

(2025) 10 CHH CK 1154
In the Chhattisgarh High Court
Case No : SA No. 533 Of 2022

Lilakram

APPELLANT

Vs

Durga Bai

RESPONDENT

Date of Decision : 17-10-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 100
Evidence Act, 1872 — Section 112

Citation : (2025) 10 CHH CK 1154

Hon'ble Judges : Deepak Kumar Tiwari, J

Bench : Single Bench

Advocate : Akhil Kumar Agrawal, Mandwi Bhardwaj

Final Decision : Dismissed

Judgement

Deepak Kumar Tiwari, J

1. This is a Second Appeal filed by the Appellants/Defendants under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC") against the judgment and decree dated 17.10.2022 passed by the District Judge Mungeli, District Mungeli in Civil Appeal No.09-A/2022, which, in turn, arose out of the judgment and decree dated 27.01.2022 passed by the Civil Judge Class-II, Lormi, District Lormi (CG) in Civil Suit No.11-A/2017.

2. By the impugned judgment and decree, the First Appellate Court dismissed the appeal filed by the defendants (appellants herein) and, in consequence, upheld the judgment and decree passed by the trial Court, which had allowed the plaintiff's suit and entitled the plaintiff to get share in the ancestral property.

3. So the short question that arises for consideration in this appeal is whether this Second appeal involves any substantial question law within the meaning of Section 100 of the CPC and whether such appeal should be admitted for final hearing?

4. Henceforth, the parties shall be referred to as per their description before the Court below.

5. Facts of the case, in brief, that respondent No.1/plaintiff has filed civil suit for declaration of title, partition and separate possession in respect of suit property situated at Village Jhafal, Patwari Halka No.17, Tahsil Lormi bearing Khasra Nos.313/7, 636/1, 637, 638, 639, 645/1, 659, 660, 673/4, 1130/8, 1149/4, 1154/2, 1156, 1161, 1160, 1207/4, 1238/1 total area 13.25 acre. The suit has been filed by the plaintiff making averment, inter alia, that marriage of her mother Mahettarin Bai was solemnized with Lilakram defendant No.1/appellant No.1 herein as per Hindu rituals and out of such relation she (plaintiff) was born. After birth of the plaintiff when she attained the age of 5-6 years, her father/defendant started quarreling with her mother and ousted her from the house. Thereafter, plaintiff and her mother started residing in the house of maternal uncle. When plaintiff reached to the age of marriage, she requested her father for support, however, he denied for fulfilling his obligation. It is further averred that in the Government records total property area 13.2 acre at Village Jhafal is recorded in the name of her father and being a daughter plaintiff is also entitled for share and partition on the said property.

6. The appellants/defendants have filed the written statement denying the relationship of plaintiff and defendant No.1. They averred that mother of the plaintiff Mehattarin Bai was pregnant at time of Chudi marriage with defendant No.1, and earlier, marriage of plaintiff's mother was solemnized with one Burdu Kurmi who is resident of Village Kathautiya and after death of her husband, she (plaintiff's mother) came to Village Bhatha and started residing with her parents. It is further averred that during such period mother of the plaintiff has developed relation with one Ganesh and out of such relation she became pregnant and by suppressing such fact mother of the plaintiff has solemnized Chudi marriage with appellant/defendant No.1. It is averred that when the said fact came to notice defendant No.1, he informed elderly people of the society and left mother of the plaintiff to her matrimonial home. It is specifically stated that plaintiff is not the daughter of defendant No.1, and therefore, she is not entitled for share or partition in the suit property.

7. On the basis of pleadings of the parties, learned trial Court framed as many as 4 issues. Plaintiff has examined herself as PW-1 and two others namely Mahdev Kumri (PW-2) and Bahorik (PW-3) and exhibited 4 documents vide Ex.P-1 to Ex.P-4. On the other hand, defendants have examined defendant No.1 Lilakram as DW-1, Mohan (DW-2) and Fulchand (DW-3). After evaluating the evidence available on record, learned trial Court reached to the conclusion that plaintiff has established her relationship with defendant No.1 as daughter and she is entitled for the share in the suit property. Against the said findings, the defendants have preferred the First Appeal which ultimately was dismissed by affirming the judgment and decree passed by the trial Court. It is this judgment and decree passed by the First Appellate Court, which is impugned in the Second

Appeal filed by the appellants/defendants. Hence, this appeal.

8. Learned counsel for the appellants/defendants would submit that the trial Court as well as the First Appellate Court have committed an error by not appreciating the evidence in its proper perspective. He submits that both the Court below have wrongly applied the presumption under Section 112 of the Indian Evidence Act, 1872 (hereinafter referred to as the "Evidence Act"). He also submits that mother of the plaintiff was not examined during trial, therefore, findings of both the Court below are perverse and contrary to law. In view of such submission, he prays to admit the appeal by formulating substantial question of law on the aforesaid aspect.

9. Heard learned counsel for the appellant and perused the record with utmost circumspection.

10. There is concurrent finding of facts recorded by the trial Court as well as the First Appellate Court that plaintiff has specifically proved that plaintiff is daughter of appellant/defendant No.1. Both the Courts below after appreciating the evidence on record also held that subject property is ancestral property.

11. 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.

12. 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 dehors 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.

13. In the present case, both the Courts below after examining the evidence of the plaintiff as well as defendants and after considering their averments made in the plaint and written statement found that defendant No.1 has solemnized Chudi marriage with mother of the plaintiff Mehttarin Bai and said fact is also admitted by the defendants in their written statement.

14. Further, certain averment has been made that defendant/appellant No.1 is not biological father the plaintiff, however, Section 112 of the Evidence Act provides the specific provision in this regard which reads as under:-

Section 112. Birth during marriage, conclusive proof of legitimacy. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

15. The aforesaid provision of the Evidence Act clearly stipulates a conclusive presumption of legitimacy, meaning a child born during a valid marriage is conclusively presumed to be the legitimate child of the husband. So the both the Courts below after considering the presumption under Section 112 of the Evidence Act that a person was born during the continuance of a valid marriage shall be conclusive proof that she is the legitimate child granted decree in favour of the plaintiff and further such presumption was not rebutted by the defendants. Moreover, findings with regard to the ancestral property is correctly recorded by both the Courts below.

16. Considering the aforesaid facts 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 two Courts below appear to be just, proper and legal. The findings recorded by both the Courts 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.

17. Consequently, the Second Appeal fails and is hereby dismissed in limine upholding the judgment and decree of both the Courts below.

18. No order as to cost(s).

19. A decree be drawn accordingly.