

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 142 of 2008

Vidyesh Kumar Soni S/o. Laxmi Prasad, Aged about 47 years,
Caste Soni, R/o. Valoda, Tahsil Janjgir District Janjgir Champa (C.G.)

----- Appellant/ Defendant No.1

Versus

- 1(A) Ramesh Kumar Soni, S/o. Late Shri Dallu Prasad Soni, Aged about 58 years, R/o. Shyam Bazar, Kosgai Mandir Road, Sonarpara, Baloda, Police Station and Post Baloda, Civil and Revenue District Janjgir Champa (C.G.)
- 1(B) Ram Kumar Soni S/o. Late Shri Dallu Prasad Soni, Aged about 54 years, R/o. Sharma Vihar Khamtarai Road, Post Khamtari, Civil and Revenue District Bilaspur (C.G.)
- 1(C) Shiv Kumar Soni, S/o. Late Shri Dallu Prasad Soni, Aged about 50 years, R/o. Shyam Bazar Kosgai Mandir Road, Sonarpara, Baloda Police Station and Post Baloda, Civil and Revenue District Janjgir -Champa (C.G.)
- 1(D) Dinesh Kumar Soni S/o. Late Shri Dallu Prasad Soni, Aged about 41 years, R/o. Bhoi Mohalla, Purena Talab Road, Police Station and Post Baloda, Civil and Revenue District Janjgir -Champa (C.G.)
- 1(E) Pawan Kumar Soni S/o. Late Shri Dallu Prasad Soni, Aged about 37 years, R/o. Shyam Bazar Kosgai Mandir Road, Sonarpara, Baloda Police Station and Post Baloda, Civil and Revenue District Janjgir -Champa (C.G.)
- 1(F) Devendra Kumar Soni S/o. Late Shri Dallu Prasad Soni, Aged about 33 years, R/o. Shyam Bazar Kosgai Mandir Road, Sonarpara, Baloda Police Station and Post Baloda, Civil and Revenue District Janjgir -Champa (C.G.)

2 Chhote Lal died through LRs

2(A) Saroj Saraf Soni S/o. Late Chhotelal, Aged about 50 years,

2(B) Luv Saraf Soni, S/o. Late Chhotelal, Aged about 39 years,

Both above R/o. Ward No. 1, Ramsagar para, Korba, Post and Tahsil Korba District Korba (C.G.)

3. Radheshyam Soni S/o. Laxmi Prasad, Aged about 51 years,

4(A) Anita Bai Wd/o. Murli Manohar, Aged about 42 years,

4(B) Ku. Gayatri Soni D/o. Late Murli Manohar Soni, Aged about 26 years,

4(C) Manoj Kumar Soni S/o. Late Murli Manohar Soni, Aged about 24 years,

4(D) Mithlesh Kumar Soni, Late Murli Manohar Soni, Aged About 22 Years

(Respondent No. 4(A) to 4(D) are a legal representative of Late Murli Manohar Soni) Respondent No. 4(A) to 4(D) are a resident of Baloda, Tahsil Janjgir, District Janjgir Champa (C.G.)

5. Shyam Sunder S/o Shri Heera Lal, R/o Baloda, Tehsil - Janjgir, District - Janjgir Champa (C.G.)

6. Chandra Kumar S/o Heera Lal Aged About 36 Years

7. Bhupendra Kumar S/o Heera Lal Aged About 34 Years

8. Ravishankar S/o Heera Lal Aged About 30 Years

9. Sudarshan S/o Lakhan Lal Aged About 42 Years

10. Ramjhool S/o Lakhan Lal Aged About 40 Years

all are R/o. Baloda, Tahsil Janjgir, District Janjgir Champa (C.G.).

-----Plaintiffs

11. Ramgopal S/o Madhao Prasad, Aged About 52 Years, R/o Baloda, Tahsil Janjgir District Janjgir - Champa Chhattisgarh.

(Defendant No. 2)

12. Bharat Lal S/o Madhao Prasad Aged About 40 Years Caste Sonar, R/o Hanuman Chowk, Kaserpara, Champa, District Janjgir - Champa Chhattisgarh. (Defendant No. 3), District : Janjgir-Champa, Chhattisgarh
13. Chief Municipal Officer, Nagar Panchayat Baloda, Tahsil Janjgir, District Janjgir Champa Chhattisgarh. (Defendant No. 4), District : Janjgir-Champa, Chhattisgarh
14. Nagar Panchayat Baloda, Through President Nagar Panchayat Baloda, Tahsil Janjgir District Janjgir - Champa Chhattisgarh. (Defendant No. 5), District : Janjgir-Champa, Chhattisgarh
15. State Of Chhattisgarh, Through Collector, Janjgir, District Janjgir - Champa Chhattisgarh. (Defendant No. 6), District : Janjgir-Champa, Chhattisgarh
16. Jagannath S/o Lakhan Lal Aged About 46 Years Caste - Soni, R/o Baloda, Tahsil Janjgir District Janjgir Champa Chhattisgarh. (Defendant No. 7), District : Janjgir-Champa, Chhattisgarh
17. Digambar S/o Lakhan Lal Aged About 44 Years Caste - Soni, R/o Baloda, Tahsil Janjgir District Janjgir Champa Chhattisgarh. (Defendant No. 8), District : Janjgir-Champa, Chhattisgarh

---- Respondents

For the Appellant	:-	Mr. Anurag Singh, Advocate
For the Respondent	:-	Mr. Vivek Tripathi, Advocate
For the Respondent No. 15	:-	Mr. Anmol Sharma, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By
Manindra Mohan Shrivastava, J.

08.07.2019

1. This appeal is directed against the impugned judgment and decree dated 07.05.2008 passed by District Judge, Janjgir Champa in Civil Suit no. 02-A/2007 whereby the plaintiffs' suit for declaration and permanent injunction has been decreed by the learned trial Court.
2. This is defendants' appeal. Respondent Nos. 3 to 10 (including deceased No. 1 and 2) filed civil suit against the appellant/defendant No.1 and other defendants seeking declaration of title and injunction on the pleading inter-alia that the property in dispute situated in three khasra numbers, total area admeasuring 1.39 ½ acres, form part of joint family property and continued to be jointly recorded in the name of Madho Prasad, Laxmi Prasad, Lakhan Lal, Chhotelal, Dallu Prasad and Heera Lal till 1995. The plaintiffs came to know that the defendant No.1, without notice and knowledge of the plaintiffs, got his name fraudulently mutated in the revenue records on 07.02.1995. The plaintiffs came to know about the said mutation order on 12.03.2007, where-after, an appeal was also filed. It was pleaded that the defendant No.1 succeeded in his design on the basis of an unregistered and forged relinquishment deed. It was further pleaded that the so called relinquishment deed dated 11.06.1992 is illegal, void and therefore, entire proceedings of mutation order passed in appeal are all illegal. It was also pleaded that the defendant

No.1 acting upon in collusion with defendant Nos. 2,3,7 and 8 submitted application claiming payment of compensation against the acquisition of land before the Land Acquisition Officer, Janjgir and is trying to collect the entire amount of compensation in respect of acquisition of joint property which has not so far been partitioned and continued to be the joint family property.

On the said pleadings a declaration was sought that the property in dispute is joint family property and in joint occupation of plaintiffs along with defendant Nos. 1,2,3, 7 and 8 and further that the defendant 1,2,3,7 and 8 be restrained from transferring the land to the Nagar Panchayat and the Panchayat be also restrained from paying compensation to defendant Nos. 1,2,3,7 and 8.

3. The defendant No.1 in his separate written statement, however, came out with a case that partition had already taken place, though, the revenue records disclosed the joint name which was ultimately corrected by appropriate order of mutation. It was pleaded that in respect of land in dispute, only defendant No.1 Videsh Kumar is entitled and defendant Nos. 2,3,7 and 8 have no share because this property was received by defendant No. 1 from his father Laxmi Prasad. Laxmi Prasad was allotted his share to the joint family property under partition and family settlement on the basis of which record were also mutated in the year 1995. Mutation was ordered after due notice to other shareholders of joint family property namely Dattu Prasad,

Heera Lal, Chhotelal and heirs of late Lakhan Lal. The 5th brother of Dallu Prashad, Heeralal, Chhotelal and Laxmi Prashad.

4. Learned trial Court had initially framed five issues and later on one additional issue with regard to limitation was also framed which are as under:-

उभयपक्ष के अभिवचनों के आधार पर मेरे द्वारा निम्नलिखित वादप्रश्न निर्मित किये गये जिनके सक्षम निष्कर्ष अंकित हैं:

क्र०	वाद प्रश्न	निष्कर्ष
1	क्या ग्राम बलौदा स्थित भूमि खसरा नम्बर 3035/1 रकबा 0.69 एकड़ खसरा नम्बर 3454/1 रकबा 0.01 एकड़ खसरा नम्बर 3579/1 रकबा 0.69—1/2 भूमि वादीगण और प्रतिवादीगण क्र. 1,2,3 एवं 7,8 की पैत्रिक भूमि है ?	हाँ प्रमाणित
2	क्या प्रतिवादी क्र.1 ने वादीगण की जानकारी के बगैर उक्त भूमि का नामान्तरण दिनांक 07.02.1995 को करा लिया ?	हाँ प्रमाणित
3	क्या वादीगण को उपरोक्त नामान्तरण की जानकारी दिनांक 12.03.2007 को हुई ?	हाँ प्रमाणित
4	क्या दिनांक 11.06.1992 को कोई भी हकछोड़ पत्र वादीगण एवं उनके पूर्वजों द्वारा निष्पादित नहीं किया गया है?	हाँ प्रमाणित
5	सहायता एवं व्यय ?	वादी का घोषणा एवं स्थायी निषेधाज्ञा का वाद स्वीकार किया गया।

अतिरिक्त वाद प्रश्न:—

1	क्या वादी का वाद समयावधि में है ?	दावा समयावधि में है।
---	-----------------------------------	----------------------

5. On the first issue as to whether the property in dispute is ancestral property of the plaintiffs and private defendants, learned trial Court, in view of the pleading of the parties, recorded a finding that all the parties initially constituted joint family property as the defendants failed to prove that there was valid partition in which the disputed property was allotted to share of Laxmi Prasad. Defendant No. 1 Videsh Kumar S/o. Laxmi Prasad failed to establish partition and therefore, the entire property would be treated as the joint family property.
6. On fourth issue as to whether a relinquishment deed dated 11.06.1992 was executed by predecessor in title of the plaintiff, learned trial Court recorded findings that the defendant also failed to prove any such relinquishment deed. Learned trial Court, on issue Nos. 2 and 3 also recorded findings that the defendant No.1 got the property mutated on 07.02.1995, without notice and knowledge of the plaintiff and it came to the notice and knowledge of the plaintiffs only on 12.03.2007. These findings of fact, relates to finding on the aspect of limitation that as the plaintiff came to know about the mutation only on 12.03.2007, the suit was within the limitation, thereby rejecting the defendants case that the plaintiff having come to know about the mutation proceedings and the order passed by the Sub Divisional Officer by 1997, the suit was beyond the period of limitation prescribed in the Article 58 of the Schedule appended to Limitation Act.

7. Assailing legality and validity of the impugned judgment and decree of the trial Court, learned counsel appearing for the appellant/ defendant No.1 would argue that the learned trial Court while recording the findings on the aspect of limitation has ignored admission of both Dattu Prashad and Chhotelal. The two plaintiffs, in their respective evidence before the Court have admitted that they signed Vakaltnama Ex.D-3, which was filed by their counsel DW-4 in the appellate proceedings which culminated in compromise and settlement between the parties. He would argue that the appeal was filed by Heera Lal and therefore, the heirs of Heera Lal namely Murlimanohar, Shyam Sundar, Chandra Kumar, Bhupendra Kumar, Ravishankar, plaintiffs No. 4,5,6,7, and 8 respectively could not be heard saying that they had no knowledge because they take their share only through their father Heera Lal. It is next submitted that Radheshyam plaintiff No. 3, is the son of Laxmi Prashad. In the mutation proceedings, property in dispute were recorded in the name of Laxmi Prashad and as Radheyshyam could take his share only from his father Laxmi Prashad, who was beneficiary of mutation proceedings, he would not have raised his grievance much less claim ignorance of mutation proceedings which culminated in favour of his father Laxmi Prashad. It is next submitted by the learned counsel for the appellant that Sudarshan and Ramjhul, plaintiffs No. 9 and 10 respectively, who were sons of late Lakhan Lal (brother of Dattu Prashad, Chhotelal, Heera Lal and Laxmi Prashad) were served with the

notices in mutation proceedings and they were fully in notice and knowledge of mutation proceedings. In the appeal which was filed before the SDO in the year 2007, nowhere it was alleged that order of 1997 in appeal was passed or the proceedings were drawn without notice and knowledge of Sudarshan and Ramjhul. In the entire memo of appeal, Sudarshan and Ramjhul, along with other plaintiffs only challenged the mutation order of 1995. Therefore, the appellant succeeded in proving that the suit of the plaintiffs was barred by limitation.

8. It is next submitted by the learned counsel for the appellant that as far as factum of partition is concerned, the defendants have not only pleaded but also proved from the oral, documentary evidence that long back, a partition had already taken place. The defendant apart from the oral evidence have placed on record number of sale deeds executed by Laxmi Prashad by which, small parcel of the property in dispute was sold by him to different person from time to time, but no objection was ever raised by the plaintiffs. He would further argue that all the plaintiffs' witnesses have admitted that partition had taken place but the dispute that only the suit property remained unpartitioned is highly improbable because out of extensive property, every thing was partitioned, there is no reason why only a part of it would remain unpartitioned. His further argument is that in the evidence it has come that various parcels of the dispute property were sold to the

different persons, houses have been constructed and corporation also constructed road, drainage but none of the plaintiffs at any point of time, raised any dispute and the plaintiffs witnesses particularly Chhotelal and Dallu Prashad have no idea about the present status of the land as to whether the land diverted or not and what kind of activities are going on. They have admitted that when the parcel of so called joint property was acquired by the Nagar Panchayat for construction of road and drainage, the plaintiffs did not raise any objection at any point of time. Therefore, the defendants have proved that since long, the parties had partitioned and they were in possession of their respective shares and selling and protecting their respective shares.

9. Learned counsel appearing for respondent/ plaintiffs would argue that the learned trial Court had decreed the suit of plaintiff holding that as the property admittedly was an ancestral property, defendant No. 1 Videsh Kumar was required to prove the same but he has failed to lead any clinching evidence of partition but only on the basis that some of the parties were subjected to partition and they enjoyed the same separately, has come out with the case of partition. He would next argue that the learned trial Court has clearly recorded findings that the mutation proceedings were drawn and order was passed without proper notice and further that the pendency of appeal at the instance of Heeralal against Laxmi Prashad as well as Videsh Kumar was not known to all the

parties. Mere admission of signature on Vakalatnama could not mean that the plaintiffs had notice or knowledge of passing of order of mutation or pendency of an appeal much less passing of an order in appeal. Therefore, the judgment and decree passed by the trial Court does not warrant any interference.

10. The plaintiffs' pleading is that the property in dispute admeasuring 1.39 ½ acres situated in three khasra numbers form part of ancestral property. According to the defendants also, it constituted part of ancestral property, therefore, one thing is clear that the property in dispute, earlier constituted as an ancestral property. The defendant, however, has come out with the case that a partition had taken place, therefore, the burden was on the defendants to prove the factum of partition.
11. At this stage, we may hasten to add that only defendant No.1 Videsh Kumar had filed his written statement. Sons of Madho Prashad namely Ramgopal and Bharat Lal defendant Nos. 2 and 3, Jagannath and Digambar sons of Lakhan Lal did not file any written statement, they were proceeded as *ex-parte*.

According to the plaintiffs, the property belonging to Madho Prashad, Laxmi Prashad, Lakhan Lal, Dallu Prashad, Heeralal and Chhotelal was an ancestral property. The family tree as has been shown in the plaint, to that extent shows the relationship and lineage has not been disputed. Dansai and Kunjram were brothers, Kunjram had one son Madho Prashad whereas Dansai has five sons namely Laxmi Prashad, Lakhan Lal, Dallu Prashad,

Heeralal and Chhotelal. According to plaintiffs' pleadings, sons of Dansai and the sons of Madho Prashad, all were living jointly and held joint ancestral property. According to the plaintiffs, no partition had taken place and certain mutation orders were passed behind their back which was not within their notice and when they came to know about the same, they moved an appeal before the Sub Divisional Officer. Dismissal of the appeal gave them cause of action to file this suit.

12. According to pleadings of defendant No.1, he received property in dispute by succession from his father Laxmi Prashad and the property in dispute fell to the share of father of Laxmi Prashad to the exclusion of all. According to him, in favour of Laxmi Prashad, on the basis of a relinquishment deed of 1992, an order of mutation was passed by the mutation officer on 07.02.1995 and later on, a compromise had taken place in the appeal filed by the Heera Lal and the dispute between them was set at rest and all the parties were enjoying their property separately. Videsh Kumar defendant No.1, who has been examined as defendant witness has stated the aforesaid facts in his affidavit under Order 18 Rule 4 CPC. In support of his oral evidence of partition having taken place, the records of mutation proceedings which culminated in passing of mutation order on 07.02.1995 including relevant part of mutation register, issuance of notices, acknowledgment of receipt of notices by Heeralal, Dallu Prashad, Chhotelal and legal heirs of deceased Lakhan Lal namely Jagannath, Digambar, Sudarshan

and Ramjhul. The notices and acknowledgment of receipt have been filed as Ex-D-30 to Ex. D-34. In addition, publication, Ex. D-35 has also been produced. Ex.D-36, certified copy of mutation register also supports the case of the defendant that under family settlement, the land in dispute was allotted to the share of Laxmi Prashad. The defendants have also led in evidence, number of sale deeds as Ex.D4-1, Ex.D4-2, Ex.D4-3, Ex.D4-4 and Ex.D4-5. These sale deeds record sale of a part of the ancestral property being small parcel, from time to time by Laxmi Prashad, in favour of different persons, during the period 1989-90. This would show that in the year 1989-90, itself, Laxmi Prashad had sold different parcel of land which form part of that property which has been shown to be allotted to his share. At no point of time, any of the plaintiffs much less Heeralal or Lakhan Lal ever raised any objection to these sales and purchases.

13. Videsh Kumar DW-1, has further deposed in his evidence that Heeralal filed an appeal against his father Laxmi Prashad and other shareholders in the Court of SDO Janjgir, and in that appeal, a compromise was arrived at on 29.07.1997 in which, all the parties including Heeralal, admitted the property in dispute belonging to the exclusive share of Laxmi Prashad. It is relevant to note that the appeal against mutation order dated 07.02.1995 was filed by Heeralal and therefore, there is no doubt that Heeralal had not only notice of the order of mutation but he had taken the remedy against the same before the SDO.

If that be so, how could the plaintiffs No.4,5,6,7 and 8, the successor of Heeralal could exception to the proceedings and claim that no settlement had taken place between their father Heeralal in the year 1997. Once father of these plaintiff himself had taken remedy and having arrived at settlement of the dispute in the year 1997, the plaintiffs, being sons of Heeralal, could not revert back after the death of their father to say that the partition was done without notice. They all are claiming through their father Heeralal.

14. As far as Dallu Prashad and Heeralal are concerned, both of them have admitted in their cross examination that they filed Vakalatnama Ex. D-3 which was given to their counsel DW-4. That means both Chhotelal and Dallu Prashad had full notice and knowledge of the mutation order dated 07.02.1995. DW-4, the concerned advocate who represented Laxmi Prashad and others in appeal filed by Heeralal has clearly deposed in his evidence that he was engaged and he had filed his Vakalatnama in the appeal before the Sub Divisional Officer.

15. Thus, as far as Dallu Prashad and Chhotelal are concerned, it is proved that both of them had full notice and knowledge of the proceedings. An order based on compromise entered into between Heeralal, and Laxmi Prashad was passed in the year 1997.

16. Videshkumar DW-1 has also deposed in his evidence that Nagar Panchayat Baloda encroached upon a part of the land which fell

to share of Laxmi Prashad. He has further deposed that against the proceeding drawn by Nagar Panchayat, his father had raised objection on 11.03.1995 and thereafter, he had raised objection and was contesting the matter with the local body and also claimed compensation from the government.

17. PW-1, in his cross examination, has admitted that the land on which, local body constructed road and drainage did not belong to his share. He admitted that the corporation constructed road and drainage on the disputed property. He further stated that he never got the measurement done as to how much property was encroached upon by the Nagar Panchayat.

18. The defendant's case that a partition of the family property had already taken place is also supported from the evidence of both PW-1 and PW-2 because, both of them, in their evidence, have clearly admitted that partition had earlier taken place and they all were occupying their separate property share, however, they deny partition only of the disputed property which is a small portion, by stating that on this land, a mango orchard was developed which used to be jointly enjoyed by all of them. Once the two plaintiffs have already admitted in their cross examination that extensive joint family property had already been partitioned, their case that it was only a partial partition and a part of it namely the disputed party alone continued in jointness, was essential a burden required to be discharged by the plaintiffs and not the defendants. We have also seen from the evidence on record that when the plaintiffs No.1 and 2 who

were examined as witnesses were asked about the nature and status of the land, they are unable to give any description, though they admit that part of it has already been sold and certain houses have been constructed.

19. Therefore, on preponderance of probability, the evidence as has come on record proves that the property had already been partitioned in the past not only amongst the five sons of Dansai and one son of Kunjram namely Madho Prashad, but later on, even amongst the sons of Dansai, partition had taken place and and that is why they all started enjoying their shares separately, though the mutation of record had taken place on 07.02.1995 on the application filed by Laxmi Prashad. Not only this, the proceedings of mutation as well as order passed in the appeal in the year 1997, was known to all the shareholders which included Dallu Prashad, Chhotelal, Heeralal and sons of Lakhan Lal namely Sudarshan and Ramjhul. The mutation notices proved that it was served on Jagannath and Digambar also. It is worth noticing that when appeal was filed before the SDO in the year 2007 by all the plaintiffs, no ground was taken that the plaintiffs has no notice or knowledge of the order passed in appeal in the year 1997 which was based on compromise and settlement between Heeralal and Laxmi Prashad. The grounds raised in the appeal centered around dispute with regard to proper opportunity in the mutation proceedings and not in the appellate proceedings. It is thus quite apparent that the mutation proceedings and order passed

therein was not challenged by any of the parties, though, within their notice and knowledge, after about 10 years, an appeal was filed before the Revenue Authority and after dismissal Civil suit was filed in the year 2007. Cause of action had first arisen on 07.02.1995 when mutation order was passed and thereafter on 10.11.1997.

20. As per the provisions contained in Article 58 of the limitation Act, a suit for declaration that the mutation proceedings are illegal was required to be filed within a period of 3 years. It indeed gave a cause of action to the plaintiff to file a suit for declaration regarding jointness of the property in dispute. That having not been done, the suit was barred by limitation.

21. In view of aforesaid consideration, the findings of learned trial Court both on issue no. 1, 2, 3 and the additional issue No. 1 are reversed. It is held that ancestral property was already partitioned and the plaintiffs had full notice and knowledge of the mutation order dated 07.02.1995 and also that suit is barred by limitation. There is finding recorded by the trial Court with regard to so called relinquishment deed dated 11.06.1992. The said relinquishment deed could not be proved by the defendants. However, that would not affect the ultimate result of the case, because we have found that the partition had already been taken place and the suit filed by the plaintiffs was barred by the limitation. Appeal is therefore, allowed and the impugned judgment and decree passed by the trial Court is set aside and the plaintiffs suit is dismissed.

22. Let appellate decree be drawn accordingly.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge

santosh