

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 393 of 2013

Baliram (Since Deceased) Paltan Aged About 42 Years S/o Khedu Lodhi R/o Village Jangalpur, Post Bundeli, Tahsil Chhuikhadan, Distt. Rajnandgaon C.G.

---- Appellant/Plaintiff

Versus

1. Bela Bai (Since Deceased)
2. Pusau S/o Pancham Lodhi Aged About 60 Years R/o Dhaura Bhatha, Post-Parpodi, Tah. Saja, Civil and Revenue Distt. Durg C.G.
3. Sukalu S/o Pancham Lodhi Aged About 55 Years R/o Dhaura Bhatha, Post-Parpodi, Tah. Saja, Civil and Revenue Distt. Durg C.G.
4. Sumitra Bai D/o Late Milap Aged About 27 Years R/o Dhaura Bhatha, Post-Parpodi, Tah. Saja, Civil and Revenue Distt. Durg C.G.
5. Sangeeta Bai D/o Late Milap Lodhi Aged About 23 Years R/o Dhaura Bhatha, Post- Parpodi, Tah. Saja, Civil and Revenue Distt. Durg C.G.
6. Ku. Rani D/o Late Milap Lodhi Aged About 19 Years R/o Dhaura Bhatha, Post-Parpodi, Tah. Saja, Civil and Revenue Distt. Durg C.G.

--- Respondents/Defendants

7. State Of Chhattisgarh Through- The Collector, Rajnandgaon C.G.

---- Defendant No.2

For Appellant	:	Shri Ravindra Agrawal, Advocate
For Respondents No.2 to 6	:	Shri Abhishek Sharma, Advocate
For State/respondent No.7	:	Shri Neeraj Kumar Sharma, Dy. G.A.

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava
Order On Board

29/10/2015

Heard on admission.

1. Learned counsel for the appellant argued that the learned Lower Appellate Court committed gross illegality and perversity in allowing the appeal and granting decree in favour of plaintiff completely ignoring that there was clinching evidence available on record to draw inference of partition between Baliram and Pancham. He submits that the

partition had taken place more than 50 to 55 years after death of Charan Lodhi and Pancham and Baliram being sons succeeded to the property in dispute admeasuring 10.42 acres of land. Even though there is no documentary evidence of partition, the oral evidence of partition is proved from the fact that Pancham executed as many as four sale deeds from time to time in respect of a total land of 4.45 acres. In all these sale deeds, Pancham alone is the vendor which clearly proves that partition had already taken place. The learned Trial Court duly appreciated this proved fact of 4.45 acres of land sold by Pancham from time to time to hold partition having taken place long back but the learned Appellate Court reversed the finding without justification.

2. In the absence of there being any document evidencing partition, any memorandum of partition, separation of holdings or correction in the revenue records which show the land recorded jointly in favour of both Baliram and Pancham, it has been held by the learned Lower Appellate Court that the plaintiff has failed to prove partition. In order to hold against the appellant, learned Lower Appellate Court has also appreciated the oral evidence of Baliram (PW1) who admitted that at the time of so called partition, he was of 10 to 15 years of age, which is highly improbable. The learned Lower Appellate Court has also taken into consideration that the plaintiff has failed to lead evidence of any of witnesses to so called oral partition and also that even though Jahni, Mahatma, Gajanand and Dhaniram, who are stated to be alive and aware of the fact of partition, were not examined by the plaintiff. Alaram (PW2) and Arjun Lal (PW3) examined by the plaintiff as witness, were not present at the time of partition and they had no personal knowledge but they have admitted that Baliram, his brother Pancham and their mother were residing together.

3. Therefore, in view of the above consideration, the finding recorded by learned Lower Appellate Court on the issue of partition is essentially finding a fact, which does not involve any substantial questions of law.

4. Learned counsel for the appellant also argued that even if it was held that the plaintiff was not entitled to declaration as sought by him, in view of the finding that there was no partition, a decree ought to be granted in his favour that he is entitled to half of the share in the property, declaration, **relying upon 2001(2) M.P.L.J. 112 (Kashi Prasad Vs. Banshidhar and others) and 2002 SAR (Civil) 29, Supreme Court (Rajendra Tiwary vs. Basudeo Prasad & another).**

It is not a case where the plaintiff having succeeded to prove partition was not held entitled for partition to the extent claimed by it. The plaintiff, herein, has prayed for

declaration that he is the exclusive owner and title holder of the disputed property, deletion of name of defendants from revenue records and also permanent injunction.

5. Learned counsel for the appellant argued that the dismissal of the suit is being wrongly interpreted by defendants and they have started claiming that they are entitled to entire property. This apprehension has no basis. It is apparent from the judgment of the Learned Lower Appellate Court that property in dispute has been treated to be joint property of the parties and not the exclusive property of the plaintiff and by necessary implication, not even exclusive property of defendant.

6. In the result, the appeal has no merit and is therefore dismissed. A decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E