

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 64 of 2017**

1. Chhabilal Dewangan S/o Heeralal Dewangan, Aged About 56 Years R/o Village Katgi, Tahsil Kasdol, Dist. Balodabazaar, 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)

---- Applicants**Versus**

1. Chhedilal Dewangan S/o Shri Ramnath Dewangan, Aged About 60 Years R/o Village Katgi, P.S. & Tahsil Kasdol, District Balodabazar-Bhatapara, Chhattisgarh, Presently R/o Village Jhriya, P.S. & Tahsil Simga, District Balodabazar-Bhatapara, Chhattisgarh
2. State Of Chhattisgarh, Through Collector Balodabazar-Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh

---- Respondents

For Applicants	:	Shri H.B.Agrawal, learned Senior Advocate with Smt. Prabha Sharma, Advocate
For Respondent No.2/State	:	Shri R.K.Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****26/09/2017**

1. This review petition has been preferred under Order 47 Rule 1 of the Code of

Civil Procedure, 1908 (hereinafter referred to as the 'Code of 1908' in short) by the defendants against the order dated 17.04.2017 passed by this Court in Second Appeal No. 675/2015, by which, the appeal filed by the applicants/defendants was dismissed.

2. Shri H.B.Agrawal, learned Senior Advocate with Smt. Prabha Sharma, counsel for the applicants submits that since the alleged partition, as pleaded in the written statement, has already been admitted by the plaintiff by executing a document, marked as Ex.D.1, therefore, under such circumstances, it was submitted that the order impugned deserves to be reviewed.

3. I have heard learned counsel for the applicants and perused the entire record carefully.

4. This is the case where plaintiff Chhedilal Dewangan had instituted a suit for partition, separate possession and for injunction by submitting, *inter alia*, that the suit property was originally held by his predecessor-in-interest, namely, Girdhari Lal and Ramchandia. In the said suit, it was pleaded very specifically that the partition was not effected with regard to the suit property between predecessors-in-interest of the parties, therefore, the suit was instituted for partition and separate possession. The defendants, in turn, have contested the aforesaid claim by submitting, *inter alia*, that the partition had already taken place, therefore, the suit is liable to be dismissed.

5. After considering the said pleadings of the parties, the trial Court, after considering the evidence of the parties, had come to the conclusion that the partition had taken place between their predecessors-in-interest, and accordingly the suit was dismissed. However, the lower appellate Court, in an appeal preferred by the plaintiff, had come to the conclusion that in absence of any deed of partition, it cannot be held that the alleged partition, as pleaded by the defendants, was ever effected between the predecessors-in-interest of the parties and accordingly, the lower appellate Court, while reversing the finding of the trial Court, has decreed the plaintiff's claim.

6. The said finding was affirmed further by this Court in a Second Appeal No. 675/2015 by considering all oral and documentary evidence including the document Ex.D.1 and then only came to the conclusion that no partition as such was ever effected between the predecessors-in-interest of the parties.

7. In view of the aforesaid facts and circumstances of the case and particularly when the alleged document Ex.D.1 was taken into consideration while arriving at a conclusion that no partition as such was ever taken place, therefore, it cannot be held that there is any error or mistake which is apparent on the face of the record in the order impugned so as to interfere with the same in this review jurisdiction.

8. Consequently, I do not find any substance in this review petition, which is liable to be and is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge