

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.34 of 2002

1. Basant, S/o Chetan Das, age 40 years.
2. Aghnu, S/o Chetan Das, age 32 years.
3. Sahadur Das, S/o Chetan Das, age 35 years.
4. Durli (Died and deleted)
5. Kalyan Das, S/o Premdas, age 45 years.

AI by Occupation Agriculturist, Caste Panika, R/o Village Brijnagar,
Tehsil Surajpur, Distt. Surguja (C.G.)

6. Muketi, W/o Munna, Caste Panika, Occupation Agriculture, R/o
Village Sidhma, Tehsil Rampur, Distt. Surguja (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Yashoda Bai, W/o Sammal Das, age 50 years.
2. Rajmen (Dead) Through LRs
 - 2.a. Sukhdev, S/o Late Rajman, aged about 30 years,
 - 2.b. Mahesh, S/o late Rajman, aged about 27 years,
 - 2.c. Manik, S/o late Rajman, aged about 21 years,
 - 2.d. Sanik, S/o Late Rajman, aged about 23 years,

Respondents No.1 and 2.a. to 2.d. by Caste Panika, R/o Village
Brijnagar, Tehsil Surajpur, Distt. Surguja (C.G.)

3. The State of Chhattisgarh, Through Collector, Surguja, Ambikapur.
(Defendants)
---- Respondents

For Appellants: Mr. A.K. Prasad, Advocate.

For Respondents No.2.a. to 2.d.: -

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

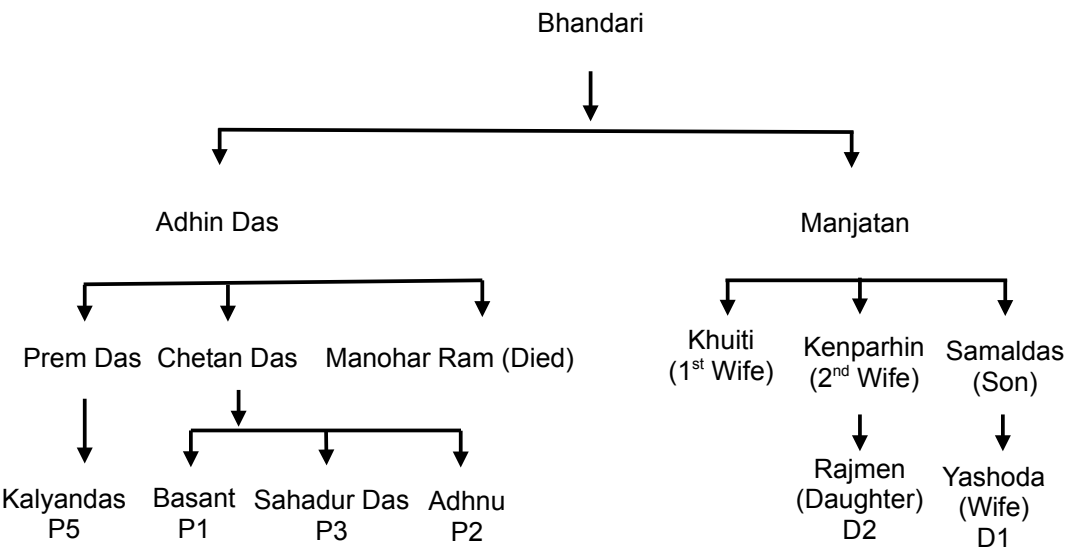
18/09/2018

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

“Whether in the facts and circumstances of the case the Court below committed an error in holding that there was no partition between Adhin Das and Manjatan?”

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

2. The following genealogical tree will demonstrate the relationship between the parties: -



3. The property mentioned in Schedule A of the plaint was originally held by Late Shri Bhandari. The plaintiffs are great grand-sons of Bhandari, whereas defendant No.1 is son's wife and defendant No.2 is grand-daughter of Shri Bhandari. The plaintiffs filed suit for declaration of possession and permanent injunction stating inter alia that they be declared owners of the property mentioned in Schedule A, as the properties mentioned in Schedule A & Schedule B were recorded in the name of Bhandari and after death of

Bhandari, Adhin Das – grand-father of the plaintiffs and Manjatan – grand-father of defendant No.2 have partitioned the properties described in Schedule A & B and the property mentioned in Schedule A has fallen in the share of Adhin Das, whereas the property mentioned in Schedule B has fallen in the share of Manjatan, therefore, defendant No.2 has no title over the property described Schedule A, which was opposed by defendant No.2 by filing written statement stating inter alia that the property mentioned in Schedule A was the ancestral property of the plaintiffs & the defendants which was recorded in the name of Bhandari and after the death of Bhandari, the plaintiffs & the defendants have succeeded the property jointly, and the property mentioned in Schedule B was the self-acquired property of Manjatan.

4. The trial Court after appreciating oral and documentary evidence, dismissed the suit by holding that the plaintiffs have failed to prove that oral partition was affected between Adhin Das and Manjatan so far as the suit property is concerned and further held that the property shown in Schedule B is self-acquired property of Manjatan. On appeal being preferred, the said finding has been upheld by the first appellate Court and in second appeal, the substantial question of law has been formulated as set-out in the opening paragraph of this judgment.
5. Mr. A.K. Prasad, learned counsel for the plaintiffs, would submit that both the Courts below have committed grave legal error in recording a finding that the property mentioned in Schedule A is the joint property of the parties, as such, it could have been held that

there is earlier partition after death of Bhandari and oral partition took place between the parties and the property mentioned in Schedule A has fallen in the share of Adhin Das and the property mentioned in Schedule B has fallen in the share of Manjatan. Therefore, both the Courts below have concurrently committed legal error in holding that no partition took place between the parties.

6. Mr. Anurag Singh, learned counsel appearing for the legal representatives of defendant No.2, supporting the impugned judgment, would submit that Manjatan had filed an application under Section 178 of the Land Revenue Code for partition only with regard to the property shown in Schedule A being joint property of the parties, which was granted by the Tahsildar and it has been maintained by the Sub-Divisional Officer, and the finding of no partition between the parties in respect of Schedule A property is a finding of fact based on evidence available on record and therefore the second appeal is liable to be dismissed.
7. I have heard learned counsel for the parties and went through the record with utmost circumspection.
8. The plaintiffs have set up a plea of partition between Adhin Das and Manjatan with regard to the property shown in Schedule A & B of the plaint and according to them, the property shown in Schedule A had fallen in the share of Adhin Das and they have inherited the same, whereas the property shown in Schedule B has fallen in the share of Manjatan and the defendants are legal heirs of Manjatan. Manjatan filed an application under Section 178 of the Land

Revenue Code for partition of property shown in Schedule A of the plaint which was granted by the Tahsildar on 17-11-1987 which was affirmed by the Sub-Divisional Officer on 18-1-1989 (Ex.D-3) partitioning the property shown in Schedule A and the said property was earlier recorded during the Sarguja State Settlement Ex.P-4 in the name of Bhandari, the original holder and ancestor of the plaintiffs & the defendants. Whereas, the property mentioned in Schedule B was recorded in the exclusive name of Manjatan, one of the sons of Bhandari.

9. The trial Court on the basis of documentary evidence stated above and oral evidence, clearly recorded a finding that the property shown in Schedule A was never subjected to oral partition between the parties, as at the time of Sarguja State Settlement, the property mentioned in Schedule A was recorded in the name of Bhandari and the property mentioned in Schedule B being the self-acquired property of Manjatan was recorded in the name of Manjatan, second son of Bhandari, as such, the factum of partition between Adhin Das and Manjatan is not established on record.
10. The first appellate Court on close scrutiny of evidence on record and reappraisal of record, clearly held that the property mentioned in Schedule A was inherited by the both sons of Bhandari namely, Adhin Das and Manjatan and there is no partition affected between both the sons and affirmed the finding of the trial Court.
11. The Supreme Court in the matter of **Addagada Raghavamma and another v. Addagada Chenchamma and another**¹ has held that

¹ AIR 1964 SC 136

there is a general presumption that a Hindu family is presumed to be joint unless the contrary is proved and further held that whether there is a partition in a Hindu joint family is a question of fact.

12. Likewise, in the matter of E. Mahboob Saheb v. N. Sabbarayan Chowdhary and others², it has been held by Their Lordships of the Supreme Court that whether a partition took place between the parties is a finding of fact and if the finding is not unreasonable or perverse, the High Court has no jurisdiction to interfere under Section 100 of the Code of Civil Procedure, 1908 with the finding of fact and substitute its own finding in that place. Paragraph 13 of the report states as follows: -

“13. After hearing counsel appearing on both sides, we have unhesitatingly come to the conclusion that both the aforesaid contentions advanced on behalf of the appellant have to be upheld. The finding entered by the Additional District Judge that a partition had taken place between the plaintiff and the other legal heirs of Narayanaswamy in 1952, and as a result thereof the southern portion of the 'B' Schedule property (plaint 'C' Schedule property) had been allotted to the plaintiff's share was based on a detailed consideration of the legal evidence available on the record. It was not open to the High Court to reappraise the said evidence and substitute its own conclusions in place of those entered by the lower courts while exercising the jurisdiction conferred by Section 100, CPC. The learned counsel appearing on both sides have taken us through the relevant portions of the evidence having a bearing on the plea of partition, and we are satisfied that the finding entered by the Additional District Judge cannot be said to be unreasonable or perverse. No question of law whatever was agitated before the High Court. In the circumstances, there was no justification at all for the High Court to interfere with the finding of fact entered by the Additional District Judge that there had been a partition between the plaintiff and the legal heirs of Narayanaswamy in 1952 at which the plaint 'C' Schedule property had been allotted to the share of the plaintiff. ”

13. Reverting to the facts of the present case following the law laid

² (1982) 1 SCC 180

down in the afore-cited cases and applying to the facts of the present case, the two Courts below have concurrently held that so far as the property mentioned in Schedule A of the plaint is concerned, there is no partition between Adhin Das and Manjatan during their lifetime as such, the finding is neither unreasonable nor perverse on record. Therefore, the finding of fact recorded by both the Courts below with regard to 'no partition between the parties' is a pure and simple finding of fact and is binding on this Court. The substantial question of law is answered in favour of the defendants and the appeal is dismissed. No order as to cost(s).

14. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma