

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.629 of 2000**

1. Sukari (Died) Through Legal Heirs As Per Hon'ble Court Order Date- 15-02-2019.
2. Sukhram (Died) As Per Honble Court Order Date- 15-02-2019.
 - 2.1 - (I) Lalita Wd/o Late Sukhram Aged About 65 Years R/o Village Katuri, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh
 - 2.2 - (II) Shatrughan S/o Late Sukhram Aged About 35 Years R/o Village Katuri, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh
 - 2.3 - (III) Sonadhar S/o Late Sukhram Aged About 32 Years R/o Village Katuri, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh
3. Jalandhar S/o Budhru Aged About 34 Years R/o Village Kasturi, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh
4. Purandar S/o Budhru Aged About 32 Years R/o Village Kasturi, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh
5. Basant S/o Budhru Aged About 27 Years R/o Village Kasturi, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh

---- Appellants**Versus**

1. Ratan Nishad S/o Budhu Aged About 52 Years R/o Village Kasturi, Tehsil Jagdalpur District- Bastar, Madhya Pradesh., Madhya Pradesh
2. (A) Raila Wd/o Late Baliram Aged About 45 Years R/o Village Kasturi, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh
 - 2.1 - (B) Raras S/o Late Baliram Aged About 5 Years
3. Maniram S/o Matiram Aged About 19 Years R/o Village Kasturi, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh
4. Chamru S/o Samuda Aged About 45 Years R/o Village Kasturi, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh
5. Somaru @ Liti S/o Samuda Aged About 40 Years R/o Village Kasturi, Tehsil Jagdalpur, District- Bastar, Madhya Pradesh., Madhya Pradesh
6. State Of Madhya Pradesh Through Collector Bastar, Jagdalpur, Madhya Pradesh., Madhya Pradesh

---- Respondents

For Appellants : Shri Prafull Bharat , Advocate

None for Respondent No.1 to 5.

For State/respondent No.6: Shri Anmol Sharma, Panel Lawyer

Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava

JUDGMENT ON BOARD

10/07/2019

Heard.

1. This appeal is directed against the impugned judgment and decree dated 07-02-2000 passed by the 3rd Additional District Judge, Bastar at Jagdalpur in Civil Appeal No.27-A/1999, by which, the learned lower appellate Court has reversed the judgment and decree dated 28-04-1999 passed by the learned Civil Judge Class II, Jagdalpur in Civil Suit No.87-A/1998 and thereby dismissed plaintiff's suit.

2. This appeal was admitted for hearing on the following substantial question of law:-

“Whether the finding of the lower appellate Court relating to partition of share owned by Chaitan amongst legal representatives of Chaitan and his brother Laikhan is perverse?”

3. The appellant-plaintiff filed a suit seeking declaration and possession on the pleadings inter alia that the plaintiff No.1-Sukri and plaintiff's No.2 to 5, her sons, are successors of one Chaitan. In the plaint, it was pleaded that Magar had two sons Laikhan and Chaitan. After death of Magar, his property devolved upon his two sons and later on, joint property was partitioned between them. After death of Chaitan, his property devolved upon his wife Mahari (mother of Sukari) and Sukari-plaintiff No.1. Mahari and Sukari were being helped by male members of their family, being sons, namely, Budhu and Mahadev. Later on, after death of Mahari, Sukari succeeded to the entire property of her father Chetan. Other male members of the family, particularly Budhu and Mahadev were helping Mahari also in managing agriculture activities. Later on, when

Budhu started interfering and objected to cultivation by Sukari and her sons, upon inquiry, Sukari came to know that without notice and knowledge, after death of Mahari, along with Sukari, names of other persons namely, Budhu and Mahadeva were also mutated in the revenue records in the year 1963 and on that basis, without her notice and knowledge, a partition was also done in the revenue records in certain revenue proceedings, in which, an order was passed on 24.03.1969. She also came to know that thereafter, mutation in revenue records were also recorded in 1977. Interference in agricultural activities by the defendants and so-called partition proceedings/mutation gave the plaintiff cause of action to file a suit and seek declaration to the effect that the agricultural land described in Schedule "क", appended to the plaint belong to the plaintiff and he be declared titleholder and they be placed in possession of the land described in Schedule "ग" and "घ" appended to the plaint. A relief of injunction restraining defendants was also prayed for.

4. Defendants 3, 4 and 5 namely Budhu, Baliram and Maniram alone filed their written statement, in which, though the family genealogy was admitted, it was pleaded that Mahari was married to Laikhan and after his death, she was married to Chaitan. According to the defendants, the property in dispute, after death of Mahari, came to be recorded not only in the name of Sukari, but also, two other defendants, as it was joint family property and later on, after death of Mahari, a partition has also taken place. In partition proceedings, the plaintiff-Sukari has admitted partition and shares received by the plaintiff, defendant Budhu son of Sahadev and Mahadev, the defendants. The plaintiff-Sukari herself received 2.74 acres of land and the plaintiff Sukari and defendant-Mahadev were cultivating their respective shares since then, without any dispute and later on, in the year, 1977, mutation has also been done. Therefore, the plaintiff-Sukari, who had never disputed the partition proceedings in the past

and as partition was done only upon she consenting to and admitting shares of others, the suit was liable to be dismissed.

5. Learned trial Court, having framed issues and allowing parties to lead evidence, decreed the plaintiffs suit holding that the property in dispute situated in 4 Khasra numbers i.e. 49, 152, 168 and 137/11 shown in Appendix "क" belonged to Chetan and after his death, his wife Mahari and daughter-Sukari succeeded to his property and thereafter, upon death of Mahari, the entire property ad-measuring 7.88 acres was received by the plaintiff-Sukari and defendants-Budhu & Mahadev or any one of them had no title in respect of these lands, because the defendants admitted that these properties belonged to Chaitan after partition between Chaitan and Laikhan. Upon appeal being preferred by the defendants, the learned lower Appellate Court reversed the judgment and decree passed by the learned trial Court. The learned lower Appellate Court relied mainly upon the partition proceedings and recorded a finding that the plaintiffs and defendants were having joint family property, which they were cultivating jointly and after death of Mahari, name of Sukari was recorded along with defendants-Budhu & Mahadev. The learned Lower Appellate Court found that the property remained in joint possession and cultivation followed by partition in partition proceedings, in which, the plaintiff Sukari had also participated and admitted share of Budhu and Mahadev also, on the basis of which, the Tahsildar passed an order on 28.04.1969 effecting partition. This was not challenged by the plaintiff. Later on, in the year-1977, mutation was done in the revenue records and thus, the plaintiff Sukari and other co-shares, who had partitioned the property in the year 1969, continued to cultivate their own property, therefore, the plaintiff was not entitled to any decree.

6. Learned counsel for the appellant raised pointed submission that the

defendants have admitted that after death of Magar, his two sons, namely, Chaitan and Laikhan had effected partition and further that, after death of Chaitan, property described in Schedule “क” was recorded in the name of Mahari. He would argue that this admission clearly proves that whatever was received in the hands of Mahari was that property, which she received along with her daughter-Sukari being successors of the deceased-Chaitan. As partition between Chaitan and Laikhan was admitted, the successors of Lekhan namely Budhu and Mahadev or any other successors of Laikhan, his three sons had no interest. The descendants of Laikhan including Mahadev and Sahadev had no legal interest in so far as property belonging to Chaitan is concerned. He would further argue that the partition proceedings did not confer any title on defendants-Budhu and Mahadev. The plaintiff-Sukari has clearly deposed that she was kept in dark and she had no notice or knowledge of such proceedings, therefore, partition of holdings and property, which exclusively belonged to Sukari as successor of her father Chaitan and mother-Mahari, could not be partitioned and given in the hands of successor of Lekhan namely Mahadev and Budhu son of Sahadev. There is no representation made by the defendants/respondents in this appeal, though they all have been served.

7. From the pleadings contained in the written statement, this Court finds that it is an admitted position that Mangar had two sons namely Chaitan and Laikhan. The family genealogy, as has been described in para 2 and the Schedule appended to the plaint, has also not been disputed. It is also an admitted position that after death of Mangar, Laikhan and Chaitan effected partition of the joint family property amongst them. This specific pleadings made in para 5 of the plaint has been admitted by the defendants No.3 to 5 in their written statement regarding partition of ancestral property between Laikhan and Chaitan.

Another admitted position from the pleadings of the parties is that Laikhan was initially married to Mahari and after his death Mahari married to Chaitan, younger brother of Laikhan. Sukari is the daughter, borne out of the wedlock of Chaitan and Mahari, which is an admitted position on record.

8. The defendants in the present case are descendants of Laikhan. Admittedly, Laikhan was survived by three sons Mahadev, Sahadev and Samunda. Chamru and Somaru are sons of Samunda and Budhu is son of Sahadev. After death of Mahadev, he is survived by two sons Baliram and Maniram.

9. From the aforesaid admitted position obtaining on record, on the basis of the pleadings of the parties, it is clear that after death of Chaitan, his property which consisted of self acquired property and those received upon partition of ancestral property, would devolve upon his wife and Sukari, the only daughter and the descendants of Laikhan namely Samunda, Mahadev, Sahadev and their sons and daughter would have no claim in so far as property of Chaitan is concerned.

10. In para 7 of the plaint, it has been clearly pleaded that after death of Chaitan, property which belonged to him and described in Schedule “३” of the plaint was recorded in the name of his wife Mahari. This pleading regarding Mahari succeeding to the property of Chetan as shown in Schedule “३” appended to the plaint, has been admitted by the defendants in their written statement. It has been specifically pleaded as admission that after death of Chaitan, his property was recorded in the name of his widow-Mahari.

11. The aforesaid admission on the part of the defendants goes to prove, without requiring any further evidence to be led in this regard that the property held by Mahari in her hand, was that, which she succeeded from her husband Chaitan. The description of this property as described in Schedule “४” of the

plaint has also been admitted. Schedule “क” of the plaint refers to lands comprised in four Khasra numbers and the extent of land comprised in each Khasra number. According to this description, in Khasra numbers 49, 152, 168 and 137/11, total 7.88 acres of land is situated. The admission on the part of the defendants is that this property belonged to Chaitan and after his death, Mahari his wife, succeeded to his property. Therefore, apparently this property belonged only to the branch of Chaitan. In view of the admitted position on record that after death of Mangar, Laikhan and Chaitan were holding the ancestral property, whatever was received by partition, in the hands of Chaitan and what was his self acquired property during his life time, could not be claimed by the descendants of Laikhan. The descendants of Laikhan including the defendants in the suit, can claim only that property which fell to the share of Laikhan and which after his death, devolved upon his three sons namely Samunda, Mahadev and Sahadev and thereafter, their lineal descendants.

12. In the written statement, all that the defendants have stated that after death of Chaitan, they were also engaged in cultivating the land in dispute along with Mahari. Their entire case is based on revenue entries that after death of Mahari, name of defendants-Budhu son of Sahadev and Mahadev son of Laikhan also came to be recorded jointly and that they were cultivating the land along with Sukari, after death of Mahari. The defendants' case appears to be based only on the order passed on 28.04.1969 by the Tahsildar effecting partition of holdings amongst Sukari, Budhu and Mahadev. The order dated 28.04.1969 passed by the Tehsildar Exhibit P-12 (also filed as Ex.D-1) shows that it is the property comprised in Khasra No.49, 152, 168 and 237, which was apportioned amongst Budhu, Mahadev and Sukari. Mere allotment of land in revenue partition proceedings, could not confer any title on the defendants. Once it has been established that the property in dispute comprised in Khasra

Nos. 49, 152, 237 and 168 as described in Schedule “क” belonged to Chaitan and after his death which, by operation of Law of Succession, devolved upon his wife Mahari and recorded in her name, after death of Mahari, alone successor-Sukri succeeded to this property. This property belonged to Chaitan and not Laikhan, therefore, the descendants of Laikhan have no claim or interest in respect of property in dispute. Accordingly, the learned lower appellate Court committed patent illegality and perversity in ignoring admitted position on record as contained in the pleading with regard to property in dispute being inherited, which belonged to Chaitan as per the admission of the defendants themselves. Only on the basis of partition in revenue proceedings, that the defendants, who were descendants of Laikhan, could not claim any title or interest over the property in dispute. Revenue proceedings and entries made therein are not the documents of title nor they create title. Partition proceedings are valid only to the extent it effects partition amongst joint owners. Partition would not create title, if a party had no title in the property. The substantial question of law is accordingly answered in affirmative.

13. Therefore, in view of the above consideration, the impugned judgment and decree passed by learned Lower Appellate Court is set aside and decree passed by the learned trial Court is restored. Let a decree be drawn accordingly.

SD/-
(**Manindra Mohan Shrivastava**)
JUDGE