

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA
FIRST APPEAL No. 401 of 2004

BETWEEN:-

**RATAN S/O AMBARAM, OCCUPATION –
AGRICULTURIST, R/O LALAKHEN, PRESENT R/O
BHUTEN (MADHAY PRADESH)**

.....APPELLANT

(BY MS. REKHA SHRIVASTAVA -ADVOCATE)

AND

1. **RAMESH S/O HARIRAM, AGED ABOUT 30 YEARS,
R/O LALAKHEDA (MADHAY PRADESH)**
2. **SAJJAN BAI D/O HARIRAM, AGED ABOUT 35
YEARS, R/O LALAKHEDA (MADHAY PRADESH)**
3. **MUNNI BAI D/O HARIRAM, AGED ABOUT 32
YEARS, R/O LALAKHEDA (MADHAY PRADESH)**
4. **LEELA BAI Wd/O HARIRAM, AGED ABOUT 60
YEARS, OCCUPATION - AGRICULTURIST R/O
LALAKHEDA (MADHAY PRADESH)
GULABJI S/O NANDU (DECEASED)
THROUGH LR:-**
5. **LALU S/O GULAB, R/O BAGRI MOHALLA,
VILLAGE LALAKHEDA, TEHSIL JAORA,
DISTRICT RATLAM (MADHAY PRADESH)**
6. **RAMLAL S/O NAGAJI, R/O JAORA (MADHAY
PRADESH)**
7. **GOVINDRAM S/O GANESHRAM, AGED ABOUT 55
YEARS, R/O LALAKHEDA (MADHAY PRADESH)**
8. **SURATRAM S/O SHOBHARAM, AGED ABOUT 50
YEARS, OCCUPATION – AGRICULTURIST, R/O
LALAKHEDA (MADHAY PRADESH)**
9. **RADHESHYAM S/O BHERULAL, AGED ABOUT 50
YEARS, R/O JAORA, VILLAGE LALAKHEDA
(MADHAY PRADESH)**
10. **THE STATE OF MADHYA PRADESH THROUGH
COLLECTOR, RATLAM (M.P.)**

.....RESPONDENT

(NONE FOR THE RESPONDENTS)

Reserved on : **13/04/2024****Pronounced on** : **24/04/2024**

*This appeal having been heard and reserved for judgment, coming on for pronouncement this day, **JUSTICE ANIL VERMA** passed the following:*

JUDGMENT

1. This first appeal under Section 96 of the Code of Civil Procedure, 1908 (in short "CPC") has been preferred by the appellant against the impugned judgment and decree dated 7.4.2004 passed by the Addl. District Judge, Jaora, District Ratlam in Civil Suit No.22-A/93, whereby the trial Court has dismissed the appellant/plaintiff's suit for declaration of title and permanent injunction.

2. The appellant/plaintiff has instituted a civil suit inter-alia claiming that he is the son of deceased Ambaram and respondents No.1 to 9/defendants are the sons, daughters and other family members of the deceased Ambaram. Plaintiff and his brother Hariram possesses undivided ancestral property, which was registered in the revenue records in the name of appellant and respondents No.1 to 4. Earlier it was registered in the name of Hariram. Respondents No.1 to 4 have no exclusive right to alienate the suit property, but have sold out some of the disputed property to the defendants No.5 to 9 through different sale deeds. In some of the sale deeds plaintiff was shown as a dead person. Defendants intended to forcefully dispossess the plaintiff from the suit

property. Defendants No.6 to 9 had taken possession of the suit land as per the sale deeds, which are not binding upon the plaintiff. Therefore, the plaintiff has filed suit for declaration of title, declaring the aforesaid sale deeds null and void and also seeking relief of permanent injunction.

3. Defendants No.1 to 4 & 8 have filed their written statement by stating that Ambaram has a only son Hariram and defendants No.1 to 4 are the heirs of Hariram. Ambaram has solemnized Natra with a lady. The alleged lady has a son/plaintiff Ratan from her earlier husband Keshuram. After the death of Ambaram, mother of the plaintiff went in another Natra relationship. Plaintiff has no title over the suit land. His name was erroneously mentioned regarding the suit property. Plaintiff was never in possession of the suit property. The suit was neither properly valued, nor requisite court fee has been paid. It is also time barred and deserves to be dismissed.

4. On the aforesaid pleadings, the trial Court has framed the issues and permitted both the parties to lead their evidence. After completion of the evidence, the trial Court scrutinized the evidence and held that the plaintiff has failed to prove that he is the son of Ambaram. The Natra marriage solemnized between Ambaram and Samand Bai is void marriage, therefore, the plaintiff is not entitled to get any title on the suit property in inheritance. Being aggrieved by the impugned judgment and decree, this first appeal has been preferred by the appellant.

5. Learned counsel for the appellant submits that the judgment and decree passed by the trial Court is illegal and it is not based upon proper

appreciation of evidence. The trial Court has failed to consider the oral as well as the documentary evidence adduced by both the parties and committed error in dismissing the suit. The trial court has ignored the pleadings of the plaintiff. Ambaram looked after the plaintiff as his son and given his name as his father. Plaintiff being a legitimate son of Ambaram is entitled to get share in his property. The findings of the trial Court is perverse, which is against the evidence available on record. Thus, in the light of the aforesaid, he submits that the present appeal deserves to be allowed.

6. Learned counsel for the appellant heard at length and perused the record.

7. Nobody has appeared on behalf of the respondents at the time of final arguments.

8. Plaintiff Ratan (PW-1) before the trial Court categorically admits in his cross-examination that Hariram has born from first wife of Ambaram and after the death of Ambaram's first wife, Ambaram took her mother Samand Bai in Natra. He was born at village Lalakheda. His mother Samand Bai is still alive and after the death of Ambaram, his mother solemnized Natra marriage with another person, whose name is also Ambaram. He also admits in Para-10 of the cross-examination that Ambaram's sister Parvati Bai looked after in his childhood.

9. Samand Bai (PW-2) admits in her cross-examination that after the death of her husband Keshuram, she went with Ambaram in Natra and Ratan and Leela Bai have been born from Ambaram.

10. On the contrary, defendants witnesses Leela Bai (DW-1), Surat Ram (DW-2) and Dhanraj (DW-3) categorically stated that plaintiff Ratanlal is the son of Samand Bai, who has born from her first husband and at the time of her Natra with Ambaram, the age of Ratan was about one and half years.

11. If the plaintiff Ratan is the real son of Ambaram, why did he not produce any relevant documents i.e. birth certificate, Ration Card or any other relevant document for his identification to establish his paternity. Plaintiff Ratan in para-2 of his cross-examination stated that he is educated till 2nd Class, but he did not file any relevant document about his school admission and mark-sheet etc. Therefore, in absence of the aforesaid material documents plaintiff/appellant has failed to prove that Ambaram was his father and he is the real and legitimate son of Ambaram. Even now the plaintiff has proved only Panchshala Khasra of the year 1957-58, in which name of Bhumiswami is mentioned as Ambaram. This document does not support the case of the plaintiff. Plaintiff did not file any relevant document to establish that his name was ever mutated in the revenue record in respect of the land in question as a owner. Therefore, on the basis of the aforesaid evidence, the trial Court has rightly held that plaintiff/appellant has no right or title over the suit land and he cannot be considered as the legal heir of

the deceased Ambaram. If it is found proved that mother of the plaintiff has solemnized Natra with Ambaram, then the plaintiff may be considered as illegitimate son of the deceased Ambaram and being a illegitimate son he is not entitled to succeed to his estate. The Hon'ble Apex Court in the case of **Dadoo Atmaram Patil @ Savant Vs. Raghunath Atmaram Patil reported in AIR 1979 Bom 176** has held as under:-

“16. Turning once again to the Act, the next relevant provision arising for consideration in this appeal is Section 8 thereof along with the Schedule. Section 8 lays down the general rules of succession in the case of males and provides that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II of the Act and in the order laid down in the said section. By virtue of clause (a) of Section 8, the property of a male Hindu dying intestate would devolve upon the heirs, being the relatives specified in Class I of the Schedule. And referring to Class I of the said Schedule, one finds therein mentioned at its very outset:

“son; daughter; widow;”

and a little further:

“daughter of a predeceased daughter;”

17.

18. The contention, however, on behalf of the contesting defendants is that the words:

“son; daughter;..... daughter of a predeceased daughter”

in Class I of the Schedule to the Act mean only legitimate son, legitimate daughter and daughter of a predeceased legitimate daughter. The contention further is that plaintiffs Nos. 1 and 2 being the illegitimate sons of Atmaram and plaintiff No. 4 being the daughter of the

predeceased illegitimate daughter of Atmaram, would, therefore, not be entitled to succeed to his estate. In my view, these contentions are sound in law and deserve to be upheld.”

12. In the light of the aforesaid discussion, this Court is of the considered opinion that the judgment and decree passed by the trial Court is well reasoned and based upon the due appreciation of oral as well as documentary evidence available on record. The findings recorded by the court below is based upon the cogent evidence and learned counsel for the appellant has failed to establish that how the findings of fact recorded by the trial Court is illegal, perverse and are based upon no evidence.

13. In the aforesaid circumstances, no merit is found in the appeal, which is accordingly dismissed by affirming the judgment and decree passed by the trial Court.

(ANIL VERMA)
JUDGE

Trilok/-