

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 154 of 2014**

1. Sarju Prasad S/o Late Samaru Satnami Aged About 61 Years
2. Smt. Nazrurin Bai W/o Samaru Satnami Aged About 80 Years

Both R/o Bharari, Tah. Takhatpur, Distt. Bilaspur C.G.

---- Appellants

Versus

1. Ganga Prasad Satnami Aged About 65 Years R/o Louda, Tah. Pathariya, Distt. Mungeli C.G.
2. Smt. Satyabhama W/o Premlal Aged About 45 Years
3. Smt. Satrupa W/o Munjan Banjare Aged About 35 Years
4. Ku. Anupa D/o Ganga Prasad Aged About 25 Years

No.2 to 4 are R/o House No. 565, Om Nagar, Near Rajeev Gandhi Chowk, Bilaspur, Tah. And Distt. Bilaspur C.G.

5. Udho Kashyap S/o Jagannath Kashyap Aged About 43 Years
6. Madho Kashyap S/o Jagannath Kashyap Aged About 42 Years
7. Keshav Kashyap S/o Jagannath Kashyap Aged About 39 Years

R/o Beside Ajeet Hotel, Telipara, Bilaspur, Tah. And Distt. Bilaspur C.G.

8. Additional Tahsildar Ganiyari, Tah. Takhatpur, Distt. Bilaspur C.G.
9. State Of Chhattisgarh Through The Collector, Bilaspur C.G.

---- Respondent

For Appellants	Shri Devesh Chandra Verma, Advocate
For Respondents No.1 & 2	None, despite service of notice <i>(as per office report)</i>
For Respondents No. 3 & 4	Shri Dharmesh Shrivastava, Advocate
For Respondents No.5, 6 & 7	Refused to accept notice <i>(as per office report)</i>
For Respondent/State	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board

By

Prashant Kumar Mishra J.

2/11/2018

1. This is plaintiffs' first appeal under Section 96 of the Code of Civil Procedure, 1908 challenging the judgment and decree passed by the trial Court dismissing their suit for declaration of title and permanent injunction.
2. One Samaru owned 3.333 hectares of land at village Bharari, PH No.12/20, Up-Tahsil Ganiyari, District Bilaspur. Samuru left behind his widow Nazrurin Bai, plaintiff No.2; son Sarju Prasad, plaintiff No.1; and daughter Saraswati Bai, the predecessor in interest of the defendants No.1, 2, 3 & 4.

Saraswati Bai was suffering from cancer, therefore, she was in need of funds for her treatment. She moved an application for partition of agricultural holdings under Section 178 of the Chhattisgarh Land Revenue Code, 1959 before the jurisdictional Additional Tahsildar, Ganiyari on 20-5-2011. Notice on this application was issued to the plaintiffs. Proclamation inviting objections from the members of public was also issued and, thereafter, when no objection was received either on behalf of the plaintiffs or by any other person the Additional Tahsildar passed an order on 12-8-2011 allotting the area of 2.74 acres to Saraswati Bai.

3. According to the plaintiffs, the partition has taken place behind their back, as they were never noticed by the Court of Additional Tahsildar. It is also pleaded that valuable property falling on road side has been allocated to the share of Saraswati Bai, therefore, for all these reasons the order of partition was illegal and void. The respondents No.1 to 4, therefore, had no right to dispose of the suit property admeasuring 0.88 acres out of 2.74 acres falling in the share of Saraswati Bai. Saraswati Bai had sold the said area to the defendants No.5 to 7 by sale deed dated 16-8-2011.

4. The defendant No.3 Smt. Satrupa, defendant No.4 Ku. Anupa and the defendants No.5 to 7 namely; Udho Kashyap, Madho Kashyap & Keshav Kashyap, respectively appeared before the trial Court to contest the suit. According to their averments in the written statement, the plaintiffs were noticed by the Additional Tahsildar, but they did not appear, therefore, there is no illegality in the order passed by the Additional Tahsildar. They also stated that Saraswati Bai being one of the legal heir of Samaru, she was entitled to succeed the property by virtue of the provisions contained in Section 6 read with Section 8 of the Hindu Succession Act, 1956.
5. The trial Court has found that there was no previous partition between the parties and Saraswati Bai, D/o Samaru being one of his legal heir was entitled to $\frac{1}{3}$ rd share in 8.24 = 3.333 hectares land, therefore, allotment of 2.74 acres lands to Saraswati Bai in partition ordered by the Additional Tahsildar is fully justified. The trial Court has also held that the sale deed dated 16-8-2011 having been executed after the order of partition on 12-8-2011 there is no illegality in the sale deed and the plaintiffs have failed to prove their case.
6. Learned counsel appearing for the parties have raised argument in favour of their respective cases.

7. The main thrust of argument of learned counsel appearing for the appellants is on the finding on issue No.3 & 5 inasmuch as, as per the appellants' counsel if there is finding that there was no partition between the parties, Saraswati Bai could not have sold any specific part of the joint property without there being any partition amongst the family members and the plaintiffs were entitled for permanent injunction. A careful reading of the finding recorded against issue No.3 would highlight that albeit the issue was framed as to whether there was any partition between the plaintiffs and Saraswati Bai, the finding is to the effect that there was no previous partition between them. It is in this context, the trial Court has further found that the order for partition passed by the Additional Tahsildar does not suffer from any infirmity and the plaintiffs have failed to prove that the order of the Additional Tahsildar was passed without giving opportunity of hearing to them.
8. In so far as the submission that the Additional Tahsildar has passed the order of partition without hearing the appellant, suffice it would be to mention here that the order of the Additional Tahsildar (Ex.P/1) clearly stated that the appellants were noticed, but they failed to appear. It is also mentioned that proclamation was issued but no objection was received by the Additional Tahsildar. The order would also reflect that

the Additional Tahsildar fixed the proceedings on at least 7-8 dates before passing the final order. Thus, the Additional Tahsildar has not proceeded in hot haste to see that the proceeding completes without appearance of the plaintiffs. If the plaintiffs were serious in contesting the issue about non service of notice to them it was open for them to have submitted document from the record of the Additional Tahsildar to prove that notice was never served on them, however, there is no document nor the order sheet of proceedings of before the Additional Tahsildar has been filed by the plaintiffs. In the absence of document, the statement made in the affidavit under Order 18 Rule 4 of the CPC being contrary to the contents of the order passed by the Additional Tahsildar, is not believable.

9. Since Saraswati Bai has not sold any area more than 2.74 acres, which was allotted to her in the order of partition passed by the Additional Tahsildar, the trial Court has rightly found that the plaintiffs have failed to prove their case.
10. As a sequel, the appeal, sans merit, is liable to be and is hereby dismissed.

Sd/-
Judge
Gowri Prashant Kumar Mishra

Sd/-
Judge
Vimla Singh Kapoor