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IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CG)

SECOND APPEAL NO.....142/2006 Single Bench

(APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE)

APPELLANT  
PLAINTIFF

✓Kanhaiyalal, S/o Kachru Ram  
lohar, aged about 34 years, R/o  
Village-Surdongar, P.S. Dondi,  
Tahsil Balod, Distt. - Durg.

**Versus**

RESPONDENT  
DEFENDANT

1. S. Bai, D/o Sadhu ram Halwa,  
aged about 25 years

2. Kumari Lokeshwari, D/o  
Unknown, aged about 8 years  
(Minor) through its legal  
guardian Smt. S. Bai, R/o  
Village Surdongar, P.S. Dondi,  
Tahsil- Balod, District Durg  
(Chhattisgarh)

P.R. No. 965/06  
Presented by Shri. N.P. Keshari  
dated 06/11/06

(APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE)

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 142 of 2006

Appellant/  
Plaintiff

:

Kanhaiyalal

Vs.

Respondents/  
Defendants

:

S. Bai and another

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JUDGMENT

POST FOR JUDGMENT ON 2609-2006

Sd/-  
Dhirendra Mishra  
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 142 of 2006

Appellant/  
Plaintiff : Kanhaiyalal

Vs.

Respondents/  
Defendants : S. Bai and another

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Appellant by Shri Vishnu Kosta, Advocate.

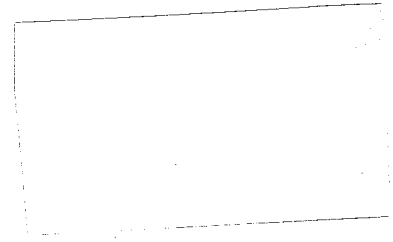
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J U D G M E N T  
(Delivered on 26/09/2006)

Dhirendra Mishra, J

Heard on admission.

2. The appellant/plaintiff has preferred this second appeal under Section 100 of the Code of Civil Procedure against the judgment and decree dated 25.2.2006 passed in Civil Appeal No. 17-A/03 by the learned Additional District Judge, Balod, District – Durg, whereby the civil appeal preferred by the appellant against the judgment and decree dated 7.3.2003 passed in Civil Suit No. 25-A/02 by learned Civil Judge, Class-I, has been dismissed. (Parties hereinafter shall be referred to as per their description before the trial Court).
3. The plaintiff filed a civil suit for declaration that he is not the father of defendant No. 2, she be restrained by a decree of perpetual injunction against using his name as her father and he also sought a declaration that defendant No. 1 should not write the name of the plaintiff as her husband as he had no



relationship with defendant No. 1 nor he is father of defendant No. 2 and he does not have any relationship whatsoever with defendant No. 1 and the defendants for the purpose of grabbing his movable and immovable property and tarnishing his image in the society, are claiming themselves to be his wife and daughter. The defendants have also filed an application for maintenance in the Court of Judicial Magistrate First Class, Balod. He also pleaded that he has been acquitted in sessions trial No. 320/95 which was registered on the basis of complaint of defendant No. 1 with a finding that the act of the accused does not constitute the offence.

4. The defendants in their written statement denied the averments of the plaintiff and stated that the plaintiff has been working as a teacher in village Surdongar for 10 years up to 1995 and in that period they fell in love and she had physical relationship with him, as a result of which she conceived. Thereafter, Panchayat was convened in which the plaintiff admitted that the pregnancy of defendant No. 1 was through him and he proposed to give a piece of land for her maintenance which was refused by her and she lodged a report against the plaintiff in the police station, whereupon an offence under Section 376/342 of the Indian Penal Code was registered against him. However, he was acquitted by the criminal Court with a finding that the physical relationship of the plaintiff with defendant No. 1 was with consent and the prosecution has failed to prove the offence against the accused/plaintiff.

5. On the basis of pleadings of the respective parties issues were framed and the trial Court partly decreed the suit by recording a finding that it is not proved that the plaintiff and defendant No. 1 are legally wedded husband and

wife, however, the claim of the plaintiff that defendant No. 2 is not his daughter has been rejected and it was held that it is proved that due to physical relationship between the plaintiff and defendant No. 1, defendant No. 2 was born and that the suit is within limitation.

6. The civil appeal preferred by the plaintiff against the judgment and decree of the trial Court was further dismissed by the learned Additional District Judge with identical findings by the impugned judgment and decree.

7. Learned counsel for the appellant/plaintiff submits that there is no evidence on record regarding marriage of the plaintiff with defendant No. 1 and therefore, the finding of both the Courts below that defendant No. 2 is the daughter of the plaintiff, is illegal and contrary to Section 112 of the Indian Evidence Act and the Court below has committed an illegality by relying upon the documents of Ex.D/1 and Ex.D/2 being the birth certificate and decision of Gram Sabha, as the birth certificate has been issued on the basis of information given by defendant No. 1 and the document of Ex.D/2 does not bear the signature of the plaintiff. Therefore, following substantial questions of law arise for decision of this second appeal:

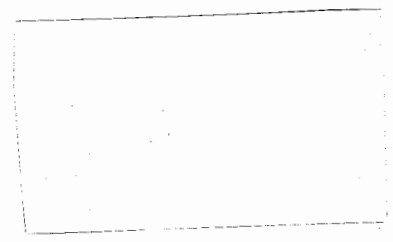
- 1) "Whether the performance of marriage not proved by custom or by any other form appellant with defendant No. 1, therefore, as per provision of Section 112 of the Evidence Act that the finding of the court below that defendant No. 2 is the daughter of the appellant is proper as per provisions of law?"

2) "Whether in spite of admission of defendant No. 1 that in Exhibit-D/1 birth certificate has been issued by the competent authority on the basis of her information at the time of birth of the defendant No. 2 the learned court below justified relying upon the Exhibit D/1.?"

3) "Whether the learned court below in spite of the admission of the defendant witnesses that Exhibit D/2 is not signed by them, the learned court below justified relying upon the Exhibit D/2 and given the finding that the appellant admitted in village panchayat that the defendant No. 2 is his daughter?"

8. I have heard learned counsel for the appellant and I have perused the material available on record including the impugned judgments.

9. The finding of the trial Court that defendant No. 2 is the daughter of the plaintiff through defendant No. 1 is based on the statement of defendant No. 1 who has deposed that she became pregnant as a result of physical relationship with Kanhaiyalal and gave birth to Lokeshwari in the hospital. When her parents came to know about her pregnancy, they convened a meeting in the village and in the said meeting, the plaintiff admitted the paternity of defendant No. 2 and he was ready to give a small agricultural land in lieu of maintenance which was declined by them. The plaintiff's name has been recorded in the school register as father of Lokeshwari as also in the document of Ex.D/2 which is the decision of Gram Sabha. The statement of defendant No. 1 is duly corroborated by the statements of her witnesses Goutarhin, one Razia, Mannulal Gawde and



Sadhuram and the statements of these witnesses stand unrebutted. Apart from this, the plaintiff was acquitted from the charge of rape by the learned Sessions Judge holding that the physical relationship between the two was with consent. However, there is no evidence on record that defendant No. 1 had physical relationship with any other person except the plaintiff.

10. The above finding of fact has been further confirmed by the lower appellate Court and as such the finding of both the Courts below is based on preponderance of probability and the same has been arrived at by proper appreciation of the evidence available on record, which being the concurrent finding of fact recorded by both the Courts below, does not warrant interference by this Court in second appeal as no substantial question of law arises for adjudication of this appeal.

11. In the result, the appeal being devoid of substance deserves to be dismissed at the admission stage itself and it is accordingly dismissed.

Sd/-  
**Dhirendra Mishra**  
Judge

Khan