

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 106 of 2004**

Bhagela, aged about 55 years S/o Late Shri Sarha, Resident of Village Chanderi, P.H. No. 11, R.I. and Tahsil Simga, Distt. Raipur, Chhattisgarh.

---- Appellant/Plaintiff**Versus**

1. Motilal, Aged 45 years, S/o Late Shri Sarha.
2. Shukalu, Aged 50 years, S/o Late Shri Sarha.

Both Residents of Village Chanderi, R.I. & Tahsil Simga, District Raipur, Chhattisgarh.

3. State of Chhattisgarh, Through The Collector, Raipur, Chhattisgarh.

----Respondents/Defendants

For Appellant	:	Mr. M.D. Sharma, Advocate
For Respondents No. 1 & 2	:	Mr. Anand Ku. Gupta, Advocate
For State	:	Ms. Shivali Dubey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****05.08.2019**

1. The substantial question of law involved, formulated and to be answered in this plaintiff's second appeal state as under:

“Whether the findings are perverse as the pleading were absent claiming the property to be the sole property of defendant which devolved on them by partition?”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. Plaintiff as well as defendants No. 1 and 2 herein are all brothers.
- The suit property is part of a land which was purchased by their

father namely Sarha, in his lifetime, in the name of all three brothers from Budhiyar in by a registered sale deed dated 17/01/1957.

3. Plaintiff brought a civil suit bearing No. 51A/2001 holding that the suit property bearing khasra No. 1845 with an area of 0.40 hectares is the joint family property of plaintiff and defendants No. 1 and 2, therefore, a bare declaration be granted in his favour, which the defendants controverted by filing written statement stating *inter alia* that the suit property has already been partitioned and after partition, it fell in the share of defendant No. 1, therefore, the civil suit deserves to be dismissed.
4. Learned trial Court, after appreciating the oral and documentary evidence on record, by its judgment and decree dated 06/09/2003, held that the suit property, which has already been partitioned, fell in share of defendant No. 1 and therefore, plaintiff is not entitled for decree.
5. Assailing the judgment and decree passed by learned trial Court, plaintiff preferred a civil appeal before the first appellate Court bearing No. 39A/2003. Learned first appellate Court agreed with the findings of the trial Court and by its judgment and decree dated 23/01/2004 dismissed the appeal.
6. Being aggrieved by the judgment and decree passed by the trial Court, as affirmed by the first appellate Court, this second appeal has been preferred by the plaintiff in which substantial question of law has been formulated and set out in the opening paragraph of the judgment.
7. Mr. M.D. Sharma, learned counsel appearing for the plaintiff would submit that the concurrent findings recorded by both the Courts

below holding that the suit property is a part of the land which fell in the share of defendant No. 1 after partition, is perverse and contrary to record and as such, it deserves to be set aside.

8. Mr. Anand Ku. Gupta, learned counsel appearing for the defendants, while supporting the impugned judgment and decree passed by the first appellate Court, would submit that the second appeal deserves to be dismissed.
9. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
10. It is a case of the plaintiff that the property held by their father – Sarha, was partitioned and particularly, the suit property was purchased by their father in the name of all the three brothers i.e. the plaintiff as well as defendants No. 1 and 2 therefore, he is entitled to have joint possession over the suit property along with defendants No. 1 and 2.
11. Learned trial Court did not accept the plea of the plaintiff and returned a finding that the suit property, in which partition has already taken place, fell in the share of defendant No. 1 therefore, he is in possession of the suit property and dismissed the civil suit filed by the plaintiff, which was agreed upon by learned first appellate Court. As such, the concurrent finding recorded by both the Courts below holding that the suit property, after partition, fell in the share of defendant No. 1 is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record. The question of law, so framed in this second appeal, is answered in favour of defendant No. 1 and against the plaintiff.

12. Accordingly, the second appeal deserves to be and is hereby dismissed. No order as to cost(s).

13. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)

Judge

Harneet