

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.94 of 2016**

Shivkumar S/o Baniya Satnami, Aged About 59 Years R/o Village Maharpur
(Sardha) Tahsil & Thana Lormi, Civil & Revenue District Mungeli
(Chhattisgarh)

---- Appellant

Versus

1. Heeradas S/o Baniya Satnami Aged About 76 Years R/o Village Maharpur
(Sardha) Tahsil & Thana Lormi, Civil & Revenue District Mungeli
(Chhattisgarh)
2. Radha Bai D/o Baniya Satnami, Aged About 73 Years R/o Village Maharpur
(Sardha) Tahsil & Thana Lormi, Civil & Revenue District Mungeli
(Chhattisgarh)
3. Uma Bai D/o Baniya Satnami, Aged About 71 Years R/o Village Maharpur
(Sardha) Tahsil & Thana Lormi, Civil & Revenue District Mungeli
(Chhattisgarh)
4. Rakha Bai D/o Baniya Satnami, Aged About 69 Years R/o Village Maharpur
(Sardha) Tahsil & Thana Lormi, Civil & Revenue District Mungeli
(Chhattisgarh)
5. Kamla Bai D/o Baniya Satnami, Aged About 67 Years R/o Village Maharpur
(Sardha) Tahsil & Thana Lormi, Civil & Revenue District Mungeli
(Chhattisgarh)
6. Dharamdas S/o Baniya Satnami, Aged About 63 Years R/o Village Maharpur
(Sardha) Tahsil & Thana Lormi, Civil & Revenue District Mungeli
(Chhattisgarh)
7. Kunjram S/o Baniya Satnami, Aged About 61 Years R/o Village Maharpur
(Sardha) Tahsil & Thana Lormi, Civil & Revenue District Mungeli
(Chhattisgarh).....(Plaintiffs)
8. State Of Chhattisgarh Through The Collector, Mungeli, District Mungeli
(Chhattisgarh).....(Defendant)

-----Respondents

For Appellant:	Shri Hemant Kesarwani, Advocate.
For Respondent No.8/State:	Shri RK. Jaiswal, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

08.03.2017

1. This is the Appellant/Defendant's Second Appeal under Section 100 of

the Code of Civil Procedure, 1908 against the judgment and decree dated 21.12.2015 passed by Additional District Judge, Mungeli, Distt. Mungeli in Civil Appeal No.03-A/2015 by which the appellate Court, while affirming the judgment and decree of the trial Court dated 3.2.2015, has dismissed the Appellant/Defendant's Appeal.

2. The undisputed facts of the case are that the Respondents/Plaintiffs have instituted a suit for declaration of title and injunction and praying that the partition as claimed by Defendant Shivkumar be declared as null and void. It is pleaded in the Plaint that Defendant Shiv Kumar has applied for partition as per the provisions prescribed under Section 178 of the Chhattisgarh Land Revenue Code, 1959 before the Tahsildar, Lormi for correction of record. The said application was allowed by the Tahsildar Lormi which was affirmed further by the SDO, Lormi by order dated 6.7.2013 and based on these orders, the Appellant/Defendant is claiming exclusive right over the property in question, therefore, the Plaintiff has been constrained in filing the suit in the instant nature, instituted on 6.3.2014.

3. The aforesaid claim was contested by the Appellant/Defendant by submitting that an oral partition was effected 45-50 years back in which the suit property had come in his share. It is pleaded further that the Revenue authorities i.e. the Tahsildar, Lormi and the SDO have passed the orders in his favour. Accordingly, it was pleaded further that since he was continuously in possession for over more than twelve years, therefore, has prescribed his right by way of adverse possession as well.

4. The trial Court after considering the evidence of both the parties, has come to the conclusion that the Appellant/Defendant has failed to establish with regard to the alleged oral partition and has failed further to establish his

right by way of adverse possession. As a consequence, the trial Court has decreed the Respondents/Plaintiffs' claim for declaration of title and injunction. The aforesaid finding of the trial Court is affirmed further by the lower appellate Court in an Appeal preferred by the Defendant.

6. Being aggrieved with the aforesaid findings, the Appellant/Defendant has preferred this Second Appeal. Shri Kesarwani, learned Counsel for the Appellant has submitted that both the Courts have erred in holding that no partition as such was ever taken place 45-50 years ago. He submits further that both the Courts below have passed orders without considering the documentary evidence as submitted by him, therefore findings are liable to be set aside.

6. I have heard learned Counsel for the Appellant and perused the entire record carefully.

7. Undoubtedly, the Plaintiffs and Defendants belong to the same family. When the Appellant/Defendant is trying to claim his exclusive right over the property in question by virtue of the orders passed by the Tahsildar as well as the SDO, a suit has been filed by the Respondents/Plaintiffs claiming declaration of title and injunction. The burden was heavily upon the Defendant to establish the fact that the suit property had fallen in his share in a partition taken place 45-50 years ago. However, he failed to establish the said fact. From perusal of paragraph-7 of the written statement, it is reflected further that the Appellant/Defendant is claiming right over the property in question by way of adverse possession. It means that no partition as such had ever taken place as stated by him, otherwise, he would not have claimed his right by way of adverse possession. The Courts below, after considering the evidence led by the parties, have come to a definite conclusion that no partition as claimed

by the Appellant/Defendant was ever taken place. This is a pure finding of fact based upon proper appreciation of evidence, therefore, the judgment and decree of both the Courts below deserve to be and are hereby affirmed as I do not find any question of law, much less, the substantial question of law which arises for determination in this Appeal. Consequently, the Appeal being devoid of merit is hereby dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Priya