

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.110 of 2011**

1. Krishno Bai (died and deleted)
2. Neera Bai, D/o Sukhram, aged about 45 years
3. Puran Singh, S/o Laxman Singh, Aged about 25 years.
4. Chitrekha, D/o Laxman Singh, aged about 23 years.

Above appellants No.2 to 4 are Caste Kanwar, Village Barridih (Akharapali), District Korba (C.G.)

5. Aanad Bai, D/o Laxman Singh, aged about 34 years, R/o Village Saraisingar, Postal Birda, Tahsil Katghora, District Korba (C.G.)
(Defendants)
---- Appellants

Versus

1. Suraja Bai, D/o late Jhuru & W/o Kushal Prasad, Aged about 45 years, R/o Kotgarh, Tahsil Akaltara, Distt. Janjgir-Champa (C.G.)

2. Raruha (Died) Through Legal Heirs

2a) Budhwara Bai, W/o Late Raruha, aged about 60 years, Caste Kanwar,

2b) Kedar, S/o late Raruha, aged about 40 years, Caste Kanwar

2c) Ram Prasad, S/o late Raruha, aged about 36 years, Caste Kanwar,

2d) Shiv Prasad, S/o late Raruha, aged about 32 years, Caste Kanwar,

2e) Jeevrakhan, S/o late Raruha, aged about 29 years, Caste Kanwar,

All above Respondents are R/o Village Bana-parasahi, Tahsil & District Janjgir-Champa (C.G.)

3. Latel Singh, S/o Firan Singh, Caste Kanwar, aged about 39 years, R/o Bendarkona, Present Address Village Banaparsahi, Tahsil & District Janjgir-Champa (C.G.)

(Plaintiffs)

4. State of Chhattisgarh, Through its Collector, Korba, District Korba (C.G.)

---- Respondents

 For Appellants / Defendants: -

Mr. Ravi Maheshwari, Advocate.

For Respondents No.1 to 3 / Plaintiffs: -

Mr. K.A. Ansari, Senior Advocate with

Mr. Devesh G. Kela, Advocate.

For Respondent No.4 / State: -

Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

03/03/2021

1. This second appeal preferred by the appellants herein / defendants was admitted on the following substantial question of law: -

“Whether in absence of any cogent documentary evidence, the appellate Court while reversing the findings of the trial Court has erred in holding that the plaintiffs are heirs of deceased Nanhi.?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The suit land belongs to Dawansai; he had two sons namely, Jangi & Nanhi; Jangi had three sons namely, Sukhiram, Mukhiram & Gendi; defendants No.1 & 2 are daughters of Sukhiram; and Mukhiram died issue-less. The plaintiffs claimed that Nanhi had three sons namely, Jhuru, Raruha and Firan Singh, who was already dead. Plaintiff No.1 Surja Bai claimed to be wife of Jhuru, plaintiff No.2 Raruha claimed to be son of Nanhi and plaintiff No.3 Latel Singh claimed to be grandson of Nanhi being son of Firan Singh. The plaintiffs got their names mutated in the revenue records by the order of the Tahsildar dated 11-3-2003 vide Ex.P-5 and that order was appealed by the defendants and ultimately, the order of mutation passed by the

Tahsildar in favour of the plaintiffs was set-aside by the Sub-Divisional Officer (Revenue), Korba by order dated 20-10-2003 (Ex.D-3) that led to filing of suit for declaration of title, partition and permanent injunction stating inter alia that the suit property was held by Dawansai, who had two sons Jangi & Nanhi, the plaintiffs are legal heirs of Nanhi, whereas the defendants are legal heirs of Jangi and therefore the plaintiffs are entitled for half share in the suit property.

3. Resisting the suit by filing written statement, the defendants had pleaded that Jangi had already sold the suit property in favour of the defendants five years back and Nanhi died issue-less and the plaintiffs are not legal heirs of Nanhi and Nanhi's wife had already left the village by marrying another person in chudi form, as such, the plaintiffs are not entitled for any decree as claimed.
4. The trial Court after appreciating oral and documentary evidence available on record dismissed the suit holding that the plaintiffs have failed to prove that they are legal heirs of Nanhi which was appealed by the plaintiffs before the first appellate Court and the first appellate Court ultimately accepted the same and it was held by the first appellate Court that the plaintiffs being legal heirs of Nanhi are entitled for half share in the suit property which was called in question by the defendants in this second appeal in which substantial question of law has been framed and which has been set-out in the opening paragraph of this judgment for the sake of completeness.
5. Mr. Ravi Maheshwari, learned counsel appearing for the appellants herein / defendants, would submit that the first

appellate Court went wrong in holding that the plaintiffs are legal heirs of Nanhi and thereby committed illegality in granting half share in the suit property to them which is absolutely perverse and contrary to the record, as such, the judgment & decree of the first appellate Court deserves to be set aside and that of the trial Court be restored.

6. Mr. K.A. Ansari, learned Senior Counsel appearing for the respondents herein / plaintiffs, would support the impugned judgment & decree.
7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
8. The first appellate Court has relied upon Exs.P-6 to P-9. Ex.P-6 is voter list of Vidhansabha Chunav Kshetra 120 Akaltara. Ex.P-6C is copy of voter list. Ex.P-7C is copy of Identity Card issued by the Election Commission of India in which Phiran Singh, father of one of the plaintiffs namely Latel Singh, has been shown to be son of Nanhi Singh. Ex.P-9 is ration card and Ex.P-9C is copy of ration card.
9. At this stage, it would be appropriate to notice Section 35 of the Indian Evidence Act, 1872, which states as under: -

“35. Relevancy of entry in public record or an electronic record made in performance of duty.—An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, it itself a relevant fact.”
10. Under Section 35 of the Evidence Act, when it is the duty of

public officer to make some entries in any public or other official book, it is admissible in evidence to prove the truth of facts entered as well as the fact that the entries were made by the officer. The principle is that it should be public enquiry, a public document and made by public officer; in performance of public duty specially enjoined by law (per Lord Blackburn in C.F. Sturla v. Freccia¹ and Lilley v. Pettit².)

11. In the matter of State of Bihar v. Radha Krishna Singh³, their Lordships of the Supreme Court laid down the following three conditions to be fulfilled before a document can be held to be admissible under Section 35 of the Evidence Act: -

- (1) the document must be in the nature of an entry in any public or other official book, register or record;
- (2) it must state a fact in issue or a relevant fact; and
- (3) the entry must be made by a public servant in the discharge of his official duties or in performance of his duties specially enjoined by the law of the country in which the relevant entry is kept.

12. The reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high.

(See Brij Mohan Singh v. Priya Brat Narain Sinha and others⁴ and Ram Prasad Sharma v. The State of Bihar⁵.)

1 (1850) 5 App Cas 623, 644

2 (1946) 1 All ER 593

3 AIR 1983 SC 684

4 AIR 1965 SC 282

5 AIR 1970 SC 326

13. The Orissa High Court in the matter of Raghunath Behera v.

Balaram Behera and another⁶ has clearly held that electoral roll being a public document is admissible evidence and it is not necessary to prove source of information on the basis whereof facts stated in the roll were recorded, nor is it necessary that the person who prepared electoral roll has to be examined. It was further held that they are entitled to the extraordinary degree of confidence partly because they are required by law to be kept, and partly because their contents are of public interest and notoriety; but principally because they are made under the sanction of oath of office, or at least under that of official duty by accredited agents appointed for that purpose.

14. Likewise, in the matter of Chitru Devi v. Smt. Ram Dei and

others⁷, the Himachal Pradesh High Court in paragraph 23 has clearly held that the electoral roll is a public document and admissible in evidence unless it is rebutted by cogent and reliable evidence. The plaintiff has failed to rebut the entries recorded in the electoral roll and on the basis of the documentary evidence proved on record. As such, it is established position on record that entry in public record / voters' list is prepared by the competent official of the election department in the discharge of his official duties which is admissible under Section 35 of the Indian Evidence Act, 1872 and if it is not challenged before the competent authority in any proceedings, voters list is admissible and reliable in evidence.

15. Reverting to the facts of the case, it is quite vivid that in Ex.P-6

which is electoral roll of Vidhansabha Chunav Kshetra 120

⁶ AIR 1996 Orissa 38

⁷ AIR 2002 HP 59

Akaltara, at serial No.46, Raruha has been shown to be son of Nanhi; at serial No.707, Phiran Singh has been shown to be son of Nanhi Singh; at serial No.708, Isarbai has been shown to be wife of Phiran Singh; at serial No.709, Latel Singh has been shown to be son of Phiran Singh; and at serial No.710, Shyamta Bai has been shown to be wife of Latel Singh. Likewise, in Ex.P-7C, which is copy of identity card issued by the Election Commission of India in the name of Phiran Singh, father's name of Phiran Singh has been shown to be Nanhi Singh. Similarly, in Ex.P-9C, which is copy of ration card, Phiran Singh has been shown to be son of Nanhi. Though these documents have been filed and marked on behalf of the plaintiffs as exhibits, but no evidence has been led by the defendants to demonstrate that after issuance of voter list, etc., it was challenged in accordance with law and no contra evidence has been brought on record to disprove it. This piece of evidence available on record demonstrates that Phiran Singh and Raruha both were sons of Nanhi, as these documents were prepared in accordance with law. Apart from this, other documents Exs.P-9 & P-9C – ration card and copy of ration card, have been filed to demonstrate that Phiran Singh and Raruha are sons of Nanhi. No rebuttal evidence has been brought before the trial Court to demonstrate that they are not legal heirs of Nanhi. As such, there is sufficient evidence available on record to hold that Phiran Singh and Raruha both were sons of Nanhi. Even otherwise, the first appellate Court has noticed the pleading of the defendants that Nanhi has sold the suit property in favour of Jangi, but no legal instrument much less legal evidence has

been brought on record to demonstrate the said fact. As such, considering the oral and documentary evidence available on record, the conclusion arrived at by the first appellate Court that the plaintiffs are legal heirs of Nanhi and Raruha & Firan Singh were sons of Nanhi is correct conclusion. The first appellate Court has rightly set aside the judgment and decree of the trial Court which cannot be taken exception to by the defendants. The substantial question of law is answered accordingly.

16. In the result, the second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

17. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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