

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 534 of 2004**

Motiram, S/o Jeetan @ Bade Jeetan, aged about 55 years,
Occupation- Agriculture, Resident of Village Ludeg, Tahsil
Pathalgaon, District Jashpur, Chhattisgarh.

---- Appellant/Defendant No. 1**Versus**

1. Dhaniram S/o Jeetan @ Bade Jeetan, aged about 45 years.

2. Sukh Sai, S/o Jeetan @ Bade Jeetan,

Both residents of Village Ludeg, Occupation- Agriculture, Tahsil
Pathalgaon, Distt. Jashpur, Chhattisgarh. **--- Plaintiffs**

3. The State of Chhattisgarh, Through Collector, District Jashpur,
Chhattisgarh. **--- Defendant No. 3**

----Respondents

For Appellant/Defendant No. 1 : Mr. Sanjay Agrawal,
Advocate

For Respondents/Plaintiffs No. 1 & 2 : Mr. Vivek Bhakta, Advocate

For Respondent No. 3/State : Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****11.07.2019**

1. The substantial question of law involved, formulated and to be
answered in this defendant No. 1's second appeal states as
under:

“Whether the first appellate Court for reversing
the finding regarding self-acquired property of the
appellant has failed to appreciate the legal
evidence available on record ?”

(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. Plaintiffs filed civil suit No. 84-A/02 for partition of the suit land and possession stating *inter alia* that the suit land was purchased from the income of all the three brothers i.e. plaintiffs as well as the defendant No. 1, which makes the suit land a joint family property. The suit was dismissed by the trial Court vide judgment and decree dated 26/09/2003. Being aggrieved, the plaintiffs then preferred Civil Appeal No. 36-A/2003 whereby learned first Appellate Court granted decree in favour of plaintiff No. 1 against which this second appeal has been preferred by defendant No. 1 in which substantial question of law has been formulated and set out in the opening paragraph of the judgment.
3. Mr. Sanjay Agrawal, learned counsel for appellant/defendant No. 1 would submit that learned first appellate Court is absolutely unjustified in granting decree in favour of plaintiff No. 1 by setting aside the well-reasoned judgment and decree of the trial Court holding that the suit land is the self-acquired property of defendant No. 1, therefore, the suit for partition and possession is not maintainable and is liable to be set aside.
4. On the other hand, Mr. Vivek Bhakta, learned counsel for respondents No. 1 and 2 / plaintiffs would support the impugned judgment and decree.
5. I have heard learned counsel for the parties, considered their rival submissions and went through the records with utmost circumspection.

6. Plaintiffs filed a civil suit for declaration of title and partition and possession stating *inter alia* that the suit property was purchased from the income of all the three brothers, which learned trial Court did not accept but was accepted by learned first appellate Court. Learned first appellate Court, after appreciating the evidence of Dhaniram (PW-1), Sukh Nagwanshi (PW-2), Amar Singh (PW-3), Budhram (PW-4) has clearly come to the conclusion that the three brothers i.e. plaintiffs as well as defendant No. 1 were residing jointly and there is no partition of khata among them. The three of them were cultivating the suit land jointly. Defendant No. 1 himself has even been examined on behalf of plaintiff No. 1. Thereafter, learned first appellate Court, after appreciating the oral and documentary evidence on record, came to the conclusion that the suit land was purchased from the income of joint family property of all three brothers, therefore, plaintiff No. 1 is entitled for partition and possession of 1/3 share in the suit land and it is not the self acquired property of appellant/defendant No. 1. The said finding recorded by the first appellate Court is neither perverse nor contrary to record and I do not find any perversity or illegality in the said finding.
7. With the aforesaid observations, this second appeal deserves to be and is accordingly dismissed. No cost(s).
8. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge