan Kunwar, therefore, the plaintiffs are not legal heirs of Bakhariya. Other defendants also filed their written statement supporting the claim of defendants No.1 and 2.

4. The trial Court framed as many as seven issues and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 20.7.2007, dismissed the suit holding that Pardeshi, father of plaintiffs No.1, 2, 4 and 5 has died civil

death and he was not son of Bakhariya and Chandan Kunwar and by recording other findings, the trial Court held that other defendants are to be *bona fide* purchasers. On appeal being preferred by the plaintiffs, the first appellate Court did not interfere with the finding of the trial Court and dismissed the appeal, against which, this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs, 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. Mr. Rajeev Shrivastava, learned counsel for the appellants/plaintiffs, would submit that both the Courts below concurrently erred in holding that Pardeshi was not son of Bakhariya out of his wedlock with Chandan Kunwar and ignored the admission made by defendants No.3 to 7 and 9 in their statements and fact of marriage of Bakhariya with Chandan Kunwar was not denied specifically, therefore, the judgment and decree of both the Courts below deserve to be set aside.

6. On the other hand, Mr. Rakesh Pandey, learned counsel for respondents No.1, 2, 4 and 5/defendants No.1, 2, 4 and 5, would submit that concurrent finding recorded

by two Courts below is based on evidence available on record, which is neither perverse nor contrary to record and 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. Two Courts below have clearly held that Pardeshi, father of plaintiffs No.1, 2, 4 and 5, was not son of Bakhariya and Chandan Kunwar, which is seriously called in question in this second appeal.

9. In order to prove relationship that Pardeshi was son of Bakhariya and Chandan Kunwar, the plaintiffs have brought four documents, which are Exs.P-1, P-5, P-7 and P-8. Ex.P-1 is certificate issued by Headmaster of village Panchayat School Kolegaon in which it has been certified that Pardeshi is son of Bakhariya, but the Headmaster who has issued the certificate has not been examined to prove the said document and it has been marked as an exhibit at the instance of brother of plaintiff No.2. Even otherwise, the said document, which has been issued by Headmaster of Village Panchayat School, Kolegaon has been held by two Courts below not a reliable document and cannot be relied upon

in absence of examination of the person who has issued the said certificate. Therefore, both the Courts below have rightly not relied upon Ex.P-1 to hold that Pardeshi was son of Bakhariya. In Exs.P-5, P-7 and P-8, name of Pardeshi has been recorded along with defendants No.1 and 2 as son of Bakhariya, though concerned Patwari has been examined, but the fact remains that they are copies of kistbandh khatouni of said village, but merely because name of Pardeshi has shown to be son of Bakhariya in the said documents/revenue documents, no inference can be drawn that Pardeshi was son of Bakhariya unless other oral and documentary evidence have been brought on record that Pardeshi was son of Bakhariya as revenue entries do not confer any right or title over the suit property. It is only for collection of land revenue and to keep the records up-to-date, as such, no other oral and documentary evidence have been brought on record to hold that Pardeshi was son of Bakhariya.

10. Both the Courts below after appreciating oral and documentary evidence available on record came to the conclusion that the plaintiffs have failed to prove that Pardeshi was son of Bakhariya. Similarly, having admission made by defendant No.9 would not serve any purpose as it has already been held by two Courts

below that the plaintiffs have failed to prove that Pardeshi was son of Bakhariya. Finding recorded by two Courts that Pardeshi was not son of Bakhariya is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any illegality or perversity in said finding. The substantial question of law is answered in favour of the defendants and against the plaintiffs.

11. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

12. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-