

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.11 of 2001

Smt. Savitribai, aged about 45 yrs., wife of Matadeen, R/o Kotgarh,
Tahsil and District Janjgir-Champa (C.G.)

(Defendant)/
---- Appellant

Versus

1. Visheshar Singh, S/o Madan Singh, aged about 50 years.
2. Arajbai, aged about years, D/o Madansingh.

Both residents of Kotgarh, Tahsil and District Janjgir-Champa (C.G)

3. State of Chhattisgarh, Through Collector, Janjgir-Champa (C.G.)
---- Respondents

For Appellant:	Mr. Sourabh Sharma and Mr. Tarkeshwar Nande, Advocates.
For Respondent No.1:	Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.
For Respondent No.3 / State: -	Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

17/09/2018

1. The substantial question of law involved, formulated and to be answered in the defendant's second appeal is as under: -

“Whether the lower appellate Court was justified in determining the share of the parties in a mere suit for declaration of title and injunction?”

(For sake of convenience, parties would be referred hereinafter as per their status shown in the trial Court.)

2. The plaintiff filed a suit for declaration that the plaintiff and the defendants are members of aboriginal tribe and the Hindu Succession Act is not applicable to them and the plaintiff & defendant No.2 are title

holders and defendants No.1 & 3 have no title over the suit land and also prayed for permanent injunction. The suit was dismissed by the trial Court finding no merit against which first appeal was preferred. The first appellate Court allowed the appeal and converted the suit for declaration of title into suit for partition and granted decree for partition as per Schedule-1 of the decree against which the instant second appeal has been preferred and substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

3. Learned counsel for the appellant herein / defendant No.3 submits that in a suit for declaration of title and injunction, no decree for partition can be granted which has been opposed by learned counsel for the plaintiff / respondent No.1 herein.
4. I have heard learned counsel for the parties and considered their rival submissions and went through the records with utmost circumspection.
5. It is true that suit was filed for declaration of title and permanent injunction which was dismissed by the trial Court and the first appellate Court converted the suit for title into suit for partition and granted the decree of partition as under: -

(20) उक्त संबंध में वादी, प्रतिवादी क्र. 2 एवं प्रतिवादी क्रं. 1 एवं 3 का वादगत भूमि में किस सीमा तक हिस्सा है का निर्धारण करना होगा जैसा कि पूर्वगामी निष्कर्ष दिया गया कि पैतृक संपत्ति और उत्तराधिकार के संबंध में सामान्य-हिन्दू विधि से शासित होंगे, उक्त परिस्थितियों में मृतक मदन सिंह की मृत्यु सन 1956 के पश्चात हुई है, यदि स्व० मदन सिंह के जीवनकाल में ही

पैतृक संपत्ति का काल्पनिक बंटवारा किया गया होता तो स्व० मदन सिंह को वादगत भूमि का $1/3$ हिस्सा, वादी विशेषर को $1/3$ हिस्सा एवं विधवा जामबाई को $1/3$ हिस्सा प्राप्त होता । इस प्रकार मृतक मदन सिंह की मृत्यु के पश्चात वादगत भूमि का $1/3$ हिस्से को उसके पुत्र विशेषर सिंह एवं विधवा को $1/3$ हिस्सा के पश्चात मृतक मदन सिंह के $1/3$ हिस्से का $1/4 - 1/4$ हिस्सा अर्थात वादी विशेषर सिंह को $1/3 + 1/12$, प्रतिवादी क्रं. 2 विधवा जामबाई को $1/3 + 1/12$ एवं पुत्रियों प्रतिवादी कं. 1 अरजबाई को $1/12$ एवं प्रतिवादी क्रं. 3 सावित्रीबाई को $1/12$, चूंकि मदन सिंह की विधवा प्रति. क्रं. 2 जामबाई की मृत्यु दिनांक 27.8.99 को हो गयी है इसलिए मृतक मदन सिंह की विधवा जामबाई को वादगत भूमि से प्राप्त हिस्से $1/3 + 1/12$ का $1/3$ हिस्सा अर्थात $5/36$ वादी विशेषर सिंह प्राप्त करेगा एवं प्रतिवादी कं. 1 एवं 3 भी $5/36 - 5/36$ प्राप्त करेंगे ।

6. The Supreme Court in the matter of **Bachhaj Nahar v. Nilima Mandal and another**¹ has clearly held that without pleading and opportunity of hearing to the defendant, no decree can be granted. It has been observed as under: -

“23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in,

¹ (2008) 17 SCC 491

etc.”

7. In view of the above, the first appellate is absolutely unjustified in granting decree for partition in a suit for title converting into suit for partition. Following the principle of law in **Bachhaj Nahar** (supra), the judgment & decree of the first appellate Court are set aside. However, the plaintiff is entitled to file suit for partition, if so advised. Consequently, the substantial question of law is answered accordingly.

8. The second appeal is allowed to the extent indicated herein-above.
No order as to cost(s).

9. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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