

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 277 of 2015**

- Bhagwati Ram S/o Panchram Gond , Aged About 38 Years R/o- Village- Ramgarh, P.S.- Mungeli, Tehsil- Mungeli, District- Mungeli, (Chhattisgarh),.....(Plaintiff).

---- Appellant**Versus**

1. Panchram (Died) Through Lrs
1. (a) Sukariya @ Munni Bai, Aged about 50 Years W/o Shri Pakla Gond, D/o Late Panchram Gond, R/o- Vinobanagar, P.S. And Tahsil- Mungeli, District- Mungeli, (Chhattisgarh).
1. (b) Gayatri, Aged about 45 Years W/o Shri Paklu Gond, D/o Late Panchram Gond, R/o- Village- Mohtara, Tehsil- Navagarh, District- Bemetara, (Chhattisgarh).
2. State Of Chhattisgarh Through Collector, Mungeli, (Chhattisgarh).
3. Chandrapal Singh, S/o Latelram , Aged About 40 Years R/o- Village- Bhaibod Kala, P.S.- Bemetara, Tehsil- Bemetara, District- Bemetara, (Chhattisgarh),.....(Defendants).

---- Respondents

For Appellant: Shri Anish Tiwari, Advocate
 For Respondent No. 2/State: Smt. Shobha Kashyap, Deputy A.G.

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

04.08.2017

1. Heard on Admission.
2. This is Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908) against the judgment and decree dated 09.03.2015 passed by the Additional District Judge, Mungeli, Dist. Bilaspur, in Civil Appeal No.25-A/2011, by which, the lower appellate Court, while affirming the judgment and decree dated 03.05.2014 passed by the Civil Judge, Class-II, Mungeli,

in Civil Suit No.19-A/2012, has dismissed the Appeal.

3. The undisputed facts of the case are that the plaintiff Bhagwati Ram instituted a suit for declaration of title and partition claiming half share with regard to the property in question bearing Kh.No.10/4 admeasuring 0.348 hectares and Kh.No.459/3 admeasuring 0.158 hectares, total admeasuring 0.506 hectares, by submitting, inter alia, that he belongs to Gond community and according to the custom prevailed in the community, he alone would inherit the property in question and daughters have no right with regard to the suit property. It is pleaded further that he approached the Tahsildar, Mungeli on 30.06.2008 by claiming partition with regard to the said property and during the pendency of that proceeding, the suit property bearing Kh.No. 10/4 area 0.348 hectares has been sold by executing the registered deed of sale dated 08.10.2008 by his father Panchram in favour of Chandrapal Singh. It is pleaded further that the alleged sale was executed only for defeating his interest over the property in question.

4. The Defendants No. 1 & 3 have contested the aforesaid plaintiff's claim by stating that father has right to enjoy the property, according to his own wishes. It is contested further on the ground that the alleged sale was not executed for defeating the interest of the plaintiff as his interest was not at all involved in the suit property. It is also pleaded by the defendants that the plaintiff has also obtained the property in oral partition with regard to Kh.No. 453/1 area 0.76 acres and the said property was sold to one Kodaiya Bai, therefore, the plaintiff has no interest whatsoever in the property in question, as claimed by him.

5. In support, the plaintiff has examined as many as three witnesses

while the defendants have examined four witnesses.

6. The trial Court, after considering the evidence led by the parties, has come to the conclusion at para 11 of its judgment that the plaintiff has neither pleaded nor adduced any evidence that the property was inherited by his father Panchram from his ancestors, and therefore, it cannot be held that the suit property is an ancestral property. In consequence, the trial Court has dismissed the plaintiff's claim.

7. The aforesaid finding of the trial Court has been questioned by the plaintiff before the lower appellate Court, as per the provisions prescribed under Section 96 of the Code of 1908. The appellate Court, in turn, has come to the conclusion that in an oral partition, the property bearing Kh.No. 453/1 area 0.76 acres was provided to the plaintiff and he was enjoying the said property and in the year 2006, the said property was sold to one Kodaiya Bai. It, therefore, held that the plaintiff is not entitled to claim partition again as the property was already provided to him in an oral partition and only after that the name of his father Panchram (Defendant No.1) was recorded in the revenue papers. With this observation, the lower appellate Court, while affirming the judgment and decree of the trial Court, has dismissed the appeal.

8. Being aggrieved, the plaintiff has preferred this appeal. Shri Anish Tiwari, counsel for the appellant submits that the judgments and decrees as passed by the Courts below are not at all sustainable in the eye of law. He submits that as per prevailing custom in Gond community, the daughters have no right to inherit the property from their father and the son alone would entitle to get share from father. He submits further that the specific plea as made by the plaintiff in plaint para 2 was not denied

specifically by the defendants, therefore, the said fact ought to have been taken into consideration as an admitted fact, as per the provisions prescribed under Order 8 Rule 5 of the Code of 1908. Without considering the material fact, the Courts below have committed illegality in dismissing the plaintiff's claim.

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

10. The plaintiff Bhagwati Ram instituted the suit by claiming declaration of title and partition with regard to the suit property bearing Kh.No.10/4 and 459/3 area respectively as 0.348 hectares and 0.158 hectares, total admeasuring 0.506 hectares. From perusal of the entire plaint averments, it is nowhere pleaded by the plaintiff that what is the nature of the property. In absence of any specific plea in this regard, it is difficult to hold that defendant No.1 Panchram, the father of the plaintiff, was not the owner of the property in question. No evidence was led by the plaintiff in this regard as well. Therefore, the trial Court by taking into account this material fact, has come to the conclusion at para 11 that the plaintiff has failed to establish the fact that the suit property is the ancestral property. Even otherwise, in appeal the lower appellate Court has observed that certain properties, i.e., land bearing Kh.No. 453/1 area 0.76 acres was provided to the plaintiff in an oral partition by his father and under such circumstances, he is not entitled to get share again. The property is admittedly recorded in the name of his father Panchram in revenue papers and from bare perusal of the application (Ex.P.5) filed before the Tahsildar, Mungeli, would also reveal very specifically that the property was recorded in the name of Panchram. In view of this fact, it is clear that Panchram alone was the

owner of the property in question, and therefore, under such circumstances, the plaintiff cannot claim any share during the lifetime of his father Panchram. Accordingly, the judgments and decrees as passed by the Courts below are based upon due and proper appreciation of the evidence and the same do not suffer from any infirmity, therefore, deserve to be and are hereby affirmed.

11. Consequently, I do not find any substance in this appeal involving question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits and substance is hereby dismissed at the admission stage itself. There shall be no order as to costs.

(Sanjay Agrawal)
JUDGE