

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 25 of 2006**

Kalawati, W/o Pratap Satnami, by caste Satnami, Aged About 45 years, R/o Satnamipara, House of Dr. Sahu, Fingeshwar, Tahsil Rajim, District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Sube Lal, S/o Tangu Satnami, Aged About 65 years, R/o Village Nahar Dih, Tahsil Kurud, District Dhamtari, Chhattisgarh.
2. State of Chhattisgarh, Through Collector Dhamtari, District Dhamtari, Chhattisgarh.

---- Respondents

For Appellant	: Shri Vivek Tripathi, Advocate.
For State/Respondent No.4	: Shri R. K. Jaiswal, P. L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****09.04.2019**

1. This appeal has been preferred by the Plaintiff under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') questioning the propriety of the judgment and decree dated 30.06.2005 passed by the learned Additional District Judge, Dhamtari, in Civil Appeal No.104-A/2004, by which the lower Appellate Court, while reversing the judgment and decree dated 01.08.2000 passed by Second Civil Judge Class-I, Dhamtari in Civil Suit No.18-A/1999 has dismissed the suit.

2. Briefly stated the facts of the case are that the plaintiff Kalawati instituted a suit, claiming partition and separate possession with regard to the suit property described in plaint, paragraph 3. According to the plaintiff, the said property is self acquired of her father. It is pleaded in the plaint that her father Sube Lal has provided her 3 acres of land out

of the suit property in the year 1990 and also provided a house to her, however, her father has obtained the same forcefully. The plaintiff has, therefore, been constrained to file the suit in the instant nature, instituted on 16.04.1993.

3. The aforesaid claim has been contested by the Defendant and denying very specifically with regard to the alleged fact of partition, effected in the year 1990, as contended by the plaintiff. The Defendant No.1 was proceeded ex parte later on. The trial Court after considering the evidence led by the plaintiff arrived to a conclusion that her father was the recorded owner of the suit property, who has provided the plaintiff 3 acres of land out of the suit land and a house in partition effected in the year 1990. In consequence, the trial Court has decreed the suit by its judgment and decree dated 01.08.2000.

4. Being aggrieved, the Defendant No.1 has preferred an appeal. The lower appellate Court, in turn, has held that during the life time of the father, the plaintiff is not entitled to claim any share and the suit as framed is not maintainable. The suit is accordingly dismissed.

5. Being aggrieved, the plaintiff has preferred this appeal. Shri Vivek Tripathi learned counsel for the appellant submits that the judgment and decree as passed by the lower appellate Court, while reversing the findings of the trial Court without meeting its reasonings in its proper manner is apparently contrary to law. He submits further that Defendant No.1 was proceeded ex parte and after examining the oral and documentary evidence led by the plaintiff, the trial Court has rightly held that 3 acres of land and a house, out of the suit property as described in the plaint paragraph 3, was provided to the plaintiff in a partition effected in 1990. In such circumstances, the lower appellate Court ought not to have reversed the findings of the trial Court.

6. I have heard learned counsel for the appellant and perused the entire record carefully.

7. A suit was instituted by the plaintiff for partition and separate possession by submitting *inter alia*, particularly at paragraph 3, that the suit property is originally held by her father Sube Lal and 3 acres of land out of the suit land and a house was provided to her (Kalawati) by her father in a partition effected in 1990 and, based upon it, the claim has been made by the plaintiff. However, from perusal of the record, it is evident that the suit property is originally held by her father, Sube Lal. In such circumstances, during his life time, the daughter cannot claim any share as such and the suit cannot be held to be maintainable. The lower appellate Court has, therefore, not committed any illegality in holding the suit as framed is not maintainable. Besides, from perusal of the entire record, I do not find any materials much less, the deed of partition effected in the year 1990 as pleaded by the plaintiff whereby, 3 acres of land and a house out of the suit property, was provided to her by her father, Sube Lal. The suit, is therefore, rightly dismissed by the lower appellate Court and the finding so recorded deserves to be and is hereby affirmed.

8. In view of the forgoing discussions, I do not find any question of law, much less the substantial question of law, which arise for determination in this appeal. The appeal being devoid of merits is accordingly, dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge