

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment reserved on 26--02-2019**

**Judgment delivered on 29-03-2019**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**FA No. 4 of 2000**

1. Manrakhan Dead Through Lrs Agriculturist And R/o Village Bhanpuri, Tahsil And Distt. Dhamtari M.P. Now Chhattisgarh
  - 1.1 Nihal Sahu s/o. Manrakhan Sahu aged about 45 years died ~ deleted through LR
  - 1.2 Gemlal S/o Late Shri Nihal Das Sahu, Aged About 43 Years R/o Village Bhanpuri, Post Demar, Tahsil And District Dhamtari, Chhattisgarh
  - 1.3 Girdhar Lal Sahu s/o. Manrakhan Sahu, aged about 40 years died and deleted – through LR
  - 1.4 Yamini Sahu Wd/o Late Shri Girdhari @ Girdhar Lal Sahu, Aged About 54 Years R/o Village Bhanpuri, Post Demar, Tahsil And District Dhamtari, Chhattisgarh
  - 1.5 Deepak Sahu S/o Late Shri Girdhari @ Girdhar Lal Sahu, Aged District Dhamtari, Chhattisgarh
2. Ganpatram S/o Dhanaram Sahu, Aged About 50 Years Agriculturist And R/o Village Bhanpuri, Tahsil And Distt. Dhamtari M.P. Now Chhattisgarh, District : Dhamtari, Chhattisgarh

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**Versus**

1. Muktiram Alias Niyamdass S/o Dhanaram Sahu, Aged About 36 Years R/o Village Bhanpuri, Tahsil And Distt. Dhamtari M.P. Now Chhattisgarh, Chhattisgarh
2. Dhaniram S/o Dhanaram Sahu, Aged About 38 Years R/o Village Bhanpuri, Tahsil And Distt. Dhamtari M.P. Now Chhattisgarh, District : Dhamtari, Chhattisgarh
3. Bhago Bai Died- Deleted
4. Ratiyan Bai Died- Deleted
5. Bodhani Bai W/o Dayaluram, Aged About 63 Years R/o Village Sankra, Tahsil Balod, District Durg, Chhattisgarh.
6. Chand Bai W/o Phirtu, Aged About 61 Years R/o Kovrel, Tahsil Balod Distt. Durg, Chhattisgarh/
7. Tejin Bai W/o Bhojiram, Aged About 59 Years R/o Village Dotipar, Tahsil Balod Distt. Durg, Chhattisgarh/
8. Kunwarbai W/o Mukundram, Aged About 43 Years R/o Chandan Birhi, Tahsil Balod Distt. Durg, Chhattisgarh.

9. Hominbai D/o Dhanaram, Aged About 39 Years R/o Dargahan Tahsil  
And Distt. Dhamtari, Chhattisgarh

10. State Of Madhya Pradesh Now Chhattisgarh, Through Collector,  
Raipur, District : Raipur, Chhattisgarh

– Respondents.

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For appellants : Mr. H.B. Agrawal, Sr. Advocate with  
Mr. Pankaj Agrawal, Advocate

For respondent/State : Mr. Ramakant Pandey, GA with Mr.  
V.B. Singh, PL.

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**SB: Hon'ble Shri Justice Ram Prasanna Sharma**  
**CAV JUDGMENT**

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 20-9-2000/23-9-2000 passed by the Additional District Judge, Dhamtari (CG) in Civil Suit No. 31-A/91 wherein the said court declared 1/11 share of respondent No.1 in the land situated at Bhanpuri, total area 21.31 acres and again mesne profits of Rs.72,000/- upto date of decree and thereafter @ Rs.6000/- per annum till delivery of the possession of the land of his share against original appellants Manrakhan, Ganpatram and respondent No.2 Dhaniram.

2) The Respondent No.1/plaintiff namely Muktiram filed suit before the trial court alleging that Dhanaram was owner of the land measuring area 45.85 acres as per Ex.P/1. The said Dhanaram had five sons namely Manrakhan, Ganpatram, Mukti Ram alias Niyamdass, Dhaniram and Narayanlal and five daughters namely

Chandbai, Bodhinbai, Tejinbai, Kumwar Bai and Homin Bai. As per version of original appellants Manrakhan, Ganpatram and respondent No.3 Dhaniram, they were managing the property. It was informed to Muktiram by villagers when he was in Kabeer Sahitya Mandir that the above three persons partitioned the property that is why he reached the village and demanded his share. As per version of Mankaran, Ganpatram and Dhaniram, their father namely Dhanaram partitioned the property through registered partition deed dated 2-4-1972, therefore, the suit filed in the month of May, 1988 is time barred. The trial court opined that though partition took place on 12-4-1972, but Mukti Ram is entitled for share in the land of his father namely Dhanaram who got the land measuring 21.31 acres in partition.

3) Learned counsel for the appellant would submit as under:

- i) As respondent No.1 Mukti Ram executed an agreement dated 7-1-1974 (Ex.D/1) and had left his share, now he cannot claim any share.
- ii) The trial Court ought to have considered that Muktiram left the house in 1964 and became Sant, therefore, he cannot claim share in the property.
- iii) Ex.D/1 (deed of relinquishment) is not required to be registered as per Section 49 of the Registration Act. The finding of the

trial court is based on misappropriation of the facts of the case, therefore, same is liable to be set aside.

4) On the other hand, learned counsel for the State would submit that the finding of the trial court is based on proper marshalling of the evidence which does not call for any interference by this court while invoking jurisdiction of the appeal.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) Ex.D/1 is the document of partition in which land measuring area 21.31 acres was allotted to Dhanaram who is father of Mukti Ram. Dhanaram died sometime in the year 1986 as per evidence. The suit was filed in the year 1988 for partition, therefore, same is maintainable so far as it relates to the property of Dhanaram which he got in partition. From the evidence it is established that registered partition deed was executed on 12-4-1972 and it was partitioned for the entire land of Dhanaram measuring to 45.42 which is shown in Ex.P/1. Partition deed is not rebutted by the evidence, therefore, it is established before the trial Court that partition took place on 12-4-1972 and this was not challenged for more than 12 years and it was within knowledge of Mukti Ram as per evidence, therefore, the trial court is right in holding that the land which was allotted to Mankharan, Ganpatram and Dhaniram

by the said partition deed is not questionable. After filing the suit the development is that wives namely Bhago Bai and Ratiyan Bai of Dhanaram died and their share is also inherited by their sons and daughters. Again, one brother Narayanlal also died on 6-6-1998 having no successor, therefore, now nine successors are there for inheriting property of Dhanaram who is alleged to have died on 29-8-1986. Four sons namely Manrakhan, Ganpatram, Dhaniram and Muktiram and five daughters namely Chandbai, Bodhinbai, Tejinbai, Kumwar Bai and Homin Bai, in all nine will get share in the property of late Dhanaram because right opened on 29-8-1986. Mukti Ram will get 1/9th share in the area measuring 21.31 acres which is the property of late Dhanaram. The survey number of the said property is 94, 114/1, 156, 179, 191/3, 33/1 and 33/7 area measuring 5.74, 2.91, 1.08, 0.03, 3.44, 6.11 and 2.00 total 21.31 acres.

7. As per evidence on record, the entire property was in possession of Manrakhan, Ganpatram, Muktiram and Dhaniram and the trial Court after assessment of income from the land opined that Muktiram is entitled to Rs.6000/- per annum since filing the plaint from 1988 till disposal of the case i.e., 20-9-2000 and the period is 12 years and accounted of mesne profits @ Rs.6000/- per annum. After re-assessing the entire evidence this court has no reason to substitute contrary finding.

8) Accordingly, the share part of the decree is liable to be modified while the other part of the decree shall remain intact. Accordingly, decree is passed in favour of respondent Muktiram and against appellant/LR of Manrakhan, Ganpataram and respondent Dhaniram as under:

- (i) Respondent No.1 Muktiram/plaintiff will get 1/9th share in the land area 21.31 acres as mentioned above.
- ii) He will get actual land after partition as per Section 54 of the CPC, 1908 by the Collector or authorised officer/Tahsildar
- iii) Mukti Ram will get mesne profits to the tune of Rs.72,000/- upto the period of year 2000. Thereafter he will be entitled to get Rs.6000/- per annum till actual delivery of possession of the land from the legal representative of Manrakhan, Ganpataram and Dhaniram.
- iv) Appellants to bear the costs of respondent No.1 Mukti Ram through out.
- v) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- vi) A decree be drawn up accordingly.

Accordingly, the appeal is partly allowed.

Sd/-

**(Ram Prasanna Sharma)**  
JUDGE