



2026:CGHC:10227



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 494 of 2018

1 - Chainbati W/o Shri Ramgopal, Aged About 51 Years R/o Village Khamhariya (Saldha), Tahsil Berla, District Bemetara (Chhattisgarh)

2 - Devseer Wd/o Late Shri Ramu Dhobi, Aged About 74 Years R/o Village Sandi, Tahsil Berla, District Bemetara Chhattisgarh.

... Appellant(s)

versus

1 - Budhayarin Bai W/o Shri Punuram, D/o Late Shri Ramu Dhobi (As Claimed In Plaint) Aged About 60 Years Village Sarora, Tahsil Tilda, District Raipur Chhattisgarh.

2 - State Of Chhattisgarh Through The Collector Bemetara, District Bemetara Chhattisgarh.

.... Respondent(s)

(Cause title is taken from CIS)

For Appellant(s)	: Mr. Rishi Rahul Soni, Advocate
For Respondent/State	: Mr. Santosh Soni, Govt. Advocate

Hon'ble Shri Justice Bibhu Datta Guru

Judgment on Board

27/02/2026



1. On the last date of hearing i.e. 13/01/2026, at the request of learned counsel for the appellants, the matter was referred to the Mediation and Conciliation Centre of this Court. However, as per report dated 20/02/2026 of the Mediation Centre, it appears that due to absence of both the parties, the mediation proceedings could not be commenced. Accordingly, this Court proceeds to hear the matter on the question of admission.
2. The present Second Appeal has been filed by the defendants under Section 100 of the Code of Civil Procedure, 1908, assailing the impugned judgment and decree dated 27.06.2018 passed by the learned District Judge, Bemetara, District Bemetara (C.G.) in Civil Appeal No. 13-A/2017 (Chainbati & Anr. vs. Budhayarin Bai & Anr.), affirming the judgment and decree dated 16.05.2017 passed by the learned Second Civil Judge, Class-I, Bemetara (C.G.), in Civil Suit No. 36-A/2016 (Budhayarin Bai vs. Chainbati & Ors.), whereby the civil appeal filed by the defendants/appellants herein was dismissed. For the sake of convenience, the parties shall hereinafter be referred to as per their status before the Trial Court.
3. The plaintiff filed the suit seeking declaration of title, partition, separate possession and permanent injunction, pleading *inter alia* that late Dukalu had one son Ramu and one daughter Kejabai, all of them have died and the ancestral land situated at Village Sandi, P.H. No. 11, bearing Khasra Nos. 1606 admeasuring 0.25



hectare and khasra No.1989 admeasuring 0.57 hectare, total 0.82

hectare, stood recorded in their names. It was pleaded that the plaintiff is the daughter born from the lawful marriage of Ramu with Kunwar Bai performed in accordance with Hindu rites and customs, and thus entitled to half share in the suit property. After the death of Ramu and Kejabai, the defendants, without any lawful right, got the mutation of the suit land effected exclusively in their names vide Mutation Case No. 46 dated 13.08.2012, ignoring the plaintiff's legitimate share. It was further pleaded that during their lifetime Ramu and Kejabai had executed a registered sale deed in February 1999 in favour of Keshoram in respect of other ancestral lands with the intention of defeating the plaintiff's rights. The plaintiff asserted that despite demand for partition, the defendants avoided the same and unlawfully retained exclusive possession, thereby necessitating the filing of the present suit.

4. *Per contra*, Defendant Nos.1 and 2, in their written statement, denied the claim of the plaintiff and contended that the plaintiff's mother, Kunwar Bai, never resided with deceased Ramu as his lawful wife and had left his house within two months of marriage without sufficient cause and subsequently contracted marriage with another person. It was pleaded that the mutation proceedings were carried out strictly in accordance with the order of succession and lawfully recorded in their names, as the plaintiff does not fall within the category of legal heirs entitled to inheritance. The defendants asserted that the plaintiff has no



right, title, or share in the ancestral land situated at Village Sandi and is not entitled to seek partition. It was further contended that the plaintiff failed to implead Keshoram, the purchaser of lands bearing Khasra Nos. 1944 and 764, and did not include the said lands in the schedule of the plaint. The defendants denied that the plaintiff ever demanded partition or visited Ramu's house for such purpose. Accordingly, they prayed for dismissal of the suit.

5. After framing the issues and upon due appreciation of the oral as well as documentary evidence available on record, the learned Trial Court allowed the suit filed by the plaintiff, holding that the plaintiff has established her claim over the suit land. Aggrieved by the said judgment and decree dated 16/05/2017, the defendants No.1 & 2 preferred a First Appeal under Section 96 of the Code of Civil Procedure before the learned First Appellate Court. The learned First Appellate Court, on re-appreciation of the entire evidence on record, affirmed the findings recorded by the Trial Court and dismissed the appeal by the impugned judgment. Hence, the present appeal.
6. Learned counsel for the appellants submits that the impugned judgments and decrees passed by both the learned Courts are perverse, contrary to law, and unsustainable on the face of the record. He submits that there is no cogent or documentary evidence to establish that the plaintiff is the daughter of late Ramu Dhobi, yet the learned Courts erroneously recorded findings in her



favour and wrongly shifted the burden of proof upon the appellants. He further submits that the evidence on record clearly indicates that Kunwar Bai had left the matrimonial home long ago and there is no proof that the plaintiff was ever in joint possession of the suit land or had demanded partition during the lifetime of Ramu Dhobi, rendering the suit barred by limitation. According to learned counsel, the findings recorded suffer from illegality and perversity, giving rise to substantial questions of law warranting interference in the present appeal.

7. I have heard learned counsel for the appellants on the question of admission, and the impugned judgments and decrees passed by the learned trial Court as also the learned First Appellate Court have been carefully examined.
8. In the present case, both the learned Trial Court as well as the learned First Appellate Court, upon due appreciation of the pleadings and the oral and documentary evidence available on record, have concurrently held that the plaintiff is the daughter of late Ramu Dhobi born out of his lawful marriage with Kunwar Bai. This fact has been duly established by the birth register extract (Ex.P-3) dated 09.06.1948, which is more than 30 years old and therefore carries a statutory presumption under Section 90 of the Indian Evidence Act. Both the Courts have further recorded a categorical finding that the suit land bearing Khasra Nos. 1606 and 1989, is ancestral property, as admitted by the defendants. It



has been held that upon the death of Ramu, the plaintiff, along with other legal heirs, succeeded to the property and accordingly she is entitled to 1/3rd share therein. While declining the claim of half share, the Courts have granted declaration of 1/3rd ownership in favour of the plaintiff along with a decree for partition, separate possession, and permanent injunction restraining the defendants from interfering with her lawful share. The concurrent findings are based on proper appreciation of evidence and settled principles of succession law, and no perversity or substantial question of law arises warranting interference under Section 100 of the Code of Civil Procedure.

9. Even otherwise, the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is extremely limited. Interference is permissible only when the appeal involves a substantial question of law. Concurrent findings of fact recorded by both the Courts cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or contrary to settled principles of law.
10. In the present case, both the Trial Court and the First Appellate Court have concurrently recorded findings, on the basis of evidence available on record, that the appellants/ defendants No.1 & 2 failed to establish their case by placing cogent and sufficient material. The appellants failed to demonstrate any perversity, illegality, or misapplication of law in the findings so



recorded.

11. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to concurrent findings of fact. Such questions do not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.
12. It is well established that when there is a concurrent finding of fact, unless it is found to be perverse, the Court should not ordinarily interfere with the said finding.
13. In the matter of ***State of Rajasthan and others Vs. Shiv Dayal and another***, reported in ***(2019) 8 SCC 637***, reiterating the settled proposition, it has been held that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.
14. Be that as it may, the argument advanced by learned counsel for the appellants and the proposed question of law cannot be regarded as satisfying the test of being 'substantial question of law' within the meaning of Section 100 of CPC. These questions, in my view, are essentially question of facts. The appellants failed



to raise any substantial question of law which is required under Section 100 of the CPC. In any event, the Second Appeal did not involve any substantial question of law as contemplated under Section 100 of the CPC, no case is made out by the appellants herein. The judgments impugned passed by the learned trial Court as well as by the learned First Appellate Court are just and proper and there is no illegality and infirmity at all.

15. Having heard learned counsel for the appellants and on perusal of the record of the case and in view of the above settled legal proposition, I find absolutely no merit in this appeal, involving no question of law much less substantial question of law within the meaning of Section 100 of the CPC. In my view, the judgment and decree passed by both the Courts appear to be just, proper and legal. The findings recorded are based on proper appreciation of evidence available on record and there is no illegality or perversity in the same and they do not call for any interference.
16. Accordingly, the Second Appeal fails and is hereby **dismissed** *in limine* resulting in upholding of the judgment and decree of the trial Court as well as the Appellate Court.

Sd/-
(Bibhu Datta Guru)
Judge