

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.675 of 2015**

1. Chhabilal Dewangan S/o Heeralal Dewangan, Aged About 56 Years R/o Village Katgi, Tahsil & P.S. Bilaigarh, Dist. Balodabazzar, Chhattisgarh (Defendant No. 1)
2. Murari Lal S/o Heera Lal Dewangan, Aged About 53 Years R/o Village Katgi, Tahsil & P.S. Bilaigarh, Dist. Balodabazzar, Chhattisgarh(Defendant No. 2)
3. Harishankar S/o Heeralal Dewangan, Aged About 51 Years R/o Village Katgi, Tahsil & P.S. Bilaigarh, Dist. Balodabazzar, Chhattisgarh(Defendant No. 3)
4. Mohan Lal S/o Hemanth Dewangan, Aged About 56 Years R/o Village Katgi, Tahsil & P.S. Bilaigarh, Dist. Balodabazzar, Chhattisgarh(Defendant No. 5)
5. Mohar Sai S/o Ramnath Dewangan, Aged About 73 Years R/o Village Katgi, Tahsil & P.S. Bilaigarh, Dist. Balodabazzar, Chhattisgarh(Defendant No. 4)
6. Heera Singh S/o Hemnath Dewangan, Aged About 58 Years R/o Village Katgi, Tahsil & P.S. Bilaigarh, Dist. Balodabazzar, Chhattisgarh(Defendant No. 6)

----Appellants**Versus**

1. Chhedilal Dewangan S/o Shri Ramnath Dewangan, Aged About 60 Years R/o R/o Village Katgi, P.S. & Tahsil Kasdol, Dist. Balodabazzar Bhatapara, Chhattisgarh, Presently R/o Village Jhiriya, P.S. & Tahsil- Simga, Dist. Balodabazzar Bhatapar, Chhattisgarh(Plaintiff)
2. State Of Chhattisgarh, Through Collector Balodabazzar, Dist. Balodabazzar Bhatapara, Chhattisgarh(Defendant No.7)

-----Respondents

For Appellants:	Shri Arvind Dubey, Advocate.
For Respondent No.1:	Shri Vikram, Dixit, Advocate.
For State/Respondent No.2:	Shri Lav Sharma, Panel Lawyer.

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

17.4.2017

1. Heard on admission.

2. This is the Defendants' Appeal under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 11.9.2015 passed by the District Judge, Baloda Bazar in Civil Appeal No.H-72A/2014 by which the lower appellate Court, while reversing the finding of the trial Court, has allowed the Appeal filed by the Plaintiff Chhedilal.

3. The undisputed facts of the case are that the Plaintiff Chhedilal has instituted a suit for partition, separate possession and for permanent injunction by submitting *inter alia* that the suit property was originally owned by his predecessor interest namely Girdhari Lal and Ramchandia. It is pleaded further that the partition was not effected with regard to the suit property between the predecessor in interest of the parties and therefore claimed the partition 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 between their predecessor interest therefore, suit as framed and instituted, deserves to be dismissed.

5. After considering the evince led by the parties, the trial Court by its judgment and decree dated 18.9.2014 has held that the partition has already taken place between their predecessor in interest and in consequence, dismissed the Plaintiff's claim.

6. Being aggrieved with the aforesaid judgment and decree, the Plaintiff-Chhedilal has preferred an Appeal under Section 96 of the Code of Civil Procedure, 1908. The lower appellate Court in turn, by considering the evidence led the parties has come to the conclusion that no partition as such had ever taken place between their predecessor in interest for want of documentary evidence in this regard and that by disbelieving the factum of oral partition. As a consequence, the lower appellate Court has directed for

partition while decreeing the Plaintiff's claim.

7. Being dissatisfied with the aforesaid finding of the lower appellate Court, the Defendants have preferred this Appeal. Mr. Dubey, learned Counsel for the Appellants submitted that the lower appellate Court has erred in reversing the finding of the trial Court by holding that the partition between their predecessor interest has never taken place. He relied upon the document Ex.D-1 in support of his submission which was executed between the Plaintiff Chhedilal and his real brother Mohar Sai and submits that the said document amply establishes the fact that the partition has already taken place.

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

9. From perusal of the record, it is evident that no deed is available on record by which it could be presumed that any partition was ever effected between Girdhari Lal and his brother Ramchandia, the predecessor in interest of the parties. Since no document is there with regard to the alleged partition and therefore, no reliance could be placed upon the alleged document (Ex.D-1) which was executed between the Plaintiff Chhedilal and his real brother Moharsai. The finding of the lower appellate Court with regard to the partition is a pure finding of fact on due appreciation of evidence of the parties and therefore, the same cannot be held to be a perverse one.

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