

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 30 OF 2013**

Buturam Satnami (Dead) Through Lrs:

(a) Dhaniram Aged about 40 Years S/o Late Buturam Satnami

(b) Jagguram Aged about 46 Years S/o Late Buturam Satnami

(c) Gendram Aged about 43 Years S/o Late Buturam Satnami

(d) Smt. Guruwari Bai Aged about 38 Years D/o Late Buturam Satnami, W/o Shri Sanjay Kumar

All R/o Village Bartunga, P.O. Dharwan, P.S. & Tah. Sarangarh, District Raigarh, Chhattisgarh(Plaintiffs)

---- Appellants**Versus**

1. Panchram Satnami S/o Tengnu Satnami, Aged About 56 Years R/o Village Bartunga, Tahsil Sarangarh, District Raigarh, Chhattisgarh
2. Budga Satnami S/o Tengnu Satnami, Aged About 58 Years R/o Village Bartunga, Tahsil Sarangarh, District Raigarh, Chhattisgarh
3. State of Chhattisgarh, Through: The Collector, Raigarh, District Raigarh, Chhattisgarh(Defendants)

---- Respondents

For Appellants	:	Mr. Raj Kumar Pali, Advocate
For State/Respondent No. 3	:	Mr. Vijay Bahadur Singh, P.L.

Hon'ble Shri Sanjay Agrawal, J.**Judgment On Board****04/08/2017**

1. This is plaintiff's second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') against the judgment and decree dated 25.10.2012 passed by the Additional District Judge, Sarangarh, District Raigarh in Civil Appeal No. 16-A/2009, by which, the lower appellate Court while affirming the judgment and decree dated 31.10.2009

passed by the Civil Judge Class-II, Sarangarh, District Raigarh in Civil Suit No. 181-A/2006, has dismissed the appeal.

2. Undisputed facts of the case, are that, the plaintiff- Buturam Satnami (since deceased now represented by his legal representatives) instituted a suit claiming declaration of title with regard to the plaint Schedule 'A' property by submitting *inter alia* that 20 years prior to the institution of the suit, partition was taken place amongst him and his brothers, namely, Panchram Satnami and Budwa Satnami, i.e., defendants No.1 and 2, in which, plaint Schedule 'A' property had fallen in his share, while plaint Schedule 'B' property was fallen in their share. It is pleaded further that defendants No.1 and 2 have sold their share with regard to the plaint schedule 'B' property. It is pleaded further that the *lkrarnamas* (Exs. P/4, P/5 and P/6) were executed on 31.5.1992 with regard to the partition and even upon knowing the said fact, the defendant No.1 Panchram Satnami had applied for partition before the Additional Tahsildar Sarangarh on 7.4.2003 and after obtaining the partition order on 27.2.2004, started interfering in his peaceful possession, giving rise to an instant action, instituted on 24.7.2006.

3. The defendants have contested the aforesaid claim and denied very specifically with regard to the alleged partition while denying the execution of the alleged *lkrarnamas* (Exs. P/4, P/5 and P/6) as made on 31.5.1992 and pleaded further that no particulars of the properties are mentioned in the said documents. It is pleaded that on the basis of earlier mutual partition, the alleged partition order dated 27.2.2004 was passed by the Revenue Authority under Section 178 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'the Code of 1959') in respect of plaint Schedule 'A' property, while registering the case as Revenue Case No. 2/A-27/2003-04 and revenue papers were also corrected accordingly. It was denied further that any alienation with regard to

plaint Schedule 'B' property was made by him, i.e., defendant No. 1, as alleged by the plaintiff.

4. After considering the evidence led by the parties, the trial Court has come to the conclusion that the plaintiff has failed to establish with regard to alleged partition on the basis of alleged *Ikrarnamas* (Exs. P/4, P/5 and P/6) as it does not disclose the factum of alleged partition nor the particulars of the properties are mentioned therein. It held further that the Additional Tahsildar, Sarangarh has rightly passed the said partition order on 27.2.2004 under Section 178 of the Code of 1959. Consequently, the trial Court dismissed the suit.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiff under Section 96 of the CPC. The appellate Court has observed that in absence of any documentary evidence with regard to alienation of plaint Schedule 'B' property, it can not be held that it was sold by defendants No.1 and 2. In consequence, dismissed the plaintiff's appeal.

6. Being aggrieved, the plaintiff has preferred this appeal. Mr. Raj Kumar Pali, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below are apparently contrary to law. He submits that the partition has already been taken place much prior to the institution of the suit as evidenced by the *Ikrarnamas* (Exs. P/4, P/5 and P/6) and therefore, by disbelieving its execution, the Courts below have committed illegality in dismissing the claim.

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

8. The plaintiff Buturam Satnami, the brother of defendants No.1 and 2 instituted a suit claiming exclusive ownership with regard to the plaint Schedule 'A' property on the premises that it came to his share in a partition effected much prior to the institution of the suit. While claiming as such, the plaintiff has relied heavily upon the *Ikrarnamas* (Exs. P/4, P/5 and P/6) and alienation of plaint Schedule 'B' property by defendants. However, perusal of these *Ikrarnamas* (Exs. P/4, P/5 and P/6), would show that it contained no particulars with regard to any of the properties, so as to hold that the alleged partition was made as pleaded by the plaintiff. Even otherwise, the plaintiff has failed to produce the documentary evidence, like, registered deed of sales with regard to alienation of plaint Schedule 'B' properties by defendants No.1 and 2 in order to establish the fact that by virtue of the alleged partition, the plaint Schedule 'A' (suit property), had fallen in his share. The burden was heavily upon the plaintiff to establish the said fact, but he failed completely to prove it. In such circumstances, it is difficult to hold that the plaint Schedule 'A' property was fallen in share of the plaintiff. Having failed so, the Courts below have rightly held that no partition as alleged was ever taken place amongst the parties. The findings so recorded are based upon due and proper appreciation of the evidence of the parties, and therefore, the same deserves to be and are hereby affirmed.

9. In view of the foregoing discussions, I do not find any substance 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