



2026:CGHC:12628

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 599 of 2019

- 1. Prabhat Jaisawl S/o Late Prakashchand Jaiswal Aged About 35 Years R/o Ward No. 7, Gandai, Tahsil Chhooeekhadan And District - Rajnandgaon, Chhattisgarh.
- 2. Pankaj Jaiswal (Died)
- 3. Pramode Jaiswal S/o Late Prakashchand Jaiswal Aged About 32 Years R/o Ward No. 7, Gandai, Tahsil Chhooeekhadan And District - Rajnandgaon, Chhattisgarh.
- 4. Smt. Priti D/o Late Prakashchand Jaiswal Aged About 28 Years R/o Ward No. 7, Gandai, Tahsil Chhooeekhadan And District - Rajnandgaon, Chhattisgarh.

... Appellant(s)

versus

- 1. Smt. Nirmla Jaiswal W/o Late Prakashchand Jaiswal Aged About 61 Years R/o Ward No. 7, Gandai, Tahsil Chhooeekhadan And District - Rajnandgaon, Chhattisgarh.
- 2. Ku. Pratha Jaiswal D/o Late Prakashchand Jaiswal Aged About 22 Years R/o Ward No. 7, Gandai, Tahsil Chhooeekhadan And District - Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh
- 3. State of Chhattisgarh through Collector Dist. Rajnandgaon C.G.

... Respondent(s)

For Appellant(s)	:	Mr. Vijay K. Deshmukh, Advocate along with Ms. Tejaswai Mandavi, Advocate
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For State	:	Mr. Lekhram Dhruv, P.L.
For Respondents No. 1 & 2	:	Mr. Saponmay Chattopadhyay on behalf of Mr. Pawan Shrivastava, Advocate

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

17.03.2026

1. The Plaintiffs/ appellants have preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity CPC) against the judgment & decree dated 29.03.2019 passed by the Learned Additional District Judge, Khairagarh Dist Rajnandgaon in Civil Appeal No. 26A/2013 (*Prabhat & Ors. Vs. Nirmala & Ors.*) affirming the judgment and decree dated 10.09.2013 passed by the Trial Court in Civil Suit No. 10A/11 *Prabhat & Ors. Vs. Nirmala & Ors.*) whereby the learned trial Judge has dismissed the suit of the plaintiffs/ appellants. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
2. The plaintiffs preferred the suit for declaration of 1/7th ownership share in the subject property, permanent injunction and declaring the order dated 24.01.2009 passed by the Naib Tehsildar, Gandai in Revenue Case No. 133/2016 (year 2008-09) as illegal and void pleading *inter*

alia that the suit property described in Schedule “A” originally stood in the name of late Prakash Chand Jaiswal, over which a talkies, building and chawl were constructed. Late Prakash Chand Jaiswal was the owner and in possession during his lifetime. It is not in dispute that defendant No.1 Nirmala Jaiswal was the legally wedded wife of late Prakash Chand Jaiswal and from their wedlock defendant No. 2 Ku. Pratha Jaiswal was born. It is further pleaded that plaintiffs No.1 to 4, namely Prabhat, Pankaj (dead), Pramod and Smt. Preeti, were born from the relationship between late Prakash Chand Jaiswal and Smt. Tulsi Devi (plaintiff No.5), who is stated to be his second wife. During the pendency of the suit, plaintiff No.5 Smt. Tulsi Devi died and her name was deleted from the plaint on 29.08.2013, as her legal representatives were already on record.

3. The plaintiffs have pleaded that after the death of late Prakash Chand Jaiswal on 09.12.2008, all the parties jointly performed his last rites and that during his lifetime he had maintained and brought up the plaintiffs as his children, and his name was recorded as father in various documents such as ration card and other records. According to the plaintiffs, being the legal heirs of late Prakash Chand Jaiswal, they are entitled to a share in the suit property and are in possession of a portion thereof, while the remaining portion comprising the

talkies and chawl is in possession of the defendants i.e. first wife and her daughter. It is further averred that after the death of Prakash Chand Jaiswal, the defendants, in collusion with the revenue authorities, got their names mutated in the revenue records on 09.01.2009 by moving an application before the Naib-Tahsildar, Gandeï without giving any notice to the plaintiffs and without impleading them as parties. Against the same, the plaintiffs preferred an appeal before the Sub-Divisional Officer, Khairagarh, who remanded the matter to the Naib-Tahsildar for reconsideration. The defendants thereafter preferred an appeal before the Additional Commissioner, Raipur, which is stated to be pending consideration. On these averments, the plaintiffs have claimed that under the provisions of the Hindu Succession (Amendment) Act, 2005, they are also entitled to equal share in the ancestral property of late Prakash Chand Jaiswal. According to the plaintiffs, the defendants have illegally secured mutation of their names in the revenue records to deprive the plaintiffs of their legitimate share, thus the present suit has been filed after proper valuation and payment of court fees.

4. Defendants in the written statement, except the facts specifically admitted, have denied all the averments made in the plaint. It is contended that plaintiffs No.1 to 4 are the

children born from the relationship of late Shri Prakash Chand Jaiswal with Smt. Tulsi Devi, who, according to the defendants, was his concubine, and therefore the plaintiffs have no legal right or share in the suit property. It is further pleaded that during his lifetime, in the year 2001, late Shri Prakash Chand Jaiswal had already effected a partition between the parties, whereby the plaintiffs were given a house situated at Maharapara, Ward No.7, Gandei and land bearing Khasra No.428/1 admeasuring 2.05 decimals, while the suit property was allotted to defendants No.1 and 2. It is also stated that one shop from the suit property was sold for Rs.3,00,000/- and the amount was utilized for the marriage expenses of plaintiff No.4. The defendants have further averred that the plaintiffs were permitted to run business in two shops situated in the portion allotted to defendants No.1 and 2 on a monthly rent of Rs.250/- each, which they paid up to May 2011, but thereafter they stopped paying rent and falsely started claiming ownership. It is also contended that the mutation in favour of defendants No.1 and 2 was carried out by the Tahsildar after following due procedure of publication and proclamation, and the plaintiffs were aware of the same. According to the defendants, the suit property exclusively belongs to defendants No.1 and 2 and the plaintiffs have no right or share therein. The defendants have also raised an objection regarding undervaluation of the suit

and prayed for dismissal of the suit with costs.

5. Defendant No. 3 remained ex parte from the very beginning; therefore, no written statement has been filed on its behalf.
6. After framing the issues and upon due appreciation of the oral as well as documentary evidence available on record, though the learned trial Court found that the plaintiffs were able to partially prove their case against the defendants on the basis of preponderance of probabilities with respect to the relief claimed, however, dismissed the suit of the plaintiffs on the ground that they failed to affix the appropriate court fee to the plaint. Aggrieved by the said judgment and decree dated 10.09.2013, the plaintiffs 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.
7. Learned counsel for the appellants submits that the First Appellate Court has erred in affirming the judgment and decree of the Trial Court without assigning proper reasons, particularly on the issues relating to the Hindu Succession Act and the status of the plaintiffs. It is contended that the findings regarding partition and possession are perverse and contrary to the evidence on record. It is further submitted that the First

Appellate Court has ignored material evidence, travelled beyond the pleadings, and relied upon unregistered documents without proper proof under Sections 67 and 68 of the Indian Evidence Act. He further submits that the plaintiffs being the children of late Prakash Chand Jaiswal are entitled for partition in the suit property. It is therefore prayed that the impugned judgment and decree be set aside.

8. I have heard learned counsel for the parties 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.
9. In the instant case, the Trial Court, upon appreciation of the oral and documentary evidence on record, held that the plaintiffs failed to establish that the suit property was the self-acquired property of late Prakash Chand Jaiswal. On the contrary, from the evidence of the plaintiffs' own witnesses, particularly Akbar Khan and plaintiff Pramod Jaiswal in their cross-examination, it was admitted that the disputed property comprising the land bearing Khasra Nos. 98/1 and 98/3, on which the talkies, house and shops were constructed, had been obtained by late Prakash Chand Jaiswal in a partition with his father and brothers. The Trial Court further found that during his lifetime, in the year 2001, late Prakash Chand Jaiswal had effected a family partition whereby land bearing

Khasra No. 458/1 was given to his second wife Tulsi Devi (mother of the plaintiffs), while the suit property fell to the share of defendant No.1 and her daughter (defendant No.2), who continued to remain in possession thereof. The Trial Court also noticed that the plaintiffs failed to produce any documentary evidence to prove their claim of ownership or to substantiate their plea regarding illegal mutation. On the basis of the evidence on record, the Trial Court concluded that the plaintiffs had no right or share in the suit property and dismissed the suit.

10. The First Appellate Court, on re-appreciation of the entire evidence, concurred with the findings recorded by the Trial Court and held that the disputed property was ancestral property received by late Prakash Chand Jaiswal in partition from his father and brothers and not his self-acquired property. It was further held that the evidence on record supported the case of prior partition in the year 2001 and that the plaintiffs failed to establish their entitlement to any share in the suit property. Finding no illegality or perversity in the judgment and decree passed by the Trial Court, the First Appellate Court dismissed the appeal and affirmed the judgment and decree dated 10.09.2013 passed by the Trial Court.

11. **In Jinia Keotin & Ors. Vs. Kumar Sitaram Manjhi & Ors.**

reported in (2003) 1 SCC 730, the Supreme Court held that while engrafting a rule of fiction in Section 16 of the Act, the illegitimate children have become entitled to get share only in self-acquired properties of their parents. The Court held as under :-

"4.....Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of contravention of the statutory prescriptions, any child born of such marriage would have the effect, per se, or on being so declared or annulled, as the case may be, of bastardising the children born of the parties to such marriage. Polygamy, which was permissible and widely prevalent among the Hindus in the past and considered to have evil effects on society, came to be put an end to by the mandate of the Parliament in enacting the Hindu Marriage Act, 1955. The legitimate status of the children which depended very much upon the marriage between their parents being valid or void, thus turned on the act of parents over which the innocent child had no hold or control. But for no fault of it, the innocent baby had to suffer a permanent set back in life and in the eyes of society by being treated as illegitimate. A laudable and noble act of the legislature indeed in enacting Section 16 to put an end to a great social evil. At the same time, Section 16 of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as succession or inheritance by such children are concerned to the properties of the parents only.

5. So far as Section 16 of the Act is concerned, though it was enacted to legitimise children, who would otherwise suffer by becoming illegitimate, at the same time it expressly provide in Sub-section (3) by engrafting a provision with a non-obstante clause stipulating specifically that nothing contained in Sub-section (1) or Sub-section (2) shall be construed as conferring upon any child of a

marriage, which is null and void or which is annulled by a decree of nullity under Section 12, 'any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of this not being the legitimate child of his parents'. In the light of such an express mandate of the legislature itself there is no room for according upon such children who but for Section 16 would have been branded as illegitimate any further rights than envisaged therein by resorting to any presumptive or inferential process of reasoning, having recourse to the mere object or purpose of enacting Section 16 of the Act. Any attempt to do so would amount to doing not only violence to the provision specifically engrafted in Sub-section (3) of Section 16 of the Act but also would attempt to court re-legislating on the subject under the guise of interpretation, against even the will expressed in the enactment itself. Consequently, we are unable to countenance the submissions on behalf of the appellants....."

12. The Supreme Court in the case of **Bharatha Matha & Anr. Vs. R. Vijaya Renganathan & Ors** reported in AIR 2010 SC 2685 has held thus at para 27:-

27. Thus, it is evident that in such a fact-situation, a child born of void or voidable marriage is not entitled to claim inheritance in ancestral coparcenary property but is entitled only to claim share in self acquired properties, if any.

13. The Supreme Court in the matter of **Revanasiddappa And Anr Vs. Mallikarjun and Ors** reported in 2023 (10) SCC 1 held in para 22:-

"22. The frame of sub-section (3), however, indicates that the conferment of legitimacy will not

confer upon the child rights in or to the property of a person other than the parents. Sub-section (3) implicitly recognises that the child conferred with legitimacy by virtue of the provisions of sub-sections (1) and (2) would be entitled to rights in or to the property of the parents of the child. But the provision equally indicates that the conferment of legitimacy will not operate to confer rights in or to the property of persons who are not the parents of the child. This stipulation is, however, conditioned by the last part of sub-section (3) which provides that such a child would not have rights in or to the property of a person who is not a parent where but for the passing of the Act the child would have been incapable of possessing or acquiring such rights by reason of not being the legitimate child. This last part of sub-section (3), takes us back to the position as it stood before the passing of the Act. If, but for the enactment of the provision the child would not have been capable of possessing or acquiring rights over the property of any person other than the parents by virtue of the "illegitimacy", the child will not have rights to or in the property of a third party (other than the parents)."

14. In the instant case, it is accepted fact that the plaintiffs No.1 to 4, namely Prabhat, Pankaj (dead), Pramod and Smt. Preeti, were born from the relationship between late Prakash Chand Jaiswal and Smt. Tulsi Devi, who is stated to be his second wife. Thus they are the illegitimate children of deceased

Prakash Chand Jaiswal.

15. Further, the trial court while deciding the issue No. 7 which relates to ancestral property of late Prakash Chand Jaiswal has examined the documentary evidence produced by the parties, particularly the revenue records such as Kistbandi Khatauni and Khasra entries, show that the land stood recorded in the name of late Prakash Chand Jaiswal and that he was in possession of the land on which the talkies, house and chawl were constructed. However, the evidence on record, including the admissions made by the plaintiffs' witnesses in their cross-examination, clearly establishes that the land in question had been received by late Prakash Chand Jaiswal in a partition with his father and brothers. The defendants have also produced documentary evidence, including the mutation register and the order of the Tahsildar dated 25.11.1986, which indicates that in the said family partition late Prakash Chand Jaiswal was allotted a share in the property. Further, there is no material on record to show that late Prakash Chand Jaiswal had any independent source of income from which the property or the constructions thereon could be treated as self-acquired. In view of the admissions of the plaintiffs' witnesses, the documentary evidence on record and the absence of proof of any independent source of income, it stands established that the

suit property was ancestral property which had fallen to the share of late Prakash Chand Jaiswal in the family partition.

16. It is noteworthy to mention here that, during the life time of Prakash Chand Jaiswal, he had effected a family partition in the year 2001 whereby land bearing Khasra No.458/1 was given to his second wife Tulsi Devi (mother of the plaintiffs) and they continued to remain in possession of the same & there is no evidence on record that Prakash Chand Jaiswal had kept any share of the ancestral property for himself.
17. Thus, as the suit property was ancestral property which had fallen to the share of late Prakash Chand Jaiswal in the family partition, therefore, the question of inheritance of coparcenary property by the illegitimate children who were born out by the second marriage could not arise. Thus, both the Courts were justified in dismissing the suit as well as the appeal of the plaintiffs.
18. 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.

19. 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 appellant/defendant failed to establish their case by placing cogent and sufficient material. The appellants have failed to demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.
20. 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.
21. 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.
22. 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.

23. 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.
24. 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.

25. Consequently, 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

Jyoti