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SISTA SOMAYAJULU
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HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 491 of 2016

{Arising out of judgment and decree dated 24-6-2016 in Civil Appeal No.2A/2012 of the Additional District Judge, Kondagaon}

Padum Singh, S/o Pursati, aged about 50 years, R/o Sonabal, Tahsil and District Kondagaon, Chhattisgarh

(Plaintiff)
... Appellant

versus

1. Smt. Janaki Bai, Wd/o Late Soman Singh;
2. Kamali, D/o Late Soman Singh, aged about 25 years;
3. Kamla, D/o Late Soman Singh, aged about 23 years;
4. Dayabati, D/o Late Soman Singh, aged about 19 years;
5. Aasmati, D/o Late Soman Singh, aged about 19 years;

   All are R/o Village Sonabal, Tahsil and District Kondagaon, Chhattisgarh

6. Smt. Osmati, Wd/o Late Soman Singh, R/o Khotalpara, Tahsil Jagdalpur, District Bastar, Chhattisgarh
7. State of Chhattisgarh, Through Collector, Bastar, Place Jagdalpur, District Bastar, Chhattisgarh

(Defendants)
... Respondents

For Appellant	**:**	Mr. Vikas Patel, Advocate on behalf of Mr. Pravin Kumar Tulsyan, Advocate.
For Respondent No.7	**:**	Mr. Tarakeshwar Nande, Panel Lawyer.

Single Bench: -
Hon'ble Smt. Sushma Sawant, J.

Judgment On Board

03/11/2026

1. The appellant herein/plaintiff has preferred the present second appeal challenging the judgment and decree dated **24-6-2016** passed by the learned First Appellate Court – **Additional District Judge, Kondagaon** {Presiding Officer – Mr. Jaideep Garg} in **Civil Appeal No.2A/2012** (Padum Singh v. Smt. Janaki Bai and six others), whereby affirming the judgment and decree dated **28-10-2010** passed by the learned Trial Court – **Civil Judge Class-II, Bastar at Kondagaon** {Presiding Officer – Mr. Harish Kumar Awasthi} in **Civil Suit No.44A/2006** (Padum Singh v. Smt. Janaki Bai and six others), the first appeal preferred by the appellant/ plaintiff was dismissed.

2. Heard learned counsel for the appellant **on the question of admission**. Perused the memorandum of appeal, the impugned judgment and decree passed by the first appellate Court, as well as the judgment and decree of the trial Court.

-:Proceedings before Trial Court:-

3. **Appellant/plaintiff Padum Singh** instituted a suit against his deceased biological brother, **Soman Singh**, through his two wives and children, seeking a declaration of title, permanent injunction restraining interference with his possession, and correction of the revenue records by recording his name in respect of 2.45 acres of land situated at Village **Sonabal**, Tehsil **Kondagaon**, District

Bastar, which originally stood in the name of their father, "**Pursati**". The suit was founded on the plea that Soman Singh had been adopted by their paternal uncle, **Sitaram**, and, therefore, had no right or share in the property of their biological father, **Pursati**.

4. Upon conclusion of the trial and after appreciating the evidence adduced by the parties, the Trial Court, applying the provisions of Sections 6 and 11 of the **Hindu Adoption and Maintenance Act, 1956** held that the alleged adoption of **Soman Singh** had not been proved in accordance with law and, accordingly, dismissed the suit instituted by the appellant/plaintiff.

-:Judgment and Finding of First Appellate Court:-

5. The appellant/plaintiff preferred a first appeal challenging the aforesaid judgment and decree passed by the Trial Court. However, by the impugned judgment, the First Appellate Court dismissed the appeal, holding that the findings recorded by the Trial Court were justified, as the parties are Hindus and the alleged adoption of **Soman Singh** was required to be proved in accordance with the provisions of the Hindu Adoption and Maintenance Act, 1956. Since the alleged adoption was not established in accordance with the statutory requirements, no interference with the judgment and decree passed by the Trial Court was warranted.

-:Argument of Appellant/Plaintiff on admission :-

6. Learned counsel for the appellant/plaintiff, while addressing arguments on admission, contended that both the Courts below

failed to examine the material effect of the alleged adoption of **Soman Singh** by his paternal uncle, Sitaram, particularly its impact on his succession rights in the properties of both his adoptive father, **Sitaram**, and biological father, **Pursati**. It was submitted that **Soman Singh** was claiming a share in the properties of both, but this aspect was not considered by either Court below, giving rise to substantial questions of law warranting admission of the second appeal.

-:Finding of this Court on Admission:-

7. Considered the submissions and perused the record.

8. The scope of interference by this Court under Section 100 of the Code of Civil Procedure is well settled. In **Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179**, the Supreme Court held that the existence of a substantial question of law is the sine qua non for exercise of jurisdiction under Section 100 of the CPC and is a condition precedent for entertaining a second appeal.

9. The distinction between a question of law and a substantial question of law was further explained in **Hero Vinoth (Minor) v. Seshammal, (2006) 5 SCC 545,** wherein it was held that a substantial question of law must materially affect the rights of the parties and cannot be equated with a mere question of fact or the application of a settled proposition of law to the facts of a case. The Supreme Court, in **Nazir Mohamed v. J. Kamala, (2020) 19 SCC 57,** reiterated that the High Court, while exercising jurisdiction

under Section 100 of the CPC, cannot act as a first appellate Court by reappreciating the evidence or interfere with concurrent findings of fact merely because another view is possible.

10. More recently, in **U. Sudheera & Others v. C. Yashoda & Others, (2025) 4 SCC 215,** the Supreme Court reiterated that admission of a second appeal is permissible only upon the Court's satisfaction that the case involves a substantial question of law; in the absence of such a question, the appeal is liable to be dismissed at the admission stage itself.

11. In the light of the aforesaid settled legal position, this Court has examined the grounds raised in the memorandum of appeal and the proposed substantial questions of law in the context of the findings recorded by both the Courts below. In the present case, it emerges from the record of the Trial Court that both the parties belong to the Kshatriya community and are governed by Hindu law. It is also an admitted position that **Sitaram**, the paternal uncle of the appellant/plaintiff and Soman Singh, had three sons.

12. In such circumstances, reference to Sections 6 and 11 of the Hindu Adoption and Maintenance Act, 1956, appears relevant, the relevant provision whereof reads as under:

> "**6. Requisites of a valid adoption**.—No adoption shall be valid unless—
>
> (i) the person adopting has the capacity, and also the right, to take in adoption;
>
> (ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter."

11. Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:—

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of datta homam shall not be essential to the validity of adoption."

13. A conjoint reading of Sections 6 and 11 of the Hindu Adoption and Maintenance Act, 1956, shows that the Trial Court record contains no

evidence establishing who had given Soman Singh in adoption, whether such person was legally competent to give him in adoption, or whether the person taking him in adoption was legally competent to do so.

14. Further, in view of the provisions of Section 11, the alleged adoption also cannot be accepted, particularly when **Sitaram** already had three sons at the relevant time. The statutory requirements governing a valid adoption have, therefore, not been established. Consequently, both the Courts below were justified in declining to accept the appellant/plaintiff's plea regarding the alleged adoption of **Soman Singh,** and no error can be attributed to their concurrent findings on this aspect.

15. In view of the foregoing discussion, this Court is of the considered opinion that the appellant/plaintiff has failed to demonstrate the existence of any substantial question of law warranting admission of the second appeal under Section 100 of the CPC. The concurrent findings recorded by both the Courts below do not suffer from any perversity or legal infirmity calling for interference. Accordingly, the second appeal is dismissed at the admission stage itself. No order as to costs.

16. Let a decree be drawn accordingly.

Sd/-
(Sushma Sawant)
JUDGE

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