

(2020) 01 CHH CK 0169
In the Chhattisgarh High Court
Case No : Second Appeal No. 178 Of 2008

Lakshani Bai And Ors

APPELLANT

Vs

Sukhanteen @ Sukhbatl And Anr

RESPONDENT

Date of Decision : 28-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100
Hindu Marriage Act, 1955 — Section 16(3)

Citation : (2020) 01 CHH CK 0169

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : R.N. Jha, Anshuman Rabra

Final Decision : Dismissed

Judgement

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/defendants under Section 100 of the CPC questioning the impugned judgment and decree by which the first appellate Court allowed the appeal preferred by the plaintiff and set aside the judgment and decree of the trial Court dismissing the suit of the plaintiff.
2. Mr. R.N. Jha, learned counsel for the appellants/defendants would submit that the first appellate Court has erred in holding that plaintiff would be entitled for $\frac{1}{2}$ share in the suit property by recording a finding which is perverse and contrary to the record, as such, the second appeal deserves to be admitted for hearing by formulating substantial question of law in this regard.
3. The suit property was originally held by Thanvar who succeeded it as his ancestral property. Thanvar had three wives. Plaintiff is the daughter of Thanvar born with his second wife namely Devkunwar Bai. Defendants are the widow and sons of deceased Ude Ram, who was the son

of Thanvar born with his first wife Budhyarin. Thanvar's third wife died issueless.

4. Plaintiff filed a suit for declaration of title and partition stating that she, being the daughter of Thanvar born out of his wedlock with his second wife,

is entitled for $\frac{1}{2}$ share in the suit property to which defendants refuted and the trial Court ultimately dismissed the suit of the plaintiff, but the first

appellate Court reversed the judgment and decree of the trial Court and allowed the appeal of the plaintiff holding that since third wife of Thanvar died

issueless, therefore, plaintiff being the daughter of Thanvar born out of his wedlock with his second wife and defendants being the legal heirs of Ude

ram who is the son of Thanvar born out of his wedlock with his first wife, both are entitled for $\frac{1}{2}$ share in the suit property.

5. As noticed herein[^]above that the suit property was the ancestral property of Thanvar who had three wives. Plaintiff is the daughter of Thanvar

born with his second wife and defendants are the widow and sons of Late Ude ram who was the son of Thanvar born with his first wife. Third wife

of Thanvar died issueless. Therefore, both plaintiff as well as defendants would succeed to $\frac{1}{2}$ share in the suit property left by Thanvar. Even if

plaintiff is the daughter of Thanvar with his second wife Devkunwar Bai, she would still be entitled to inherit the suit property of her father by virtue of

Section 16(3) of the Hindu Marriage Act, 1955. Therefore, the first appellate Court is absolutely justified in granting $\frac{1}{2}$ share in the suit property to

the plaintiff which is neither perverse nor contrary to record and does not give rise to any substantial question of law in this regard.

6. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).