

HIGH COURT OF CHHATTISGARH, BILASPUR**SA. No. 83 of 2005**

Kartik Ram Aged about 52 years, S/o. Shri Johan Ram, R/o. Village – Potia, Tehsil & Distt. Mahasamund, Chhattisgarh.

---- Appellant

Versus

1. Smt. Sonai Bai widow of Mitthu Bhinjwar, Aged about 55 years.
 2. Smt. Ghurua, D/o. Mitthu Bhinjwar, Aged about 35 years.
 3. Smt. Jatri, D/o. Mitthu Bhinjwar, Aged about 32 years.
 4. Smt. Baishakhin, widow of Johan Ram, Aged about 71 years.
- All are R/o. Village- Potia, Tahsil & Distt. Mahasamund, Chhattisgarh.

---- Respondents

For the appellant : Mr. Kishore Bhaduri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/11/2018

1. Heard on question of admission of this second appeal.
2. This is plaintiff's second appeal under Section 100 of the Code of Civil Procedure, 1908. The plaintiff's suit for declaration of title and partition to the extent of $\frac{1}{2}$ of the suit property came to be dismissed by the trial Court holding that, it is the self-acquired property of Mitthu and plaintiff has not right, title over the suit land. The said finding recorded by the trial Court has been upheld by the learned First Appellate Court in an appeal preferred by the plaintiff against which this second appeal has been preferred by the appellant/plaintiff.
3. Mr. Kishore Bhaduri learned counsel for the appellant/plaintiff would submit that, both the Courts below are concurrently unjustified in holding that suit property was the self-acquired property of Mitthu- father of defendant No. 2 & 3 and husband of defendant No.1 and plaintiff has no right of partition. As such the finding recorded by the trial Court holding the property to be self-acquired property of Mitthu is perverse and contrary to the material available on the record. As such it gives rise to substantial question of law for determination in this second appeal.
4. I have heard learned counsel for the appellant/plaintiff and went through the record with utmost circumspection.

5. The trial Court while answering the issue No.5 after analyzing the evidence on record clearly recorded a finding that partition has already been effected between the plaintiff – Johan and Mitthu during the lifetime of Mitthu and suit property was purchased by Shri Mitthu and as such, it was his self-acquired property. The said finding has been affirmed by the learned First Appellate Court by analyzing the evidence available on record, which is purely a finding of fact based on record, which is neither perverse nor contrary to record. I do not find any substantial question of law involved in this second appeal for determination. Second appeal deserves to be and accordingly dismissed in limine without notice to other side, leaving the parties to bear their own cost(s).

Sd /-

(Sanjay K. Agrawal)

Judge