

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 157 of 2016**

1. Pudgu @ Jeetram S/o Thanu Sahu, Aged About 70 Years R/o Sanakpat, Tahsil Bemetara, Civil And Revenue District Bemetara, Chhattisgarh
2. Jethiya Bai W/o Padgu Sahu, Aged About 67 Years R/o Sanakpat, Tahsil Bemetara, Civil And Revenue District Bemetara, Chhattisgarh
3. Ferha Sahu S/o Pudgu Sahu, Aged About 50 Years R/o Sanakpat, Tahsil Bemetara, Civil And Revenue District Bemetara, Chhattisgarh
4. Tulsiram S/o Pudgu Sahu, Aged About 44 Years R/o Sanakpat, Tahsil Bemetara, Civil And Revenue District Bemetara, Chhattisgarh
5. Bharat S/o Pudgu Sahu, Aged About 41 Years R/o Sanakpat, Tahsil Bemetara, Civil And Revenue District Bemetara, Chhattisgarh
(Defendants)

---- Appellants**Versus**

1. Smt. Kumari Bai Wd/o Dhiraj Sahu, Aged About 43 Years R/o Village Jhiriya, P.H. No.39, Tahsil Bemetara, Civil And Revenue District Bemetara, Chhattisgarh(Plaintiff)
2. State Of Chhattisgarh, Through Collector Bemetara, Civil And Revenue District Bemetara, Chhattisgarh(Defendant)

---- Respondents

For Appellants	:	Shri A.D.Kuldeep, Advocate.
For Respondent No.2/State	:	Smt. Shobha Kashyap, Deputy G.A.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****05/10/2017**

1. This is defendants' second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 10.02.2016 passed by the District Judge, Bemetara, in Civil Appeal No. 02-A/2013, by which, the lower appellate Court, while affirming the judgment and decree dated 17.10.2012 passed by the 2nd Civil Judge,

Class-2, Bemetara, in Civil Suit No.42-A/2009, has dismissed the appeal.

2. The undisputed facts of the case are that the plaintiff Smt. Kumari Bai instituted a suit for partition and separate possession with regard to the plaint Schedule-A property. It is pleaded in the plaint that the said suit property is the joint family property and was never partitioned earlier. It is pleaded further that when she demanded partition from the defendants in June 2007, however, it was refused by them giving rise to an instant action for partition and separate possession by claiming 1/5th share over the suit property as mentioned in plaint Schedule-A.

3. The defendants have contested the aforesaid claim by saying that the oral partition was already effected and since the plaintiff has started living in her parental house, therefore, she is not entitled to claim any partition with regard to the plaint Schedule-A property. It is contested further on the ground that the suit property is not the joint family property as it was the self-acquired property of defendant No.1 (Pudgu), defendant No.3 (Ferha), defendant No.4 (Tulsiram) and defendant No.5 (Bharat). Since the property is not the joint family property, therefore, the plaintiff is not entitled to get any share as claimed by her.

4. The trial Court, after considering the evidence of the parties, has come to the conclusion that the plaint Schedule-A property is the joint family property and it was not the self-acquired property of the defendants, as claimed by them. It held further that no oral partition, as stated by the defendants, had ever taken place. In consequence, the trial Court has decreed the plaintiff's suit by awarding her 1/5th share over the plaint Schedule-A property (suit property).

5. The aforesaid findings of the trial Court have been affirmed further by the lower appellate Court in an appeal preferred by the defendants under Section 96 of the Code of 1908. The lower appellate Court, in turn, has also held that the plaint Schedule-A property is not the self-acquired property of the defendants. The appellate Court has observed further that no oral partition had ever taken place, as pleaded by the defendants. The lower appellate Court, in consequence, while affirming the findings of the trial Court, has held that the plaintiff is entitled to 1/5th share over the plaint Schedule-A property.

6. Being aggrieved, the defendants have preferred this appeal. Shri A.D.Kuldeep, learned counsel for the appellants submits that the judgment and decree, as passed by the Courts below by holding that the property was not the self-acquired property of the defendants, are apparently contrary to law. He submits

further that the Courts below, without considering the evidence of the parties in its proper manner, have committed an illegality in holding that no oral partition, as pleaded by the defendants, had ever taken place. He, therefore, submits that the judgment and decree as passed by both the Courts below be set aside.

7. I have heard learned counsel for the appellants and perused the entire record carefully.

8. The plaintiff Smt. Kumari Bai, being the widow of Dheeraj, one of the sons of defendant No.1 – Pudgu, instituted a suit for partition by submitting, inter alia, that the plaint Schedule-A property is the joint family property. It is pleaded in the plaint that since no share was given to her despite claiming partition from the defendants, therefore, the plaintiff has filed the suit for partition. In reply to the said fact, it was stated by the defendants that the suit property is not the joint family property and in fact it was the self-acquired property of the defendants, therefore, the plaintiff is not entitled to claim any partition over it. While taking contradictory plea, it was pleaded further that since oral partition had already taken place, therefore, the plaintiff is not entitled to claim any share over it. It was contested further on the ground that since the plaintiff has started living in her parental house, therefore, she is not entitled to claim any partition over the plaint Schedule-A property. However, from perusal of the record, it is evident that the defendants have failed to produce the documents like the registered deed of sale in order to establish the fact that the plaint Schedule-A, the suit property is their self acquired property. The burden under such circumstances was heavily upon them to establish this acquisition of suit property by producing cogent and reliable evidence. Having failed so, it cannot be held that the suit property described in plaint Schedule-A is their self-acquired property. In such circumstances, the finding as recorded by the Courts below by holding that the suit property is not their self-acquired property cannot be held to be a perverse one. Accordingly, the said finding in this regard is affirmed.

9. As far as the oral partition is concerned, it was observed by the Courts below by considering the evidence of both the parties that the defendants have failed completely to establish this fact also that the alleged oral partition had ever taken place as such. This finding is a pure finding of fact based upon due and proper appreciation of the evidence of both the parties, therefore, the same cannot be held to be a perverse one. Consequently, the findings so recorded by the Courts below deserve to be and are hereby affirmed.

10. In view of the foregoing discussions, I do not find any substance in this

appeal as no question of law, much less, the substantial questions of law arise for determination in this appeal. Accordingly, the appeal, being devoid of merit, is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge