

S.A.No. 612 of 2007**30/08/2013**

Ms. V. Sumanlata, learned counsel for the appellants.

Shri Piyush Shrivastava learned counsel for the respondent No.1.

Heard on the question of admission.

This appeal under Section 100 of CPC is at the instance of the plaintiffs in the suit challenging the judgment of the first appellate court dated 13/3/2007 by which the suit filed by the appellants has been partly decreed. The trial court by the judgment dated 30/11/2005 had dismissed the C.S. No. 69A/2003 filed by the appellants.

The appellants had filed the suit pleading that they are daughters of Chhannu and since the suit land belongs to Chhannu, therefore, on his death they have become the owner thereof and they were in possession of the suit land. The respondent No. 1 had no right, title or interest in the suit land, but in collusion with the revenue authorities, he had entered his name in the revenue record and was trying to take the illegal possession, therefore, the suit for declaration and injunction was filed. The respondent No. 1 had filed written statement raising the plea that he was adopted by Chhannu about 40 years back and the suit land was purchased by Chhannu from the father of respondent No. 1 and at the time of purchase, respondent No. 1 was also adopted. Last rights of Chhannu and his wife Suabai

were performed by respondent No. 1 and that respondent No. 1 was always in possession of the suit land, but during summer time in his absence, the appellants have taken the illegal possession.

The trial court by the judgment dated 30th November 2005 had found that respondent No. 1 was adopted son of Chhannu and on his death he had received the suit property. It was also found that respondent no. 1 is the son of elder brother of Chhannu who was adopted by Chhannu. The trial court on the basis of these findings had dismissed the suit. The first appellate court has affirmed the finding relating to adoption of respondent No. 1 by Chhannu, but has partly decreed the suit on reaching to the conclusion that the appellants being the three daughters of Chhannu were also entitled for 3/4 share.

Learned counsel appearing for the appellants submits that there is no proof of adoption and that the appellants are owner of the entire property.

Having heard the learned counsel for the parties and on perusal of the record, it is found that the two courts below have concurrently recorded the finding of fact in respect of adoption of respondent No. 1 by Chhannu. It is undisputed that the parties are members of Gaund Tribe and therefore, the application of provisions of Hindu Succession Act is excluded by virtue of Section 2 of the Act. It has further been found that respondent No. 1 is the son of the elder brother of Chhannu. The adoption of

respondent No. 1 following prevalent custom has duly been proved. The courts below have noted the ceremonies which were performed at the time of adoption. The said finding has been recorded after duly considering the evidence adduced by the parties. The two courts below have also rightly noted that though respondent No. 1 is so closely related to the appellants but they had suppressed the said fact in their plaint. The finding of adoption which has been recorded by the two courts below does not suffer from any error. Since the respondent No. 1 has been found to be the adopted son of Chhannu therefore, he also had right on the property of Chhannu. In these circumstances, the first appellate court has committed no error in granting only 3/4 share to the appellants.

Thus, the appeal does not involve any substantial question of law which is accordingly dismissed in limine.

(Prakash Shrivastava)
Judge

BDJ