

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 95 of 2015**

1. Shivcharan Aghariya S/o Late Dinbandhu Aghariya Aged About 51 Years R/o Village- Raypara, Police Station & Tahsil- Tamnar, Civil And Revenue District- Raigarh, C.G.

**---- Appellant****Versus**

1. Smt. Ichchhawati Aghariya W/o Shri Maheshram Aghariya Aged About 40 Years R/o Village Danaut, Police Station & Tahsil- Tamnar, Civil And Revenue District- Raigarh, C.G.
2. The State Of Chhattisgarh Through: The Collector, Raigarh, Civil And Revenue District- Raigarh, C.G.

**---- Respondents**


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For Appellant	:	Shri Roop Naik, Advocate.
For Respondent No.1	:	Shri Sanjay Agrawal, Advocate
For Respondent No.2/State	:	Smt. Shobha Kashyap, Dy. GA

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**HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI****JUDGMENT ON BOARD****31/08/2015**

1. Heard on admission.
2. The instant second appeal filed under Section 100 of the CPC is directed against the judgment and decree dated 29.1.2015 passed by the Third Additional District Judge, Raigarh, District Raigarh, C.G., in Civil Appeal No. 15/2014 whereby and whereunder the plaintiff's/appellant's appeal has been dismissed affirming the judgment and decree dated 14.8.2013 passed by Civil Judge Class I, Gharghoda, District Raigarh, C.G., in Civil Suit No.7A/2009.

3. Facts in brief necessary for disposal of this appeal are that the appellant/plaintiff filed a civil suit before the trial Court for declaring the order passed by Naib Tehsildar, Tamnar, District Raigarh dated 15.2.2007 in Revenue Case No. 140/A-6-2005-06 as void and illegal and declaration of title over the suit land. The trial Court on close scrutiny of the evidence led, submissions made and material placed on record, dismissed the suit vide its judgment and decree dated 14.08.2013 and held that defendant D1 and the plaintiff are real brother and sister and Legal Representatives of late Dinbandhu and the plaintiff is not the sole title holder for the land in question shown in Schedule 'C'. It further held that the order passed by the Naib Tehsildar is binding on the plaintiff. Before the trial Court, the admitted facts are that the plaintiff was son of Dinbandhu and before the application made in this behalf by Defendant D1, the land in question was recorded in the name of plaintiff.

4. Against the said judgment and decree passed by the trial Court, the plaintiff preferred first appeal. The first appellate Court after re-appreciating the entire evidence available on record, dismissed the appeal and affirmed the findings recorded by the trial Court.

5. Against the said judgment and decree passed by the first appellate Court, the plaintiff has preferred this second appeal inter alia on the ground that he categorically denied that Defendant D1 is his real sister. Then burden was on Defendant D1 to prove that she is the daughter of Dinbandhu. Dinbandhu died somewhere in the year 1953-1954. At that time, the plaintiff was aged about 10 months. As per Exhibit D1, copy of Adhikar Abhilekh Panji and other documents adduced during trial by the

parties, it shows that in the year 1955 names of the appellant and his mother, Chandrawati were recorded. Chandrawati (mother) died somewhere in 2003. After the death of Chandrawati, Defendant D1, Ichchhawati filed an application for mutation of her name in the suit land. The Revenue Court vide order dated 15.2.2007 allowed the prayer made in this behalf and ordered that name of Ichchhawati, D1, be recorded in the revenue records as the co-owner of the suit land. There is no mention of defendant D1 in Exhibit D1, Adhikar Abhilekh Panji. Exhibit D2 is the School Leaving Certificate wherein it is mentioned that the date of birth of Ichchhawati is mentioned as 16.12.1957. If it is taken as correct and as per the plaintiff's pleadings Dinbandhu died somewhere in the year 1953-54, it shows that defendant D1 is not the daughter of Dinbandhu. Document D2 has not been proved. In absence of proper acceptance of this document as per provisions of the Evidence Act no reliance can be placed. The judgment and decree passed by both the Courts below squarely based on Exhibit D2, the School Leaving Certificate which is also not proved. Defendant D1 failed to prove its onus that she was the daughter of Dinbandhu. It is prayed that the findings of both the Courts below are erroneous and not based on entire evidence, therefore, the appeal may be admitted for hearing as it exists substantial question of law. It is further prayed that the appeal may be allowed and the judgment and decree passed by the Courts below be set aside.

6. I have heard the counsel appearing for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC and perused the judgments and decree including records of the Courts below.

7. Learned counsel appearing for the appellants supported the grounds taken in the second appeal and submitted that substantial question of law as shown in the memo of appeal needs to be formulated along with admission of the appeal. He would further submit that as the substantial question of law is involved as mentioned in the memo of appeal, the appeal may be admitted for hearing and be disposed of accordingly.

8. Learned counsel for the appellant placed reliance on (1983) 3 SCC 118, State of Bihar Vs. Radha Krishna Singh And Others, wherein the Hon'ble Supreme Court held in paragraphs 173 and 175 regarding appreciation of the provisions of Section 35 of Evidence Act, 1872 as follows:

“ Documents not shown to be public documents, nor bearing any seal or signature, nor showing the circumstances under which they came into existence – On facts held, documents inadmissible in evidence”.

9. Reliance has also been placed on (2014) 4 SCC 693, Rajasthan State Road Transport Corporation And Another Vs. Bajrang Lal, wherein the Supreme Court held in paragraph 19 as under :

“**19.** With all respect, we do not agree with such a conclusion reached by the High Court, as second appeal, in exceptional circumstances, can be entertained on pure questions of fact. There is no prohibition for the High Court to entertain the second appeal even on question of fact where factual findings are found to be perverse”.

10. Reliance has further been placed on (2008) 8 SCC 12, Faqrudin (Dead) Through LRs vs. Tajuddin (Dead) Through LRs. as held in

paragraph 45 as under :

“45. Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense. The provisions of Rule 13 of the Matmi Rules laying down a rule of primogeniture will have no application in relation to the offices of sajjadanashin and mutawalli, which are offices of different nature. They are *stricto sensu* not hereditary in nature. It is well settled that an entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title.”

**11.** Learned Counsel for the Appellant submitted that on the basis of the abovementioned case laws relied, the appeal involves substantial question of law. It be admitted and heard finally.

**12.** After close scrutiny of the matter it shows that the plaintiff is the son of Dinbandhu. Chandrawati was his mother. In Adhikar Abhilekh Panji, 1954-55, name of Shivcharan and Chandrawati has been mentioned as owners of the suit land. In the year 2005-2006, defendant D1 filed a revenue case for mutation of her name in the suit land, which was allowed by the Revenue Court vide order dated 15.2.2007. After the impugned order, plaintiff/appellant challenged the order passed by the Revenue Court before the Civil Court.

**13.** As per facts mentioned in the plaint no specific date, month and year of death of Dinbandhu has been mentioned. There is also no mention of the date, month and year when the name of plaintiff and his mother, Chandrawati has been recorded. Straightway, the initial document is Adhikar Abhilekh Panji 1954-55 wherein the names of plaintiff and Chandrawati are shown as LRs of Dinbandhu. Source of such

correction is not surfaced before the trial Court on the basis of the names mentioned as owner of the suit land in the year 1954-55 plaintiff based his name on the suit land.

**14.** On the other hand, Exhibit D2, the School Leaving Certificate was adduced by the defendant and other oral evidence of DW2- Govind Ram and DW4, Bhagatram. After detail appreciation of the facts and pleadings the trial Court rejected the prayer made by the plaintiff in this behalf, which was affirmed by the first appellate Court in appeal.

**15.** The cited case laws, State of Bihar (supra) for Section 35 of the Evidence Act is not applicable to the facts of present case as the document impugned was duly proved otherwise supported by the oral evidence also. The plaintiff nowhere mentioned the exact date, month and year of the death of Dinbandhu. In absence of any clear mention of the fact, it cannot be held that Dinbandu died in the year 1953-54. Thus, the date of birth of D1, Ichchhawati as 16.12.1957 is under the cloud of ashes as it was required to be proved by the plaintiff. Similarly, Rajasthan State Road Transport Corporation (supra) is also not applicable to the facts of the present case as this is not the exceptional circumstance. The Court has appreciated whether any substantial question of law needs to be formulated or not. It is of no help to the plaintiff. As held in Faqrudin (supra), the question of title was tried and appreciated and decided by the trial Court duly affirmed by the first appellate Court. Thus, the question of title decided by the Revenue Court is not applicable in the facts of the present case and this case law is also not applicable to the facts of the present case.

**16.** In the entire memo of appeal and the arguments advanced, the appellant failed to show any substantial question of law to be formulated for the hearing of instant Second Appeal. All the arguments and facts travelled around the pure question of facts only.

**17.** It is a settled law that this Court cannot proceed to hear a second appeal without there being any substantial question of law involved in the appeal. Whatever, either mentioned in the memo of appeal and argued, this Court is of the considered view that may not be taken and accepted as substantial question of law. Existence of substantial question of law is a *sine-qua-non* for the exercise of jurisdiction under the amended Section 100 of the CPC. Learned counsel appearing for the appellant failed to point out any substantial question of law which may arise for determination in the case. In absence of any substantial question of law arises for determination, this Court has no option but to dismiss the appeal.

**18.** In view of above, since no substantial question of law arises for determination in the instant case, this is not a fit case for admission. Consequently, the appeal is dismissed at the motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of the CPC.

**19.** No order as to cost.

**Sd/-**

**(Chandra Bhushan Bajpai)**

Judge