

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.354 of 1999

Order reserved on: 6-3-2019

Order delivered on: 12-3-2019

1. Ramlal @ Babulal, S/o late Rupsai, aged about 31 years, R/o Village Karwan, Tehsil Surajpur, Distt. Surguja (M.P.) (now C.G.)
2. Dashodhia, Wd/o Juran, aged about 51 years, R/o Karwan, Teh. Surajpur, Distt. Surguja (M.P.) (now C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Indraman (Dead) Through LRs

1-a. Shobhit Ram Kushwaha, S/o Late Indraman Kushwaha, aged about 60 years,

1-b. Ramjatan Kushwaha, S/o Late Indraman Kushwaha, aged about 50 years,

Both are R/o Village Kerwa, Tahsil and District Surajpur (C.G.)

2. Mahavir (Dead) Through LRs

2-a. Ishwar Prasad Kushwaha, S/o Late Mahavir Kushwaha, aged about 60 years,

2-b. Shankar Prasad Kushwaha, S/o Late Mahavir Kushwaha, aged about 50 years,

2-c. Dinesh Kushwaha, S/o Late Mahavir Kushwaha, aged about 45 years,

All are R/o Village Kerwa, Tahsil and District Surajpur (C.G.)

3. Maheshia (Dead) Through LRs

3-a. Ramnaresh, S/o Late Ramsurat, aged about 55 years,

3-b. Ramdular, S/o Late Ramsurata aged about 45 years,

Both are R/o Village Patiadand, Tahsil and District Surajpur (C.G.)

4. Mohit Ram, S/o Keshaw Ram, aged about 30 years, R/o Village Karounda Muda, Tehsil Surajpur, Distt. Surguja (M.P.) (now C.G.)

5. Bachchi, S/o Keshaw Ram, aged about 35 years, R/o Jhejharumuda, P.S.H. Patna, Teh. Baikunthpur, District Korea (M.P.) (now C.G.)
6. Indrakunwar, W/o Ammelal, aged about 32 years, R/o Shiwprasad Nagar, Teh. Surajpur, Distt. Surguja.
7. Phenkoo Prasad, S/o late Phoolchand, aged about 30 years, R/o Village Kewara, Teh. Surajpur, Distt. Surguja (M.P.) (now C.G.)
8. Shreemati, D/o late Phoolchand, aged about 28 years, R/o Nawapara, Tehsil Surajpur, District Surguja (M.P.) (now C.G.)
9. Nanka, S/o late Phoolchand, aged about 18 years, R/o Vill. Kewra, Tehsil Surajpur, District Surguja.
10. Janardan Prasad, S/o late Phoolchand, aged about 22 years, R/o Village Kewara, Tehsil Surajpur, Distt. Surguja (M.P.) (now C.G.)
11. Mohanram, S/o late Phoolchand, aged about 18 years, R/o Village Kewara, Surajpur, District Surguja (M.P.) (now C.G.)
12. Subhagia (Died and deleted)
13. State of M.P. (now State of C.G.), Through Collector, Surguja, Ambikapur, Distt. Surguja (M.P.) (now C.G.)

(Defendants)
---- Respondents

For Appellants: Mr. Ashok Kumar Shukla, Advocate.

For Respondents No.1-a to 11: -

None present.

For Respondent No.13 / State: -

Miss K. Tripti Rao, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. The second appeal was admitted for hearing on the following substantial question of law: -

“Whether the courts below have erred in dismissing the plaintiffs' suit by holding that the oral evidence led by the defendants outweighs the documentary evidence in favour of the plaintiff?”

(For sake of convenience, parties would be referred hereinafter as per their status shown in the plaint before the trial court.)

2. Jainarayan and Ramfal were two brothers. The plaintiff is grandson of Ramfal, whereas the defendants are successors-in-interest of Jainarayan. Jainarayan had four sons namely Mewa, Chopra, Chandan and Juan. The sole plaintiff filed civil suit that he has half share in the suit lands mentioned in Schedules A & B attached with the plaint, therefore, decree for partition be passed and he be delivered vacant possession thereof in which the defendants setup a plea of prior partition holding that the suit lands have already been partitioned and they are in possession of their respective shares 30 years prior to the date of filing of suit, as they are in separate possession and cultivating the suit land pursuant to prior partition and therefore the plaintiff is not entitled for partition as claimed.
3. The trial Court after appreciating oral and documentary evidence on record held that it has not been proved that the property was held by Jainarayan and Ramfal to be their self-acquired property and it is also not proved that the plaintiff has half share in the suit property, as his mother Dashodhia has also share in the suit property and 30 years prior to the date of suit, the suit property has already been partitioned between the parties and the suit is barred by limitation, and dismissed the suit.
4. On appeal being preferred, the first appellate Court concurred with the finding of the trial Court and held that Ramfal and Jainarayan died prior to the Surguja settlement, therefore, at the time of Surguja Settlement, patta was granted in favour of Mewa, Chopra, Chandan, Juan and Rupsai, therefore, the plaintiff's claim that he

has one half share on the suit property, is not acceptable. Secondly, it was also held that the suit property has already been partitioned between the parties long back and as such merely because, in the revenue records, their names have not been separately recorded, it cannot be held that partition has not taken place between the parties again which second appeal was preferred by the plaintiff in which substantial question of law has been framed on 12-8-1999 and set-out in the opening paragraph of the judgment.

5. Mr. Ashok Kumar Shukla, learned counsel appearing for the appellants/plaintiffs, would submit that both the Courts are absolutely unjustified in dismissing the suit filed by the plaintiff holding that the plaintiff has failed to prove that he has half share in the suit land. He would further submit that there is ample oral and documentary evidence on record to prove that partition has not taken place by metes and bounds and by recording perverse finding, the suit has been dismissed ignoring Exs.P-1 & P-2 which is the Surguja State Settlement in which half share of the plaintiff's father – Rupsai has clearly been recorded. He would also submit that Exs.P-1 & P-2 are documents of title being record of rights, therefore, it has presumptive value to be correct unless it is controverted. Therefore, judgments & decrees of both the Courts below are liable to be set aside.
6. None appeared for respondents No.1-a to 11, though served with notice.
7. I have heard learned counsel for the appellants/plaintiffs and

considered his submissions made herein-above and also went through the record with utmost circumspection.

8. Plaintiff Ramlal setup a plea that the suit property was jointly acquired by his grandfather Ramfal and his brother Jainarayan and on account of their death prior to survey settlement, it was settled in the name of his father Rupsai and sons of Jainarayan – Mewa, Chopra, Chandan and Juan, therefore, he has half share in the suit property and sons of Jainarayan will also get half share in the suit property according to the plaint, which is also apparent from the copy of survey settlement Exs.P-1 & P-2 in which clear half share has been recorded to the plaintiff's father Rupsai and since there is no prior partition and merely on account of the fact that they are in cultivating possession with no mutation on account of no partition having been effected between the parties, he is entitled for half share in the suit property.
9. The trial Court on close and meticulous analysis of oral and documentary evidence recorded by both the parties, clearly came to the conclusion that the suit property was not acquired by Jainarayan and Ramfal, as they died prior to survey settlement and it was acquired by sons of Jainarayan – Mewa, Chopra, Chandan and Juan and plaintiff's father Rupsai jointly, and therefore it was recorded in Exs.P-1 & P-2 – Surguja Settlement in the names of five persons jointly. The trial Court after appreciation of the evidence of plaintiff's witnesses namely Ramlal (PW-1) – plaintiff, Mahavir Prasad (PW-2) and the defendants' witnesses namely Dasodiya (DW-1) – plaintiff's mother, Feku Prasad (DW-2),

Madhusudan Dubey (DW-3), Matukdhari (DW-4) and Sadhucharan (DW-5) also held that sons of Jainarayan – Mewa, Chopra, Chandan and Juan and plaintiff's father Rupsai were cultivating the suit land in their respective shares on partition for last 35 years and these five persons jointly acquired the suit land and the trial Court further held that the revenue record Exs.P-1 & P-2 do not confer any title, as such, the plaintiff is not entitled for half share in the suit property particularly in view of the statement of his mother who stood as defendant No.6 in the trial Court and was examined as DW-1. On appeal being preferred by the plaintiff and his mother, again the first appellate Court elaborately discussed the evidence and on close analysis, reached to the conclusion that the suit property was not acquired by Jainarayan and Ramfal, as they died prior to the Surguja Settlement and it was settled in the Surguja Settlement jointly in the names of Mewa, Chopra, Chandan and Juan and plaintiff's father Rupsai. The learned first appellate Court also referred to the Surguja State's Wajibul Arj 1939 and held that prior to Surguja Settlement, the persons holding the land were holding it as riyati, but prior to settlement, no person had right over the said land. The first appellate Court also considered the testimonies of all the plaintiff's and the defendants' witnesses and clearly came to the conclusion that merely because half share is recorded in the Surguja Settlement in the revenue records vide Exs.P-1 & P-2, it cannot be held that Rupsai has half share in the suit property, as it was settled in favour of five persons jointly and particularly in view of the statement of defendant No.6 – mother of the plaintiff that

partition has already taken place between the sons of Jainarayan and plaintiff's father Rupsai – her husband and they are in separate cultivating possession of the suit land.

10. The finding recorded by the two Courts below that the suit property was not acquired by the plaintiff's grandfather Ramfal and Jainarayan is supportable finding based on record, as both the Courts have recorded that Ramfal and Jainarayan died prior to the Surguja Settlement and therefore it was not acquired by them. Even the first appellate Court referring to the Surguja State's *Wajibul Arj* 1939 has clearly held that prior to the Surguja Settlement any person having *riyyati* had no right, it is only as in the said *Riyasat Surguja Darbar* had only exclusive ownership and as such, prior to Surguja Settlement, no agriculturist had any *bhumiswami* right over the suit land. In the Surguja Settlement, only *riyyati* rights had been conferred to the persons holding the land in *riyyat*. As such, the finding recorded by the Courts below that the property was not acquired jointly by the plaintiff's grandfather Ramfal and Jainarayan is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record and it is binding on this Court being finding of fact.
11. Coming next to the question as to whether partition has taken place between the parties qua the suit land, both the Courts on the analysis of oral and documentary evidence on record, have come to the conclusion that partition has taken place qua the suit property 30-35 years prior to the date of institution of suit and parties are in separate possession and they are cultivating the land of their share.

Even both the Courts have recorded that the defendants' next generation has also further partitioned the suit land and they are cultivating their land barring the fact that lands are jointly recorded and mutation has not taken place which the parties have right to get their names mutated separately and which appears to be correct also on the count that mutation either does not confer any title or does not extinguish title on the basis of what has been recorded in the revenue records, as it is only for fiscal purpose for collecting revenue by the concerned revenue officials. Not only this, both the Courts have placed heavy reliance upon the statement of Dasodiya – mother of the plaintiff with whom the plaintiff has filed first appeal before the first appellate Court claiming half share in the suit property.

12. Mother of the plaintiff Dasodiya, who was examined as star witness as DW-1 has clearly stated that during the lifetime of Rupsai, Mewa, Chopra, Chandan, Juan and Rupsai – her husband were cultivating the suit lands separately and all five have equal share in the suit property and thereafter, legal representatives of Mewa, Chopra, Chandan and Juan and legal representatives of her husband (plaintiff) are cultivating their share separately and only after death of one of the aforesaid five persons i.e. Juan, dispute has arisen between the parties. She has also admitted that after death of her husband Rupsai, she herself and the plaintiff are cultivating the share of the suit land held by Rupsai and earning from it. As such, this Court has no reason as well as no material on record to disturb the concurrent finding recorded by the two Courts

below that the suit land has already been partitioned between the parties 35 years prior to the date of institution of suit, merely on the ground that revenue records have not been updated as per the share held by the parties on partition particularly when it is not the case of the plaintiff that partition effected is unjust, unfair and detrimental to the interest of the plaintiff.

13. The Supreme Court in the matter of **Ratnam Chettiar and others v. S.M. Kuppuswami Chettiar and others**¹ laying down the propositions regarding reopening of partitions has clearly held that 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.
14. In this case, it is not the case of the plaintiff that either the share allotted to him is shockingly proportionate or the partition has been effected which involves fraudulent misrepresentation requiring reopening of the concluded partition and partition having been effected between the parties dating back to 35 years concurrently recorded by the two Courts below holding that prior partition has taken place between the parties and parties are cultivating the same on the basis of shares allotted to them on partition and next generation has also partitioned and cultivating the suit property separately, in the considered opinion of this Court, concurrent

¹ (1976) 1 SCC 214

finding recorded by the two Courts below holding prior partition by which parties are cultivating separately except non-mutation in the names of the persons in possession, is binding to this Court and it is not open to interference in the appellate jurisdiction under Section 100 of the CPC.

15. Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse. (See: Aftaruddin (Dead) represented through legal representatives v. Ramkrishna Datta alias Babul Datta and others² and Rajkumari and another v. Ravinder Kumar (deceased) through legal representatives and others³.)

16. Consequently, the substantial question of law is answered accordingly and the second appeal is dismissed leaving the parties to bear their own cost(s).

17. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

² (2018) 11 SCC 77

³ (2018) 12 SCC 681