

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**R.S.A. No.122 of 2022**

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 13.12.2021 and 27.12.2021 respectively passed by the learned District Judge, Sambalpur in R.F.A. No.05 of 2018 confirming the judgment and decree dated 18.12.2017 and 06.01.2018 respectively passed by the learned Senior Civil Judge, Sambalpur in Civil Suit No.97 of 2010.

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***Smt. Gitanjali Seth***

....

***Appellant***

-versus-

***Chapeswari Beriha & Others***

....

***Respondents***

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

***For Appellant*** - Ms.D.Mohapatra  
(Advocate)

***For Respondents*** -

**CORAM:**

**MR. JUSTICE D.DASH**

**Date of Hearing :14.11.2022 : Date of Judgment: 25.11.2022**

***D.Dash,J.*** The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree dated 13.12.2021 and 27.12.2021 respectively passed by the learned District Judge, Sambalpur in R.F.A. No.05 of 2018.

By the same, the Appeal filed by the present Appellant being aggrieved by the judgment and decree dated 18.12.2017 and 06.01.2018 respectively passed by the learned Senior Civil Judge, Sambalpur in

Civil Suit No.97 of 2010., under section 96 of the Code has been dismissed. The suit filed by the present Appellant, as the Plaintiff, having been decreed by the Trial Court declaring them to be entitled to 1/4<sup>th</sup> share out of Rs.17,482/- only lying in the SB A/c No.10856791811 of the deceased (Bansidhar Beriha) and not holding them as entitled to 1/4<sup>th</sup> share over Rs.1,36,000/- which has been withdrawn from that Account; the same has been confirmed in the First Appeal.

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 Plaintiff's case is that she is the daughter of one Bansidhar Beriha through his first wife namely Binodini who is dead. The Defendant No.1 is the second wife of Bansidhar Beriha and the Defendant No.2 and 3 are the son and daughter of Bansidhar through Defendant No.1. It is stated that Bansidhar was serving as Superintendent in the office of Conservator of Forests, Sambalpur. He received his all service benefits including the Gratuity and Provident Fund dues when he retired on superannuation in the year 2005. Bansidhar had deposited all such sum that he had received towards service benefits in the bank. It is stated that in the month of February, 2009 when the Plaintiff asked about the movable and immovable properties of her father, the Defendant No.1 and 2 failed to give any satisfactory answer. She, then on enquiry, could come to know that a sum of Rs.1,36,000/- has been withdrawn from Savings Bank Account of his father Bansidhar on different dates after his death. It is stated that the concerned Bank authority seized the said account when the Plaintiff

wrote letter to them. The Plaintiff thereafter issued notice to the Defendants to settle the matter by paying the money towards her share. That being not paid any heed to, she filed suit for refund of 1/4<sup>th</sup> out of Rs.1,36,000/- which has been withdrawn from her father's account and also Rs.17,000/- which is lying in deposit in the name of her father in that Savings Bank Account.

4. The Defendants, while traversing the plaint averments, have denied to have any knowledge about the deposits of his Savings Bank Account as also about the withdrawal of the money from any such account of Bansidhar.

5. The Trial Court, on the above rival pleadings, having framed this issue; upon examination of evidence and their evaluation, has held that the Plaintiff has failed to prove that the Defendant Nos.1 and 2 have withdrawn a sum of Rs.1,36,000/- from the Savings Bank Account of Bansidhar Beriha on different dates. This finding of fact has practically led the Trial Court to dismiss the suit for the reliefs claim.

6. The Plaintiff, being thus unsuccessful in the suit, having carried the First Appeal has again suffered from that very finding. Hence, the present Second Appeal.

7. Learned counsel for the Appellant submitted that the Courts below have failed to consider the evidence on record in their proper prospective and overlooking the surrounding circumstances as those emanate from the evidence on record has ultimately rendered the findings on issue no.3 which is erroneous. She submitted that when that Bansidhar at the time of her death was residing with the Defendants and

it has been proved that the money had been withdrawn after his death; the Courts below ought to have held that the Plaintiff has proved the fact that her father had his money in his Savings Bank Account during his lifetime and thereby has discharged the initial burden of proof resting on her. According to her, with the above, initial burden of proof thus having been discharged by the Plaintiff, the onus of proof has shifted to the shoulder of the Defendants and that they having not been able to discharge, the suit ought to have been decreed. She thus urged for admission of the appeal to answer the above as the substantial question of law.

8. Keeping in view the submission made, I have carefully read the judgments passed by the Courts below.

9. Taking into account the facts presented in the rival pleadings, the fate of the suit in either granting or refusing the relief as prayed for by the Plaintiff is solely dependent on the answer as to whether the Defendants have withdrawn the sum of Rs.1,36,000/- from the Savings Bank Account of their father. Although I do not agree with the view that merely because a criminal case is pending, the suit for the reliefs claimed is not maintainable as has been said by the First Appellate Court, when we go through the evidence on record especially the evidence of P.W.1 and 2, as have been discussed by the Trial Court, at paragraph 6 of its judgment, which contains the analysis of said evidence in great detail, no such infirmity therein much less to say any perversity is however noticed. Therefore, this Court is not in a position to accept the submission of the learned counsel for the Appellant that

there surfaces any substantial question of law for being answered in this appeal, meriting its admission.

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

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

