

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.20 of 2005**

Bihari Lal Gupta, S/o Late Jagarnath Gupta, aged about 50 years,
Occupation Teacher, R/o of Village Batoli, Tah Sitapur, District Sarguja
(CG) ----- **Appellant**

Versus

1. Vishwanath Gupta, S/o Shivjogi Sao, aged about 65 years, Occupation Retd. Teacher
2. Hirachandra Gupta, S/o Late Shiv Jogi Sao, aged about 64 years, Occupation Retd. Teacher
3. Amirchand Gupta, S/o Late Shivjogi Sao, aged about 63 years, Occupation Retd. Teacher,
4. Murari Gupta, S/o Late Shivjogi Sao, aged about 61 years, Occupation Retd. Teacher

All R/o Village Batoli, P.S Batoli, Tahsil Sitapur, District Sarguja (CG0

5. State of Chhattisgarh through Collector, Sarguja, Ambikapur (CG)

-----**Respondents**

For Appellant:	Shri HB Agrawal, Senior Advocate along with Smt Prabha Sharma, Advocate.
For Respondent No.5/State:	Shri RK Jaiswal, Panel Lawyer

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Judgment On Board

04.04.2019

1. This Appeal has been preferred by the Plaintiff – Bihari Lal Gupta under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the propriety of the judgment and decree dated 27.12.2004 passed by the First Additional District Judge, Ambikapur, Surguja in Civil Appeal No.34-A/2004 by which, the lower appellate Court, while affirming the judgment and decree dated 26.06.2004 passed by the 5th Civil Judge, Class-II, Abmikapur, District Surugja in Civil Suit No.132-A/2003, has dismissed the Plaintiff's claim.

2. Briefly stated, facts of the case are that the Plaintiff instituted a suit

claiming partition with regard to the property in question described in Plaint Schedule-A by submitting *inter alia* that the said property is the ancestral property and the same has not been partitioned legally. It is pleaded further that the Defendants have obtained the revenue papers according to their own wishes and when partition was demanded, it was refused by them. The Plaintiff has therefore, been constrained to file the suit in the instant nature.

3. The Defendants have contested the suit by saying that the property in question is a self-acquired property of their predecessor in interest namely Shiv Jogi Sao and contested further on the ground that by virtue of the registered deed of family arrangements, said Shiv Jogi Sao has gifted the suit properties in their favour. The suit is, therefore, liable to be dismissed.

4. After considering the evidence led by the parties, the trial Court has come to the conclusion by relying upon the deed of Settlement (Ex.P-1) that the property in question was the self-acquired property of said Shiv Jogi Sao. It held further that by virtue of the registered deed of family arrangements (Exs.D-2 to D-6), said Shiv Jogi Sao has gifted the suit property to the Defendants, who are the children of his second wife Daulat Bai. It has been held further that the Plaintiff's father Jagarnath was also provided some properties, as evidenced by *kistbandi khatauni*, B-1 (Ex.D-12), by said Shiv Jogi Sao and thereafter, he was separated by him. It held further that since the suit was filed without impleading the necessary parties like his brothers and sisters, therefore, the same is liable to be dismissed for non-joinder of necessary parties.

5. The aforesaid finding of the trial Court has been affirmed further by

the lower appellate Court in an Appeal preferred by the Plaintiff.

6. Being aggrieved, Plaintiff has preferred this Appeal. Shri HB Agrawal, learned Senior Counsel for the Appellant submits that the judgment and decree as passed by the Courts below holding that the property in question is a self-acquired property of said Shiv Jogi Sao is apparently contrary to law. He submits further that in absence of any deed of partition, the Courts below ought to have held that the Plaintiff is entitled to get the share in the suit property as described in Plaint Schedule-A.

7. I have heard learned Counsel for the Appellant and perused the entire record carefully.

8. From perusal of the record, it appears that the property in question was originally held by Shiv Jogi Sao and it was his self-acquired property as evidenced by the deed of settlement (Ex.P-1). It reveals further from the registered deed of family arrangements, marked as Exs.D-2 to D-6, that said Shiv Jogi Sao has given the suit property to Defendants. The Defendants have, thus, acquired their valid right, title and interest upon the suit property based upon the registered deed of family arrangements. As such, the Courts below have not committed any illegality in dismissing the Plaintiff's claim.

9. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE