

**HIGH COURT OF CHHATTISGARH, BILASPUR****S.A No.637 of 2016**

Pyarelal Kesharwani S/o Late Chhedilal Kesharwani, Aged About 75 Years R/o Sadar Bazar Ward, Bhatapara, P.O./ P.S./ Tahsil Bhatapara, Distt. Balodabazar, Chhattisgarh .....(Plaintiff)

**----Appellant****Versus**

1. Kanhaiyalal Kesharwani S/o Laxminarayan, Aged About 40 Years R/o Sadarbazar Ward, Bhatapara, P.O./ P.S./ Tahsil Bhatapara, District Balodabazar, Chhattisgarh
2. Madan Lal Kesharwani Aged About 50 Years S/o Late Pratap Chand Kesharwani, R/o Sadarbazar Ward, Bhatapara, P.O./ P.S./ Tahsil Bhatapara, District Balodabazar, Chhattisgarh
3. Dilip Kumar Kesharwani Aged About 45 Years S/o Late Pratap Chand Kesharwani, R/o Sadarbazar Ward, Bhatapara, P.O./ P.S./ Tahsil Bhatapara, District Balodabazar, Chhattisgarh
4. Rajendra Kesharwani Aged About 43 Years S/o Late Pratap Chand Kesharwani, R/o Sadarbazar Ward, Bhatapara, P.O./ P.S./ Tahsil Bhatapara, District Balodabazar, Chhattisgarh
5. Lalit Kesharwani Aged About 40 Years S/o Late Pratap Chand Kesharwani, R/o Sadarbazar Ward, Bhatapara, P.O./ P.S./ Tahsil Bhatapara, District Balodabazar, Chhattisgarh
6. Satish Kesharwani Aged About 35 Years S/o Late Pratap Chand Kesharwani, R/o Sadarbazar Ward, Bhatapara, P.O./ P.S./ Tahsil Bhatapara, District Balodabazar, Chhattisgarh
7. Smt. Annapurna Wd/o Pratap Chand Kesharwani, Aged About 70 Years R/o Sadarbazar Ward, Bhatapara, P.O./ P.S./ Tahsil Bhatapara, District Balodabazar, Chhattisgarh
8. Murli Kesharwani Aged About 38 Years S/o Late Pratap Chand Kesharwani, C/o Gupta Sweets, Gole Bazar, Raipur, Chhattisgarh
9. Sonu Kumar Aged About 30 Years S/o Late Pratap Chand Kesharwani, C/o Gupta Sweets, Gole Bazar, Raipur, Chhattisgarh
10. State Of Chhattisgarh, Through District Collector Balodabazar, Chhattisgarh .....(Defendants)

**-----Respondents**


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|-----------------------------|-----------------------------------------|
| For Appellant:              | Shri BM Rao, Advocate.                  |
| For Respondent No.1:        | Shri Prakash Tiwari, Advocate.          |
| For Respondent No.10/State: | Shri Vijay Bahadur Singh, Panel Lawyer. |

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

**12.4.2017**

1. Heard on admission.

2. This is the Plaintiff's Appeal under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 29.11.2016 passed by the Additional District Judge, Bhatapara in Civil Appeal No.12-A/2015 by which the appellate Court, while affirming the judgment and decree passed by the trial Court, has dismissed the Appeal.

3. The undisputed facts of the case are that the Plaintiff Pyarelal has instituted a suit for partition and separate possession with regard to the property in question mentioned in Plaint paragraph-4 by submitting *inter alia* that no partition as such with regard to the same has ever taken place. It is pleaded further that the Defendants have denied to provide him the share with regard to the said property, therefore, the Plaintiff has been constrained to file a suit in the instant nature by claiming 1/3rd share with regard to the suit property.

4. The Defendants have contested the aforesaid claim by submitting *inter alia* that the partition had already taken place and a deed of memorandum of partition was executed on 04.10.1989. They submitted further that since the partition had already taken place much prior to the year 1989, therefore, the Plaintiff's claim is liable to be dismissed.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the partition had already taken place and the execution of alleged deed of document dated 4.10.1989 (Ex.D-1) is a memorandum of partition which does not require to be registered under Section 17 of the Indian Registration Act. Consequently, the trial Court has dismissed the Plaintiff's claim.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by the Plaintiff. The appellate Court

has also held that the partition has already taken place amongst the parties and a deed of memorandum of partition in this respect was executed on 04.10.1989.

7. Being aggrieved with the aforesaid finding of the Courts below, the Plaintiff-Pyarelal has preferred this Appeal. Shri Rao, learned Counsel for the Appellant submits that both the Courts below have erred in holding that the partition had already been effected amongst the parties and the alleged deed of partition does not require to be registered. The findings as recorded by the Courts below are therefore liable to be set aside.

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

9. The Plaintiff's entire case is based upon the fact that no partition has ever taken place with regard to the agricultural lands as mentioned by him in Plaint paragraph-4. However, perusal of the document Ex.D-1 dated 4.10.1989 would reveal very specifically that the partition amongst the parties had already taken place and a deed of memorandum of partition (Ex.D-1) has been executed in this regard. The said document revealed further that the Plaintiff Pyarelal himself has put his signature in the said document which is marked as A to A. The trial Court as well as the lower appellate Court has thus rightly held that this is the memorandum of partition which does not require to be registered in view of the provisions prescribed under Section 17 of the Indian Registration Act. The findings so recorded by the Courts below cannot be held to be perverse and therefore deserved to be and are hereby affirmed.

10. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law involved in this Appeal. Accordingly, the instant Appeal is dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)  
**JUDGE**