

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 225 of 2015**

Ganesh S/o late Banai Aged About 36 years R/o Village Barion,
P.S. & Post Barion, Tahsil, Rajpur, Civil District, Surguja Revenue
District Ramanujganj Balrampur Chhattisgarh

---- Appellant**Versus**

1. Bhetal Ram S/o Saudha Aged About 56 Years.
2. Rajkumar S/o Mahajan Aged About 28 Years.
3. State of Chhattisgarh Through Collector Surguja Ambikapur, P.S. & Post Ambikapur, Civil & Revenue District Surguja Chhattisgarh
4. Arjun S/o Pahun Aged About 26 Years
5. Smt. Chargarhin W/o Pahun Aged About 50 Years
6. Sahun S/o Uraon Aged About 40 Years.

Respondents No. 1, 2, 4, 5 & 6 R/o Village Barion, P.S. & Post
Barion, Tahsil Rajpur, Civil District Surguja, Revenue District,
Balrampur Ramanujganj Chhattisgarh.

---- Respondents

For Appellant	:	Ms. Priyanka Mehta.
For Respondent No.3/ State	:	Shri Sanjeev Kumar Agrawal, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgement on Board****23/07/2015**

(1) Heard on admission.

(2) The instant Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') is directed against the judgement and decree dated 4.3.2015, passed by the Additional District Judge, F.T.C., Ambikapur, District Sarguja, Chhattisgarh, in Civil Appeal No. 125A of 2011, whereby and whereunder the Appellant's/ Defendent No.1's appeal has been dismissed affirming the judgement and decree dated 11.3.2010, passed by Fourth Civil Judge, Class-II, Ambikapur, in Civil Suit No. 51A of 2007.

(3) Facts in brief necessary for disposal of this appeal at the stage of admission are that, the Plaintiff/ Respondent No.1 filed a suit before the trial Court for declaration of title and partition. The trial Court on a close scrutiny of the evidence led, submissions made on behalf of the parties and material placed on record, allowed the suit in part vide its judgement and decree dated 11.3.2010 that Plaintiff Bhetal Ram is entitled for 1/4th share of suit land after division as the suit land mentioned in Schedule "A".

(4) Against the said judgement and decree passed by the trial Court, the Appellant/ Defendant No.1 Ganesh Kumar preferred the 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 aforesaid judgement and decree passed by the First Appellate Court, the Appellant/ Defendant No.1 Ganesh Kumar has preferred this Second Appeal *inter-alia* on the ground that both the Courts below have erred in holding that the Plaintiff is entitled for 1/4th share of the suit land, after division as there exists already oral partition between the parties prior to filing of the instant suit and as such the suit for partition is not maintainable. The Plaintiff instead of filing a suit he was required to file an application for division as per oral partition under provisions of Section 178 of the Chhattisgarh Land Revenue Code, 1959. The other grounds taken by the Appellant/ Defendant No.1 are that as the suit land was self-acquired property and the present Appellant was the adopted son of Budhau and after the death of Budhau, he conducted all the rituals and customs, which fact was also supported by the

Plaintiff's witnesses. There is sufficient material on record that the Appellant was the adopted son and he had performed all the customs as prevalent after the death of Budhau goes to show that he was the adopted son of Budhau, which is proved by the evidence adduced on behalf of the Plaintiff and other evidence. Further ground taken by the Appellant/ Defendant No.1 is that as all other Defendants No. 2 to 6, who are also family members of the Plaintiff accepted the claim of Appellant Ganesh Kumar. The Trial Court has failed to appreciate this fact that as per Section 50 of the Evidence Act, Ganesh Kumar was the adopted son of Budhau is proved, thereby, both the Courts below have erred in holding that present Respondent No.1 Bhetal Ram is entitled for 1/4th share of the suit land after its division. Therefore, it is prayed that the appeal may be allowed and the judgement and decree of both the Courts below may be set aside.

(6) I have heard Learned counsel for the Appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the Code of Civil Procedure and perused the judgement and decree including records of both the Courts below.

(7) Learned counsel appearing for the Appellant supported the grounds taken in the second appeal and submitted that substantial question of law needs to be formulated along with the 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 disposed of accordingly.

(8) After perusal of entire facts, it goes to show that so far as earlier partition is concerned, the fact for which there was no any written

document for proving the same whatever is required regarding the partition not proved before the trial Court beyond all adverse probabilities, both the Courts below held that there is no proof for the fact regarding earlier partition and both the Courts appreciated this point. On basis of the entire evidence adduced before them, I do not see any requirement or any violation under Section 178 of the Land Revenue Code as the earlier partition was not proved.

(9) So far as adoption of present Appellant Ganesh Kumar by the Budhau is concerned, there was no written document for the same. In absence of any written document regarding adoption, it requires by the person who claims to be adopted son to prove this fact by adducing evidence for eliminating any other probabilities. The fact raised by the Defendant in support of his claim that the witnesses of the Plaintiff also accepted that after the death of Budhau, Defendant No.1 performed all the rituals itself is not sufficient for adoption. Witness No.4 Kunwar has been examined regarding the adoption and his deposition has been appreciated by both the Courts below. This Court is in agreement that whatever qualitative and quantitative evidence regarding alleged adoption surfaced not constituted and proved the factum of adoption. Both the Courts below through detailed appreciation of evidence held that the same is not proved.

(10) This Court cannot proceed to hear a second appeal without there being any substantial question of law involved in the appeal. As per the arguments advanced on behalf of the Appellant for substantial question of law regarding the applicability of Section 178 of the Chhattisgarh Land Revenue Code and other questions, those are related to facts only but

not to law. In the considered view of this Court, no substantial question of law surfaced for formulation regarding hearing of this second appeal. Existence of substantial question of law is sine-qua-non for the exercise of the jurisdiction under the amended Section 100 of the Code. Learned counsel appearing for the Appellant failed to point out any substantial question of law which may arise for determination in the case. In the absence of any substantial question of law arising for determination of this appeal, this Court has no option but to dismiss the appeal.

(11) 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 motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of the CPC.

(12) No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE