

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.540 of 2019

1. Sundri, D/o late Moti, W/o Basant, aged about 48 years,
2. Bigni, D/o late Moti, W/o Dashrath, aged about 53 years,

Both are R/o Village Jagdishpur @ Adhina, Post Salka, Police Station Bhatgaon, Tahsil Bhaiyathan, District Surajpur (C.G.)

(Defendants)
---- Appellants

Versus

1. Karmato, D/o late Moti, W/o Chandan Ram, aged about 60 years, Caste Rajwar, Occupation Cultivator, R/o Village & Post Jarhi, Police Station & Tahsil Pratappur, District Surajpur (C.G.)

(Plaintiff)

2. Tejpal, S/o Bira, aged about 30 years,
3. Bifaiya, D/o Bira, aged about 28 years,
4. Kunti, D/o Bira, aged about 25 years,
5. Mulki, Wd/o Bira, aged about 60 years,

No.2 to 5 are by Caste Rajwar, R/o Village Jagdishpur @ Adhina, Post Salka, Police Station Bhatgaon, Tahsil Bhaiyathan, District Surajpur (C.G.)

6. State of Chhattisgarh, through the Collector, Surajpur, District Surajpur (C.G.)

(Defendants)
---- Respondents

For Appellants / Defendants: Mr. D.N. Prajapati, Advocate.

For Respondent No.6 / State: Mr. Sunil Otواني, Additional Adv. General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/06/2021

1. Heard on admission and formulation of substantial question of law for determination in the second appeal preferred by the appellants herein / defendants No.1 & 2 by which the first appellate Court has

reversed the judgment & decree of the trial Court and granted decree in favour of the plaintiff.

2. Mr. D.N. Prajapati, learned counsel appearing for the appellants herein / defendants No.1 & 2, would submit that the first appellate Court is absolutely unjustified in holding that the plaintiff is daughter of Moti from his first wife and thereby entitled for $\frac{1}{3}$ share in the suit property by recording a finding which is perverse to the record, as such, the appeal involves substantial question of law and question of law be formulated by admitting the appeal.
3. I have perused the judgments & decrees of both the Courts below as also the records thereof.
4. The plaintiff filed suit stating inter alia that the suit property is held by Moti and she is his daughter from his first wife Bifaiya and defendants No.1 & 2 are daughters of Moti from his second wife, and the defendants after death of Moti got their names recorded in the revenue record and her appeal and revision before the authorities have already been rejected necessitating the filing of suit for declaration of title and partition in which defendants No.1 & 2 pleaded by filing written statement that they are the only daughters of Moti and the plaintiff has no right and title over the suit land, as such, the plaintiff is not the daughter of Moti. The trial Court dismissed the suit, but the first appellate Court decreed the suit holding that the plaintiff is daughter of Moti out of his wedlock with his first wife and defendant No.2 in Civil Suit No.128A/2001 filed against the plaintiff & defendant No.1 in relation to the named property has admitted that plaintiff Karmato is daughter of Moti from his first wife, as such, the admission made by defendant No.2 in the earlier civil suit filed with the same finding is binding on them and accordingly, decreed the suit granting

1/3 share in the suit property. The first appellate Court has clearly recorded a finding that Karmato is daughter of Moti from his first wife and defendants No.1 & 2 are daughters of Moti from his second wife, it is a pure and simple finding of fact based on the evidence available on record, particularly in Civil Suit No.128A/2001, defendant No.2 Bigni, who is appellant No.2 herein and plaintiff No.2 therein, has admitted the fact that Karmato is daughter of Moti. The said admission on the part of Bigni – defendant No.2 has not been explained by her, as such, on the basis of said admission and other evidence available on record, it has clearly been held by the first appellate Court that the plaintiff is daughter of Moti. The said finding is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. I do not find any good ground to admit the appeal and no substantial question of law is involved in the appeal, it deserves to be and is accordingly dismissed *in limine*, without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma