

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 267 of 2003**

Radhabai, aged about 50 years, W/o Ramcharan Mahaar, R/o Village Kherkheda, Jheepatola, Tahsil & Dist. - Kanker, Chhattisgarh.

---- Appellant/Plaintiff

Versus

1. Netram, aged about 35 years, S/o Bhav Singh, Caste- Mahar.
2. Dashrath, aged about 30 years, S/o Bhav Singh, Caste- Mahar.
3. Radhiyabai, aged about 32 years, D/o Anjori, Caste- Mahar.
4. Johan, aged about 40 years, S/o Mayaram, Caste- Mahar.
5. (dead) Bhav Singh, S/o Dhanaji, Caste- Mahar.
6. Udayram, aged about 36 years, S/o Ramdayal.
7. Jageshwari, aged about 33 years, D/o Ramdayal.

All R/o Village Kherkheda, P.O.- Chinauri, Tahsil Charama, Dist.- Kanker, Chhattisgarh.

8. State of Chattisgarh, through the Collector, Kanker, Chhattisgarh.

----Respondents/Defendants

For Appellant/Plaintiff

:

Mr. Vishnu Koshta, Advocate

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

11.03.2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the plaintiff/appellant under Section 100 of the Code of Civil Procedure, 1908 (henceforth "CPC").
2. The Plaintiff i.e. Radhabai filed a civil suit against the defendants claiming declaration of title, permanent injunction and recovery of possession and for declaring the sale deed dated 22/12/1988 as void and inoperative. The trial Court partly decreed the suit holding that the sale deed dated 22/12/1988 is void to the extent of 1/4th share of the plaintiff and she is in possession of the land bearing Khasra No. 257/3 with an area of 10 decimal, and to that extent the trial Court restrained the defendants from interfering with her peaceful possession. Plaintiff preferred first appeal before

the first appellate Court but she remained unsuccessful as her appeal was dismissed which led her to file this second appeal under Section 100 of CPC.

3. Learned counsel for the plaintiff submits that both the Courts below are concurrently unjustified in not decreeing the suit of the plaintiff *in toto* by recording a finding which is perverse and contrary to record and gives rise to substantial question of law for determination.
4. I have heard learned counsel for the plaintiff, considered his submissions and went through the records with utmost circumspection.
5. The suit land is situated at village Kherkheda, Tahsil - Charama, with a total area of 10.71 acres was originally owned by late Shri Anjori. The plaintiff and defendants No. 1 to 3 as well as defendants No. 6 & 7 are successors in interest of late Shri Anjori. Admittedly, defendants No. 1 to 3 sold a part of the suit land with an area of 1.47 acres by registered sale deed to defendant No. 4 on 22/12/1988 which led to the filing of the suit in which the trial Court has held that the sale deed executed by defendants No. 1 to 3 & 5 in favour of defendant No. 4, to the extent of plaintiff's share i.e. 1/4th is void and inoperative. The trial Court further held that the plaintiff is in possession of 10 decimal of land by constructing house and badi and granted decree for declaration of title and permanent injunction in her favour, but the fact of prior partition between the parties as set up by plaintiff was not accepted by the trial Court as well as by the first appellate Court, finding lack of evidence *quo* the fact of partition between the parties and holding that the suit land is joint family property of the

parties and therefore, declaration and injunction with regard to the joint family property cannot be granted to the plaintiff.

6. The concurrent finding recorded by both the Courts below that partition has not taken place between the parties and that it is joint family property is a pure finding of fact based on evidence available on record and I do not find any perversity or illegality in that, particularly when no relief of partition was claimed by the plaintiff, as such, no substantial question of law is involved in this second appeal for determination.
7. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed *in limine* without noticing to the other side.

Sd/-

(Sanjay K. Agrawal)

Judge