
(2022) 10 CHH CK 0012
In the Chhattisgarh High Court
Case No : First Appeal No. 86 Of 2006

Bhago Ram

APPELLANT

Vs

Tara Bai

RESPONDENT

Date of Decision : 13-10-2022

Acts Referred:

Citation : (2022) 10 CHH CK 0012

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : S.N. Nande, Udho Ram Koshaley, Ishwari Ghritlahare

Final Decision : Allowed

Judgement

1. The instant appeal has been preferred by defendants 2 to 10 against the judgment and decree dated 6.2.2006 passed by 2nd Additional District Judge, Raigarh in Civil Suit No.6A of 2006, whereby the plaintiff's suit has been partly decreed.

2. During pendency of the suit itself, original plaintiff Tarabai and original defendant 1 Panchu died. Present plaintiffs 1 to 3 Lakhanbai, Badku and Ghotku are legal heirs of original plaintiff Tarabai and present defendant 1 Sundari is legal heir of original defendant 1 Panchu.

3. Facts of the case, in short, are that original plaintiff Tarabai instituted a declaratory suit, being Civil Suit No.6A of 2006 against the defendants seeking declaratory relief to the effect that the sale deeds dated 28.2.1995 and 15.3.1995 executed by original defendant 1 Panchu in respect of the lands as shown in Schedules A, B and C appended with the plaint be declared void. The original plaintiff consequently sought further declaration to the effect that the purchasers/defendants 2 to 10 did not have obtained any right over the lands. She further sought restoration of possession over the lands as shown in Schedules A, B and C.

4. According to the pleadings of the plaintiff, there was a joint khata in the names of Sukhru and his brothers Jageswar and Mani holding lands ad-measuring 6 acres at Village Lendhra, Tahsil Sarangarh, District Raigarh. On mutual family settlement Sukhru obtained a share of 3 acres as his brother Mani died issueless. Though Sukhru and Jageswar were in possession of their respective shares, the khata remained joint. According to the family tree, Sonkunwar was wife of Sukhru and they have 3 daughters, namely, Khikmati, Samarin and Amarin. According to the pleadings of original plaintiff Tarabai, she is the daughter of Khikmati. It was further pleaded in the plaint that on the death of Sukhru, name of Samarin was left to be mutated in the revenue record, but, the same was later on corrected vide Sanshodhan Panji No.84 by order dated 25.8.1959. After the death of Sukhru, Sonkunwar and Jageswar got their khata separated vide Sanshodhan Panji No.463 and 464 by order dated 27.2.1973. Sonkunwar died leaving behind her grand daughter, namely, Tarabai (original plaintiff). As other sisters of mother of Tarabai, namely, Samarin and Amarin died issueless, therefore, Tarabai is the only heir of Sukhru. On her back, playing mischief, original defendant 1 Panchu got his name illegally recorded in the revenue records and sold the lands shown in Schedule A to defendants 2 to 4 vide registered sale deed dated 28.2.1995. He further sold the land shown in Schedule B to defendant 5 on 15.3.1995 and further sold the lands shown in Schedule C to defendants 6 to 9 on 28.2.1995. Thus, claiming the relief as mentioned earlier, original plaintiff Tarabai filed the civil suit.

5. The present Appellants, being defendants 2 to 10 filed their joint written statement denying the claim of the plaintiff. It was pleaded by them that the plaintiff is not the real grand daughter of Sukhru and she, by wrongly introducing herself as a successor of Sukhru, filed the false suit. It was pleaded by them that Sukhru died in the year 1959-60 and in accordance with the prevalent law his widow Sonkunwar succeeded her husband. Daughter of Sukhru, namely, Khikmati was married in Village Bardula and out of her wedlock only 2 female children, namely, Paharbai and Isubai were born. Plaintiff Tarabai born through earlier married wife of husband of Khikmati and, therefore, Tarabai is step daughter of Khikmati. Defendant 1 Panchu married Sukhru's daughter Samarin and lived with her in her paternal home as ghar jamai. At the time of marriage, some of the land of the share of Sukhru had been given to defendant 1 Panchu as a dowry. It was further pleaded that on the death of Sukhru name of his widow alone was recorded in the revenue records. The khata was jointly recorded in the names of Sonkunwar and Jageswar. The land bearing Survey No.1060 and 1065, part of land ad-measuring 0.87 acres was sold to Samarin and her husband Panchu vide registered sale deed executed in the month of April, 1961 jointly by Jageswar and Sonkunwar. Thereafter, the joint khata was separated by Sanshodhan Panji No.463 and 464. It was further pleaded by them that the land mentioned in Schedule B was purchased by Panchu and Samarin through a registered sale deed dated 12.8.1977. Later on this land has been sold by Panchu to defendant 5 Ramprasad. The land bearing Khasra No.1068 and

1164 total 0.87 acres has been purchased by Panchu and Samarin from Sonkunwar and Jageswar through a registered sale deed dated 11.4.1967, which has been sold by Panchu to defendants 2 to 4 and defendants 6 to 10 through registered sale deed dated 28.2.1995. The remaining suit land has been obtained by Panchu at the time of his marriage as a dowry. Therefore, he was owner of the remaining land. Hence, he has full right to sell those lands also. It was further pleaded by defendants 2 to 10 that on an earlier occasion, defendant 11 Jageswar had brought a declaratory suit against defendants 2 to 10 in relation to the subject matter of this suit, which was registered as Civil Suit No.62A of 1995 and was dismissed by the judgment dated 9.8.1996. An appeal was preferred against the said judgment. Apart from the all such factual pleadings, some legal objections pertaining to mis-joinder of cause of action, valuation of suit, tenability of suit, limitation, cause of action etc. have been raised in the joint written statement of defendants 2 to 10. A separate written statement has been filed by Ghasia, the legal heir of defendant 11 Jageswar. Ghasia supported the entire case of original plaintiff Tarabai. A separate written statement has been filed by defendant 12/State of Madhya Pradesh (now Chhattisgarh). Sundari, the legal heir of defendant 1 Panchu, after service of summons, did not appear before the Trial Court and was declared ex parte.

6. On the basis of the pleadings, the Trial Court framed as many as 5 issues. After recording evidence of the parties and hearing arguments, vide judgment dated 6.2.2006, the Trial Court partly decreed the suit. Hence, the instant appeal by defendants 2 to 10.

7. Learned Counsel appearing for the Appellants/defendants 2 to 10 submitted that the Trial Court only on the basis of evidence of DW1 Khemram arrived at the conclusion that original plaintiff Tarabai was the daughter of Khikmati, which is not in accordance with the evidence available on record. The Trial Court did not consider the evidence of DW2 Bijo on this point at all, who has categorically stated that Tarabai was step daughter of Khikmati. The Trial Court also did not even appreciate the law of evidence shifting onus to prove a fact on the party. Since original plaintiff Tarabai had claimed herself to be a grand daughter of Sukhru, the onus is prima facie on her to establish this fact. From the evidence available on record, it is well established that Tarabai was not the original daughter of Khikmati. Rather, she was step daughter of Khikmati and, therefore, she has no right over the lands of Sukhru. It was further submitted by Learned Counsel that from the evidence on record it is also established that defendant 1 Panchu was for more than 12 years recorded as land owner and was in possession of the suit land for more than 12 years. After the death of Sukhru and Sonkunwar, no claim was made over the suit land by plaintiff Tarabai. The Appellants/defendants 2 to 10 are bona fide purchasers of the suit land and are in peaceful possession of the suit land from the date of the purchase. Therefore, the finding recorded by the Trial Court is not sustainable.

8. Learned Counsel appearing for Respondent 3(i) and Respondent 4 opposed the

arguments raised on behalf of the Appellants and supported the impugned judgment passed by the Trial Court.

9. I have heard Learned Counsel appearing for the parties and perused the entire evidence both oral and documentary adduced by the parties before the Trial Court.

10. It is not in dispute that Dular had 3 sons, namely, Sukhru, Jageswar (defendant 11) and Mani. Sukhru died in the year 1951. Sonkunwar was wife of Sukhru. It is also not in dispute that Sukhru and Sonkunwar had 3 daughters, namely, Khikmati, Samarin and Amarin. Original defendant 1 Panchu was husband of Samarin and they died issueless. Amarin also died issueless. According to the pleadings of original plaintiff Tarabai, she was the only daughter of Khikmati. Therefore, on this ground only, she made a claim over the suit land. According to the pleadings of the Appellants/defendants 2 to 10, Khikmati had only 2 daughters, namely, Paharbai and Isubai. As per the pleadings of defendants 2 to 10, original plaintiff Tarabai is step daughter of Khikmati. The Trial Court only relying on the statement of DW1 Khemram arrived at the conclusion that Tarabai is original daughter of Khikmati.

11. DW1 Khemram, in his cross-examination in paragraphs 15, 26 and 29, deposed that he does not know anything about Tarabai, he also does not know whether Tarabai is daughter of Khikmati or not and he also does not know when Tarabai took birth. He further admitted that at the time of his birth, Tarabai had already taken birth. Only on the basis of this statement, the Trial Court arrived at the conclusion that the defendants are not able to prove the fact that Tarabai was the step daughter of Khikmati and arrived at the conclusion that Tarabai was the real daughter of Khikmati. From perusal of the impugned judgment of the Trial Court, it appears that the Trial Court did not consider the evidence of DW2 Bijo at all, who was a resident of Village Pasit and has categorically deposed that Tarabai was the daughter of first wife of Ghasiram, namely, Dhodhmihin. At the time of birth of Tarabai, Dhodhmihin had died. When Tarabai was aged about 1½ years, at that time, Ghasiram married Khikmati and out of their wedlock 2 daughters Paharbai and Isubai took birth and later on these 2 daughters also died. The above statement of DW2 Bijo has not been duly rebutted during his cross-examination. Rather, in paragraph 7 of cross-examination of this witness, a suggestion was made to him and he has stated that when Tarabai was aged about 1½ years, at that time, Ghasiram had married Khikmati and brought her home. Meaning thereby, it has been accepted by the plaintiffs that Tarabai was step daughter of Khikmati. But, this has not been considered by the Trial Court at all.

12. Further, according to the pleadings of the plaintiff and the statement made by plaintiff witness No.1 Ghasia, Khikmati had only 1 daughter, namely, Tarabai. Contrary to this, as per the pleadings of the Appellants/defendants 2 to 10 and the statements made by defendants witnesses No.1 and 2, namely, Khemram and Bijo, respectively, Khikmati had only 2 daughters, namely, Paharbai and

Isubai and they have also died. In paragraph 7 of cross-examination of DW2 Bijo, existence of Isubai and Paharbai has also been admitted by the plaintiffs. Jageswar, original defendant 11 of the instant civil suit (father of the plaintiff witness No.1 Ghasia) had earlier filed a suit, being Civil Suit No.62A of 1995 before the Civil Judge Class II, Sarangarh. From perusal of the judgment dated 9.8.1996 (Ex.D12) passed in that suit, it appears that Jageswar filed the suit on the ground that at the time of death of Sonkunwar she had no Class-I successor and being a brother of Sukhru he only had full title over the whole property of Sukhru. Against the judgment dated 9.8.1996, an appeal was moved before the Appellate Court. From perusal of the judgment dated 17.4.2003 (Ex.D13) passed by the Appellate Court, it also appears that the Appellate Court arrived at the conclusion that Khikmati had 3 daughters, namely, Tarabai, Paharbai and Isubai, which had not been arrayed as party in that civil suit. Thus, it is also established that Khikmati had 3 daughters, namely, Tarabai, Paharbai and Isubai. Considering this fact, the instant civil suit was filed by Tarabai claiming herself to be only daughter of Khikmati. From the statement of DW2 Bijo, it is also established that Tarabai is not the real daughter of Khikmati. Rather, Tarabai was born out of the wedlock of Ghasiram and Dhodhmihin. Therefore, Tarabai does not have any right over the property of Sukhru and Sonkunwar. Thus, the finding of the Trial Court in this regard is perverse and is not in accordance with the evidence available on record.

13. Resultantly, the appeal is allowed. The impugned judgment and decree passed by the Trial Court is set aside.

14. A decree be drawn up accordingly.