

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 500 of 2004**

1. Baccharaj S/o Late Bishramdas, aged about 52 years, Occupation – Agriculture, Caste – Panika, R/o Village Umeshpur, P.S. Tahsil Surajpur, District Surguja (C.G.)[Defendant No. 1]
 2. Sonmet Bai Wd/o Sonsai, aged about 36 years, Occupation – Service, R/o Village Umeshpur, P.S. Tahsil Surajpur, District Surguja (C.G.).....[Defendant No. 2]
 3. Santdhari S/o Baccharaj, aged about 28 years, Occupation- Agriculture, Caste – Panika, R/o Village Umeshpur, P.S. Tahsil Surajpur, District Surguja (C.G.)[Defendant No. 3]
 4. Ram Sai S/o Sonsai, aged about 60 years, R/o Village Umeshpur, P.S. Tahsil Surajpur, District Surguja (C.G.).....[Defendant No. 5]
- Appellant / Defendant**

Versus

1. Bhagrasiya D/o Late Bishram Das, aged about 45 years, Caste – Panika, R/o Village Basdei, P.S. and Tahsil – Surajpur, District Surguja (C.G.)[Plaintiff]
2. Faleshwar Das S/o Late Bishram Das, aged about 36 years, Occupation – Agriculture, Caste – Panika, R/o Village Umeshpur, P.S. Tahsil Surajpur, District Surguja (C.G.).....[Plaintiff]
3. Sundar adopted S/o Late Sonsai, aged about 22 years, Occupation – Agriculture, Caste – Panika, R/o Village Umeshpur, P.S. Tahsil Surajpur, District Surguja (C.G.)[Plaintiff]
4. The State of Chhattisgarh, through Collector, Surguja, Ambikapur, District Surguja (C.G.).....[Defendant No. 4] **---- Respondents / Plaintiffs**

For Appellant	:	Mr. A. K. Prasad, Advocate.
For Respondent No. 4 / State	:	Mr. Arun Sao, Dy. A. G.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****26/09/18**

1. This is defendants' second appeal under Section 100 of the Code of Civil Procedure, 1908 questioning the judgment and decree passed by the

First Appellate Court whereby the First Appellate Court has affirmed the judgment and decree of the trial Court decreeing the suit for declaration of title and partition and separate possession in respect of Schedule- A of the property.

2. The plaintiffs / respondents herein filed a suit for partition and separate possession in respect of agricultural land described in Schedule-A of the property. It was the case of the plaintiffs that the said property was self acquired property of Bishramdas who had three sons namely – Baccharaj, Sonsai and Faleshwar and one daughter Bhagrasiya. It is further their case that after the death of Bishramdas they have succeeded the property though the property was recorded in the names of three sons in the revenue records and they were separately possessing the different portions of the suit land but no partition had taken place so far as the suit property is concerned by metes and bounds. It was opposed by the defendants by filing written statement and it was pleaded that the partition has already taken place among the three brothers and Bhagrasiya is not entitled as the ornaments and cash were already given to her.

3. The trial Court decreed the suit holding that Baccharaj (Defendant No. 1), Faleshwar (Plaintiff No. 2) and Bhagrasiya (Plaintiff No. 1) are the owner of the suit land and each of them are entitled for 1/3 share in the suit property and the sale deed executed by defendant No. 1 in favour of defendant No. 5 on 03.09.2001 is illegal against the interest of plaintiff No. 1 and 2 and the same is not binding. The said finding has been affirmed by the First Appellate Court.

4. The trial Court as well as the First Appellate Court have concurrently held that no partition has taken place in metes and bounds between Baccharaj, Faleshwar and Bhagrasiya and each of them are entitled for 1/3 share in the suit property. The said finding recorded by the two Courts below holding that no partition has taken place between the parties is a finding of fact based on evidence available on record in which I do not find any perversity or illegality.

5. Accordingly, the second appeal deserves to be and is hereby dismissed *in limine*. No cost(s).

SD/-

(Sanjay K. Agrawal)
Judge