

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 166 of 2010

1. Kriparam S/o Hridayram Sidar
2. Dayaram S/o Hridayram Sidar

Both Caste-Gond, Occupation - Agriculturist R/o Devgaon, Tahsil
-Gharghoda, District - Raigarh (CG)

---- Appellants

Versus

1. Aatmaram S/o Hridayram Sidar, R/o. Near Water Tank, Tamnar, Tah. -
Gharghoda, Distt. - Raigarh (CG)
2. State Of C.G. Through Collector, Raigarh (CG)

---- Respondents

Shri K.N.Nande, counsel for the appellant/s.
Shri R.K.Pali, counsel for respondent No.1.
Shri Neeraj Sharma, Dy.G.A. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

27/01/2016

Heard.

This appeal is directed against impugned judgment and decree dated 14/05/2010 passed by the learned lower Appellate Court affirming judgment and decree of the Trial Court dismissing the suit.

2. Learned counsel for the appellant argued that the Courts below have committed gross illegality and perversity in holding the partition as not proved completely ignoring the proof (Ex.P/2) which was a consent letter signed by Atmaram / defendant. It is next contended that the Courts below failed to properly appreciate the clinching and oral evidence that for the last 40 years, prior to filing of suit, the land in village-Milupara was being cultivated by Atmaram. It is also submitted that the Courts below also did not examine in proper perspective, the legal consequences flowing through order passed by the

Tahsildar in view of the consent letter of respondent – Atmaram.

3. Plaintiffs' case rests on the plea of partition. In order to establish their case, plaintiffs sought to rely upon a consent letter (Ex.P/2) said to be executed by the defendant / Atmaram. The defendant / Atmaram denied execution of the said document stating that it is a forged document. The evidence of Firu (PW2), who claims to be the attesting witness, has been disbelieved by the Courts below in view of what has been stated in the examination-in-chief as well as in cross examination by him that the consent letter is said to be executed 20-25 years back whereas the consent letter is of the year 2001 and the witness was examined in the year 2008. In the cross examination, he has stated that for the last 20-25 years, he has not seen the defendant Atmaram affixing thumb impression. The document is not a registered one. Taking into consideration all these circumstances and evidence, both the Courts below have disbelieved the story of partition.

4. It was the plea of the appellants / plaintiffs that the land situated in village-Milupara also constitute joint family property having been acquired by the father of the plaintiffs. However, the plaintiffs failed to discharge this burden by placing on record any clinching or oral evidence that the land in Milupara was earlier recorded in the name of Hridayram and thereafter, it was succeeded by all the brothers being plaintiffs and defendant No.1. Therefore, no substantial question of law arises for consideration in this appeal. The appeal is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge