

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.282 of 2013

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned District Judge, Angul in R.F.A. No.24 of 2011 confirming the judgment and decree dated 20.10.2011 and 25.10.2011 respectively passed by the learned Civil Judge (Senior Division), Athmallik in Civil Suit No.1 of 2008.

Sudam Charan Swain & Others *Appellants*

-versus-

Arabinda Swain *Respondent*

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellants - Mr.B.N. Bhuyan, B.N. Misra,
C.R. Swain & S. Patra
(Advocates)

For Respondent - Mr.S.P. Mishra, Sr. Advocate
S. Mishra, S. Modi,
E. Agarwal. B.S. Panigrahi,
S.K. Sahoo & D. Priyanka

MR. JUSTICE D.DASH

Date of Hearing : 05.05.2022 :: Date of Judgment:20.06.2022

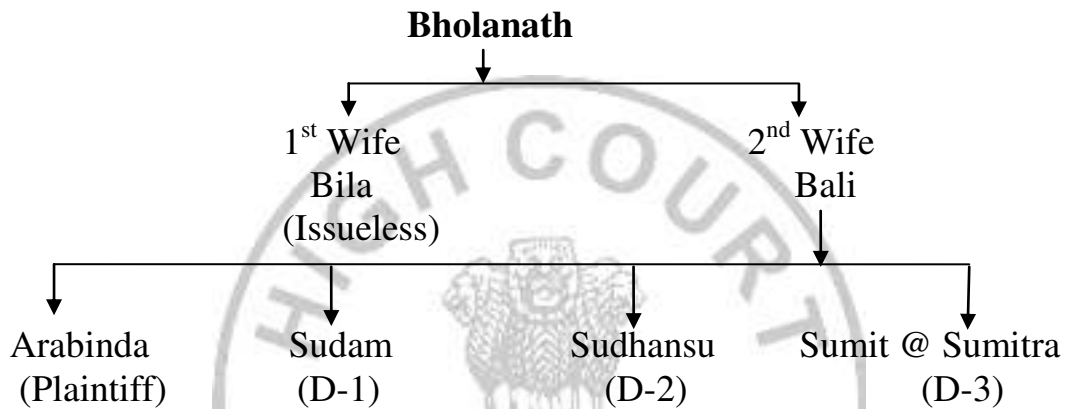
The Appellants, by filing this Appeal under Section- 100 of the Code of Civil Procedure (for short, 'the Code') have assailed the judgment and preliminary decree passed by the learned District Judge, Angul in R.F.A. No.24 of 2011.

By the same, the judgment and preliminary decree dated 20.10.2011 and 25.10.2011 respectively passed by the learned Civil Judge (Senior Division), Athmallik in Civil Suit No.1 of 2008 have been confirmed and the suit filed by the Respondent, as the Plaintiff, for

partition against the Appellants (Defendants) has been preliminarily decreed.

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 Suit.

3. The genealogy showing inter se relationship between the parties as given by the Plaintiff runs as under:-



It is stated that Bholanath died in the year 1999 and as he did not beget any child through his first wife Bila, he again married Bali as per their caste and custom and kept her in his house as such. From out of the union of Bhola and Bali, four sons, i.e, Plaintiff and Defendants were born. It is alleged that the Defendants, fraudulently misrepresenting the facts before the Revenue Authorities have somehow managed to get the land belonging to Bhola recorded in the record of right to the exclusion of the Plaintiff by obtaining an order in the Mutation Case No.473 of 2001. It is his case that the suit properties were never partitioned by metes and bounds and the Defendants forcibly possessed those lands without giving any share to the Plaintiff although he has 1/4th share over the same being one of the sons of Bhola.

4. The Defendants, contesting the suit, submitted that the Bhola through Bali had two sons, namely, Sudam (Defendant No.1), Sudhansu (Defendant No.2) and a daughter, namely, Sumit @ Sumitra (Defendant No.3). So, they denied the status of the Plaintiff as the son of Bhola and asserted that he is an outsider and stranger to the family having no right whatsoever the properties of Bhola and his claim as co-sharer is stated to be false.

5. The Trial Court, with such rival pleadings, has framed six issues. Coming to answer the most important issues nos.4 and 6, on examination of evidence and their evaluation, the answers have been given that the Plaintiff and Defendants 1 to 3, being the children of Bhola, each are entitled to 1/4th share over the properties of Bhola recorded in the record of right (Exts.1 and 2).

The Defendants, having assailed the above findings, leading to the passing of the preliminary decree holding the entitlement of the Plaintiff to 1/4th share over the suit properties, in carrying an Appeal under Section 96 of the Code, have failed in their attempt in getting those set aside.

6. The Appeal has been admitted on the following substantial question of law:-

“Whether in absence of evidence passing the test of section 50 of the Evidence Act, the learned courts below have committed illegality in deciding plaintiff’s disputed relationship with late Bholanath Swain merely on the basis of documents, i.e, School Leaving Certificate, Voter list and School Admission Register?”

7. Learned counsel for the Appellants submitted the findings of the Courts below deciding the status of the Plaintiff as the son of Bhola is

the outcome perverse appreciation of evidence and for the purpose, there being no evidence on record in passing out the tests as laid down under the provision of section 50 of the Evidence Act, the Courts below have erred in law by merely relying upon the oral evidence let in by the Plaintiff coupled with the School Leaving Certificate, Voter List and Admission Register (Exts.3 to 6) and returned the finding as to the status of the Plaintiff as the son of Bholanath.

8. Learned Counsel for the Respondents submitted that the Courts below, when upon just and proper appreciation of evidence, taking an overall view of the same and though a holistic and rational approach, which are not in contrary to the settled principle, have answered the contentions issue as to the status of the Plaintiff as no perversity surfaces therein; the same are not liable to be interfered with merely for the reasons that another view is so possible.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint, written statement and the deposition of the witnesses as well as the documents admitted in evidence from the side of the parties.

10. It stands undisputed that no children being born to Bhola through Bila, Bali stayed with Bhola as his second wife and that the Defendant Nos.1 to 3 are the children of Bhola through Bali. The First Appellate Court has extensively discussed the oral as well as documentary evidence on record and the objection raised from the side of the Defendants to discard the evidence let in by the Plaintiff appears to have been dealt one by one in that exercise.

He has proved the Headmaster of Kalabeda Primary School, as per School Admission Register (Ext.4) as well as the counter-foil of School Leaving Certificate (Ext.5) wherein the name of the Plaintiff's mother very much finds mention. Column-5 of the School Admission Register (Ext.4) is in respect of the name and business of father/guardian of the child admitted to school. There being no column in Ext.4 requiring to indicate the name of the mother of the child; no doubt as the correctness/genuineness of Ext.3 can be raised on that ground of non-mentioning of the name of the mother of the Plaintiff. Ext.4 is a fifty years old document produced from proper custody and is admissible in evidence under section 90 of the Evidence Act. This Ext.4 is admissible under section 35 of the Evidence Act. Perusal of the deposition of P.W.2, an independent witness who belongs to Kalabeda village, P.W.3, a Teacher, Lalabeda Primary School and P.W.4, the Headmaster of Kalabeda Primary School shows that all have unequivocally stated that the Plaintiff and Defendant Nos.1 and 2 are the sons and Bhola through his second wife Bali. The name of the father of the Plaintiff has been mentioned in Ext.3 as Bholanath Swain and his mother to be Bali. P.W.3 has stated in clear terms that Bhola had made the admission of the Plaintiff in their Kalabeda Primary School and being the father guardian, he was regularly visiting to the School for better study of his son Arabinda. In cross-examination, he has explained away as to how could he remember the name of Arabinda and he has said specifically that he having admitted in the School, it is so possible to remember his name. No such material surfaces in their evidence to show that those do not satisfy the provision laid down in Section 50 of the Evidence Act. On cumulative assessment of evidence, the Courts below having found the Plaintiff to have proved his case as to his status

as one of the sons of Bholanath and Bali, this Court finds no such reason or justification to take a view to the contrary. The substantial question of law stands returned against the case/claim of the Plaintiff.

11. In the result, the Appeal stands dismissed. No order as to cost.

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



Basu