

(2025) 01 JH CK 1695

In the Jharkhand High Court

Case No : S.A. No. 192 Of 2019 With M.A. No. 361 Of 2014

Sudamia Devi

APPELLANT

Vs

Urmila Devi @ Dhano Devi

RESPONDENT

Date of Decision : 08-01-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1

Citation : (2025) 01 JH CK 1695

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Navneet Toppo, Anil Kumar Singh, Sheo Kumar Singh, Navneet Toppo, Saurav Mahto, Sheo Kumar Singh

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. Heard the learned counsels appearing on behalf of the parties.
2. Learned counsel Mr. Navneet Toppo has joined the proceeding online.
3. Second Appeal No. 192 of 2019
4. Learned counsel for the appellant has submitted that the appellant was defendant no. 1 before the learned Trial Court and is only concerned with issue no. 8 and 9 as framed by the learned Trial Court with regard to grant of permanent injunction, whereby the defendant no. 1 has been restrained from receiving any death benefits amount of service of Late Chhote Lal Das and defendant nos. 2,3,4 and 5 have been restrained from making any payment to defendant no.1. He has submitted that not only the issue no. 8 has been decided by the court but there is also a direction given by the learned Trial Court that plaintiff no. 1 would be entitled to receive death benefit of her husband to her share along with plaintiff nos. 2 and 3 excluding the share of other children of late Chhote Lal Das borne out of the second marriage with defendant no. 1. The

learned counsel submits that the learned court has decided the issue no. 7 against the plaintiff and has refused to grant the decree declaring that she was the legally married wife of late Chhote Lal Das on the ground that the family court has exclusive jurisdiction to give such a declaration and the learned court had no jurisdiction over such issue and no order could be passed to this effect. The issue no. 7 was decided against the plaintiff in the aforesaid terms.

5. The learned counsel submits that the appellate court has also affirmed the decision with regard to issue no. 8 and 9 and has a substantial question of law arising in the present case in view of the fact that the learned court ought to have earmarked the share of the wife and ought to have issued only a temporary injunction under Order 39 Rule 1 subject to decision by the competent court regarding as to who is the legally wife of Chhote Lal Das. He has submitted that so far as the share allocated and directed to be disbursed to the children are concerned the appellant has no objection.

6. After hearing the learned counsel for the parties and considering the impugned judgments, this court is of the considered view that the present second appeal is to be heard on the following substantial question of law:-

(i) Whether the learned courts while holding that the court did not have the jurisdiction to declare the marital status of the plaintiff/defendant no. 1 with respect to marriage with Chhote Lal Das were justified in passing permanent injunction against the defendant no. 1 and directing the defendant nos. 2 to 5 to disburse the amount to the plaintiffs and the children of defendant no. 1 or the learned court ought to have granted only temporary injunction subject to any adjudication by the Family Court as and when the concerned parties would have approached the Family Court for declaration of their marital status?"

7. Respondent nos. 1,2 and 3 have already appeared and counsel for the respondent nos. 1,2 and 3 are present in this court.

8. Mr. A.K. Mehta, the learned counsel accepts notice on behalf of respondent nos. 4 and 5 and undertakes to file vakalatnama.

9. Mr. Ravi Prakash Mishra, the learned counsel accepts notice on behalf of respondent nos. 6 and 7 and undertakes to file vakalatnama .

10. Counsel for the appellant is directed to serve two copies of the entire records of this case to the learned counsel Mr. A.K. Mehta and Mr. Ravi Prakash Mishra by 13.01.2025.

11. Let the records of this case be called for from the concerned court.

M.A. No. 361 of 2014

12. Respondent nos. 1 to 4 have already appeared by filing Vakalatnama and their learned counsel is appearing through virtual mode.

13. Counsel for the appellant is directed to comply the order dated 07.03.2019, if

not already complied.

14. This appeal is admitted for final hearing.

15. Let the records of the case be called for from the concerned court.

I.A. No. 189 of 2022

16. This I.A. has been filed to tag this case with Second Appeal No.

192 of 2019. These two cases have already been tagged vide order dated 16.02.2022. Accordingly, I.A. No. 189 of 2022 is hereby closed.

I.A. No. 7849 of 2017

17. Counsel for the appellant seeks permission to withdraw I.A. No. 7849 of 2017.

18. Accordingly, I.A. No. 7849 of 2017 is dismissed as withdrawn.

19. Post both the cases on 09.04.2025.