

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

S.A. No. 677 of 2015

1. Kranti Kumar Tamrakar, age 68 years, S/o. Late Nandu Prasad, R/o. Sardar Patel Ward, Mungeli, Tahsil-Mungeli, District-Mungeli (C.G.)

----Appellant

Versus

1. Ramkumar Tamrakar, age 50 years, S/o. Late Nandu Prasad,
2. Smt. Nandrani, age 65 years, W/o. Late Ganpatlal
3. Jaikumar, age 43 years, S/o. Late Ganpatlal,
All of them, R/o. Sardar Patel Ward Mungeli, Tahsil and District-Mungeli (C.G.)
4. Smt. Geeta Bai, age 37 years, D/o. Late Ganpatlal, W/o. Sanjay Tamrakar, R/o. Shikshak Nagar, Durg, District-Durg (C.G.)
5. Smt. Shakun Bai, age 63 years, W/o. Late Shivkumar,
6. Kashi Prasad, age 35 years, S/o. Late Shivkumar Tamrakar,
7. Akhand Jyoti, age 31 years, S/o. Late Shivkumar

No.5 – 7, R/o. Harinagar, Katul Board Durg, District-Durg (C.G.)

----Respondents

For Appellant : Mr. Kamal Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

12/04/2016

Heard on admission.

1. This is an appeal against the judgment and decree dated 30.10.2015, passed by Additional District Judge, Mungeli, in Civil

Appeal 26-A/2012, whereby the judgment and decree dated 31.10.2012, passed in Civil Suit No.80-A/2009, passed by Civil Judge, Class-II, Mungeli, was affirmed.

2. The appeal is by the plaintiff against the concurrent finding of fact by both the Courts Below.
3. Brief facts of this case as per the pleading is that after the death of father of the plaintiff, an oral partition took place in between mother and four brothers namely Kranti Kumar, Ramkumar, Ganpat Lal and Shivkumar and after such partition, all the parties came to their respective possession of share. It was contended that the partition was made orally wherein the house No.6, situated at Ward No.2, Sardar Patel Ward, Mungeli came to the share of the plaintiff. It was stated that the defendant No.1, Ramkumar, one of the brother had filed an application before the Municipal Council, Mungeli to record his name and the Municipal Council, Mungeli ignoring the partition affected has recorded the name of the defendant No.1 in respect of the house. It was further stated that without affording any opportunity, the name was recorded and the plaintiff was given threat to be dispossessed, therefore, the suit was filed for declaration and permanent injunction.
4. The defendants in their reply denied the averments of plaint and stated that after the death of the father of the plaintiff and the defendants, no oral partition had ever taken place and the suit house was not given to the plaintiff exclusively and the house was held by all the brothers and the plaintiff jointly. It was stated that on 17.04.2007 a partition took place between the brothers and in such

partition, the house came to the share of the defendant No.1 and 2, Ramkumar and Smt. Nandrani Bai and since the tax was paid by the plaintiff, therefore, the plaintiff with all tented motive acquired the property.

5. After evaluating the pleadings and the evidence, the Trial Court dismissed the suit. The said findings were assailed before the Appellate Court and the Appellate Court also affirmed the finding of fact by the Trial Court. Hence, this second appeal.
6. Learned counsel for the appellant submits that the finding of both the Courts below are completely perverse according the evidence adduced. He further submits that after the death of father of the plaintiff and the defendants, an oral partition took place in between the parties and the subject suit house devolved to the share of the plaintiff. It is further submitted that such oral evidence remained un rebutted, therefore, ignoring such statement, dismissal of the suit by both the Courts below is completely perverse, therefore, the case be admitted for hearing.
7. Heard the counsel for the appellant.
8. Perused the judgments and the decree, pleadings and the evidence.
9. Perusal of the pleadings alongwith the statement would indicate that this fact is not in dispute that both the plaintiff/appellant and the defendants/respondents were son of Nandu Prasad, who died in the year 1986. During the course of trial, a document Ex.D/6 was produced by the defendants, which purports that partition was affected in between the parties. Though the document, Ex.D/6 is

not a registered document, however, the plaintiff during his cross-examination has admitted the fact that the said document bears his signature, therefore, necessary inference would be drawn that partition were subsequently affected as has been stated by the defendants. No documents have been placed on record by the plaintiff to show that oral partition has taken effect in the year 1992. Even if, the effect of Ex.D/6 is ignored then in absence of that it was upon the plaintiff to prove his case that oral partition have taken place in the year 1992 and the oral partition was acted upon, wherein the plaintiff/appellant came into possession of the subject suit house. On the contrary, the plaintiff has also produced the document Ex.P/6, which is the photocopy of the Ex.D/6, which shows that house in question did not fall to his share, therefore, considering the documents of the plaintiff itself it can not be stated that plaintiff has proved his case by oral evidence that subject suit house has fallen to his share and has failed to prove the pleadings.

10. So the finding arrived at by both the Courts below that plaintiff has failed to prove his case are finding of fact which do not call for any interference. In a result no substantial question of law arises for consideration in this second appeal.
11. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE