(2018) 08 CHH CK 0352

Chhattisgarh High Court

Case No: Second Appeal No. 263 Of 2003

Devmuniya And Ors	APPELLANT
Vs	
Vaishakhi And Ors	RESPONDENT

Date of Decision: Aug. 29, 2018

Acts Referred:
Code Of Civil Procedure 1908 â€" Section 100

Citation: (2018) 08 CHH CK 0352

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: A. K. Prasad, Arun Sao

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. The plaintiffs have filed a suit for declaration of title and permanent injunction stating inter-alia that the plaintiff No. 1 is widow of Nandas. The

defendant No. 1 also claimed to be wife of Nandas and defendant No. 2 claimed to be daughter of Nandas. The trial Court recorded a finding that

plaintiff No. 1 is wife of Nandas and also recorded that defendant No. 1 is also the wife of Nandas and the defendant No. 2 is the daughter of Nandas

and the defendants No. 1 and 2 have filed a counter claim and claimed for suit property. The trial Court dismissed the suit of the plaintiffs as well as

the counter claim of the defendants. Both the parties filed the first appeal before the First Appellate Court and the First Appellate Court reversed the

finding of the trial Court holding that defendant No. 1 is not the wife of Nandas and defendant No. 2 is not the daughter of Nandas and further held

that no document showing the suit land in existence has been filed. As such, for want of documents, no decree can be granted against which the

plaintiffs have filed this second appeal under Section 100 of the Code of Civil Procedure.

2. Learned counsel for the appellants / plaintiffs submits that both the Courts have concurrently committed legal error in not granting decree in favour

of the plaintiffs as it involves the substantial question of law.

3. I have heard learned counsel for the appellants/ plaintiffs.

4. The trial Court and the First Appellate Court both have concurrently recorded a finding that merely on the basis of oral evidence no decree can be

granted as there is no documents on record to demonstrate the existence of the suit land. As such, neither the title nor the land in dispute has been

found therefore, both the Courts have dismissed the suit. The aforesaid finding recorded by the two Courts below are finding of fact based on material

available on record. I do not find any merit in the second appeal.

5. Accordingly, the second appeal deserves to be and is hereby dismissed.