

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 301 of 2004**

Gafoor Khan, S/o Ramzaan Khan, aged about 45 years, Caste – Musalman, Occupation Agriculture, Resident of Village Belkharikha, Tahsil Ambikapur, Distt. Surguja, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Smt. Ashikoon, Widow of Late Abzaan, aged about 60 years, Resident of Belkharikha, Tahsil Ambikapur, Distt. Surguja, Chhattisgarh.
2. Smt. Emaman, daughter of Late Abzaan and wife Saleem Khan, Aged about 40 years, Resident of Village Darima, Tahsil Surajpur, Distt. Surguja, Chhattisgarh.
3. Smt. Noorjahan, Daughter of Late Abzaan and Wife Beltariha, Aged about 38 years, Resident of Nawapara (Near Premnagar), Tahsil Surajpur, Distt. Surguja, Chhattisgarh.
4. Smt. Shahjahan, Daughter of Late Abzaan and Wife Swad Mohd., aged about 35 years, Resident of Village Belkharikha, Tahsil Ambikapur, Distt. Surguja, Chhattisgarh.
5. Khaleel (Mother's name Late Smt. Zahita Zee, Daughter of Late Abzaan), Son of Rahmatulla, aged about 11 years.
6. Kumari Aktroon (Mother's name Late Jahima Jee, Daughter of Late Abzaan), Daughter of Rahmatulla, Aged about 15 years.
7. Afzal (Mother's name Late Smt. Jahima Jee, Daughter of Late Azbaan) son of Rahmatulla, aged about 13 years.

Sl. No. 5 to 7 (minors) through : their natural guardian (father) Rahmatulla, R/o Village Pratappur, Bazarpara, Tahsil Pratappur, District Surguja, Chhattisgarh.

8. Aashik Mohd., aged about 31 years, Son of Late Abzaan, resident of Belkharikha, Tahsil- Ambikapur, Distt. Surguja, Chhattisgarh.
9. The State of Chhattisgarh, Through : Distt. Collector, Surguja, Chhattisgarh.

----Respondents/Defendants

For Appellant	:	Mr. Vivek Bhakta, Advocate
For Respondents	:	Mr. Ashok Kumar Shukla, Advocate
For State	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

29/07/2019

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

“Whether the Courts below erred in not holding title of the appellant over the suit property ?”

(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. The parties herein are muslims and they are governed by 'Sunni Law' in the matter of inheritance. Admittedly, the suit land is part of the property mentioned in 'Schedule E' of the plaint, bearing khasra No. 271/2 with an area of 0.769 hectares. The suit land originally belonged to Sarifan, who had two sons namely Ramzaan Khan and Abzaan Khan. Plaintiffs are son and widow of Ramzaan Khan. Defendant No. 1 – Abzaan Khan died during the pendency of the suit, whose legal representatives are now defendants No. 1 to 8.
3. Plaintiffs filed civil suit bearing No. 151-A/98 for declaration of title and permanent injunction stating *inter alia* that suit land is the self-acquired property of Sarifan, as it was settled in his name in Surguja State Settlement, and that they are entitled for declaration of title and

injunction in the suit property mentioned in 'Schedule E' of the plaint, as that part of the suit land has not been partitioned. The defendant filed his written statement and set up the plea that the suit land has already been partitioned and after partition, it fell in the share of the original defendant – Abzaan Khan, and as such, plaintiffs are not entitled for declaration of title and injunction.

4. Learned trial Court, vide judgment and decree dated 07/11/2001, dismissed the civil suit relying upon the statement of plaintiff – Gafoor Khan (P.W.-2) where he himself, has admitted the fact of earlier partition of the suit property.
5. The first appeal preferred by the plaintiff was also dismissed vide judgment and decree dated 24/03/2004, whereby learned first appellate Court relied upon Exhibit P-3 where it is proved by the plaintiff himself that partition took place between Ramzaan Khan and Abzaan Khan in the year 1958-59 and confirmed the judgment and decree of the trial Court, feeling aggrieved against which, this second appeal has been preferred by the plaintiff in which substantial question of law has been formulated and catalogued in the opening paragraph of the judgment.
6. Mr. Vivek Bhakta, learned counsel for the plaintiff would submit that the concurrent finding recorded by both the Courts below that the suit land was also subject to partition in the year 1958-59 per se is perverse and contrary to the evidence available on record therefore, it is liable to be set aside.
7. Mr. Ashok Kumar Shukla, while supporting the judgment and decree passed by both the Courts below, would submit that P.W. 2 i.e.

plaintiff Gafoor Khan himself, has admitted the fact of earlier partition and moreover, Exhibit P-3 would clearly show that partition has already taken place between the parties. As such, both the Courts below have rightly concluded that since, earlier partition has taken place between the parties, therefore, plaintiff is not entitled for declaration of title and permanent injunction over the suit land.

8. I have heard learned counsel for the parties, considered their submissions and went through the records with utmost circumspection.
9. It is the case of the plaintiff that though partition has not taken place between the parties by metes and bounds, but in the year 1971, a mutual partition happened in which the suit land bearing khasra No. 271/2 which is mentioned in 'Schedule E' of the plaint fell in the share of the plaintiff. Learned trial Court has recorded the admission made by the plaintiff (P.W. 2) whereby in paragraph 7 of his statement, he himself has admitted that earlier partition has taken place.
10. It is also the case of the plaintiff that partition has taken place in which the suit property fell in his share. Learned first appellate Court relied upon Exhibit P-3, which is a copy of the land records maintained under Section 115 of the Madhya Pradesh Land Revenue Code, 1954, in which the fact of partition between plaintiff - Gafoor Khan and the original defendant – Abzaan Khan has clearly been recorded.
11. The Supreme Court, in the matter of ***Ratnam Chettiar & Ors. Vs. S. M. Kuppuswami Chettiar & Ors.***¹, has laid down the proposition

¹ (1976) 1 SCC 214

regarding reopening of the partition and has clearly held that Court should not lightly set aside an act inter vivos, which is as under :-

“(1) A partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.”

12. In the instant case, partition has already happened between Ramzaan Khan and his brother Abzaan Khan and it has not been shown that same has been obtained by any fraud, coercion, misrepresentation or undue influence. It has also not been shown that the partition is unjust and unfair. The concurrent finding recorded by both the Courts below that earlier partition has taken place between the parties is a finding of fact which is neither perverse nor contrary to record.

13. The second appeal deserves to be and is accordingly dismissed.

14. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge