

HIGH COURT OF ORISSA : CUTTACK

SA NO.74 OF 1999

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned District Judge, Keonjhar in Title Appeal No.23 of 1992, by confirming the judgment and decree passed by the learned Sub-Judge, Keonjhar passed in Title Suit No.71 of 1989.

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Krishna Chandra Pradhan :::: Appellant.

-:: VERSUS ::-

Haramani Giri :::: Respondent.

**Advocate(s) who appeared in this case by Hybrid Arrangement
(Virtual/ Physical) Mode.**

For Appellant ... M/s. G.C. Namtoar, U.K. Mishra,
T.K. Mahanta, D.P. Dhalsamanta,
Advocates.

For Respondents ... M/s. S.K. Nayak-2, B.K. Rout,
B.K. Sahoo, S. Pattnaik,
Advocates.

**CORAM:
MR.JUSTICE D. DASH**

DATE OF HEARING : 12.07.2022 :: DATE OF JUDGMENT :: 18.07.2022

D.Dash,J. The Appellants, by filing this Appeal, under Section-100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment and decree passed by the learned District Judge, Keonjhar in Title Appeal No.23 of 1992.

By the same, the Appeal filed by the present Appellant being the unsuccessful Plaintiff under Section-96 of the Code has been dismissed and thereby the judgment and decree passed by the learned Sub-Judge, Keonjhar passed in Title Suit No.71 of 1989 non-suiting the Appellant (Plaintiff) in the suit filed against the Respondent (Defendant) have been confirmed.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. Plaintiff's case is that one Satrughana Pradhan is his maternal grandfather. He died in the year, 1972 leaving behind two daughters Champabati and the Defendant, namely Haramani. Champabati pre-deceased Satrughana. Plaintiff claims to be the son of Champabati. Satrughana died leaving behind his widow-Basanga and daughter-Defendant. Basanga was in possession of the suit till her death which took place in the year, 1988. The dispute arose thereafter when the Defendant did not agree for partition of suit properties by allotting half share over the same to the Plaintiff as of his legitimate entitlement.

4. The Defendant in the written statement has questioned the locustandi of the Plaintiff to file the suit. It is stated that he is not the son of Champabati as claimed. According to her Champabati died at her

youth shortly after her marriage leaving no child. It is stated that she (Defendant) and her husband after their marriage remained in the house of Sagtrughana and enjoyed the properties. In the current settlement, the record of right in respect of the suit land has been prepared in the name of the Defendant and her mother and she is paying the rent to the State. It is the further case of the Defendant that her mother Basanga by executing a Panchanama had gifted away the properties in favour of the surviving daughter i.e. the Defendant. The Plaintiff is stated to have no right to sue for partition being a stranger to the family and as such having nothing to do with the suit property. It is specifically stated that he is son of one Mohan and Kautuka and as their request to keep the Plaintiff in the house as adopted son had been turned down by the Defendant, the suit has been filed to serve the mischievous purpose.

4. On the above rival pleadings, the Trial Court framed four issues. In taking up first to answer the rival issue relating to the status of the Plaintiff and his right over the properties to have share upon partition; on examination of evidence and their analysis, the answer has been rendered that the plaintiff is not the son of Champa and as such has no right over the property in claiming any share over there through partition. This has led the Trial Court to dismiss the suit.

5. The unsuccessful Plaintiff then having carried the Appeal has failed in the said move too.

6. This Appeal has been admitted to the substantial question of law which reads as under:-

Whether the findings of the Courts below that the Plaintiff is not the son of Champa is against the weight of evidence on record and in arriving such conclusion, the Courts below have failed to appreciate the evidence; keeping in view the provision of section-50 of the Evidence Act and as such the same suffers from the vice of perversity?

7. Learned Counsel for the Appellant submitted that the overwhelming oral evidence on record have been eschewed from consideration without any justifiable reason. He submitted that when the plaintiff has tendered evidence through the relations to establish the fact that he is the son of Champa, the Courts below having placed unnecessary reliance upon a manufactured document, Ext.A have committed grave error in turning down the case/ claim of the Plaintiff.

8. Learned Counsel for the Respondent on the other hand supported the finding of the Courts below. According to the concurrent finding on the important factual setting of the case has been returned by the Courts below upon just and proper appreciation of evidence and as such the same is not liable to be disturbed by this Court in seisin of the Second

Appeal as no such perversity surfaces therein. According to him, the Courts below have examined the evidence on record in detail and have rightly held that the Plaintiff has failed to establish his case that he is the son of Champabati.

9. Keeping in view the submissions made, I have carefully gone through the judgments of the Courts below. I have also gone through the pleadings and have perused the evidence both oral and document.

The Plaintiff's suit for partition stands on the foundation that he is the son of Champabati, daughter of Satrughana whose property are the subject matter of the suit. Admittedly, Satrughana had two daughters namely, Champabati and Haramani, the Defendant. In view of the denial of the status of the Plaintiff by the sole Defendant and her assertion that she is the owner of entire property, the burden lies upon the Plaintiff to prove that he being the son of Champabati has succeeded to the interest that the Champabati had over the property of her father.

For the purpose, the Plaintiff cannot take advantage of the weakness of the defence or the failure on the part of the Defendant to prove her case and he has to stand on his own.

The Plaintiff has examined in total four witnesses and no document has been admitted in evidence from his side. P.Ws.2 and 3 are the grandfather and father of the Plaintiff respectively. This P.W.2 happens

to be the maternal uncle of Champabati and the two witnesses P.W. 2 and 4 as alleged by the Defendant are the planners for advancement of the claim by the Plaintiff in creating litigation which has been very much pleaded in the written statement. Admittedly there is no document to prove the parentage of the Plaintiff and for the purpose; he relies mainly on oral evidence. The oral evidence from the side of the Plaintiff that he was son of Champabati as stated by P.W.3 has been rightly held to be unacceptable and the Courts below appear to have found out the justifications for the same from the other obtained evidence. It having been stated by the P.W.1 to 3, that the Plaintiff was the only son of Champabati through her husband, Basudev, P.W.3 and the Plaintiff was three years old when Champabati died interestingly enough, the P.W.4 has come out with a statement on oath that Champabati had also conceived child in her womb for the second time and during delivery of that second child, she died, which is not the case of any one.

The record of right of the said land published in the year 1976, Ext.B shows that it was recorded in the name of the Defendant and her mother. The Plaintiff has no where raised any objection with regard to such recording. The witnesses examined from the side of the Plaintiff having stated that settlement Patta was issued after the death of Basanga, the same runs against the consistent case of the Plaintiff that Basanga

died in the year 1988 which is about 11 years after the publication of the record of right. The oral evidence of the Plaintiff that he is possessing the suit land is not acceptable on the face of the rent receipts proved by the Defendant vide Ext.C series. The evidence of P.W.2, who is the star witness for the Plaintiff, is to the effect that no share of the crop was being given to the Plaintiff or his father and it is the Defendant who is enjoying the entire property. From the side of the Plaintiff, no such other witness has been examined in tendering evidence to enable the Court informing opinion expressed by conduct as to existence of such relationship with the Champabati.

10. With the above obtained evidence, this Court is led to record answer to the substantial question of law that the Courts below have rightly held that the Plaintiff has failed to establish the fact that he is the son of Champabati and thus has the right to file the suit for partition.

11. In the result, the Appeal stands dismissed. There shall however no order as to cost.

**(D. Dash),
Judge.**

Narayan