

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 492 of 2006**

1. Maan Sing Son of Shri Amar Sing Gond, aged about 58 years
2. Sujan Sing Son of Shri Amar Sing Gond, aged about 53 years
3. Mansha Ram Son of Shri Amar Sing Gond, aged about 43 years

All Resident of Village Jeetatola, P.H. No. 32, 22, P.S. Kawardha, District Kabirdham (C.G.)

---- Appellant/ Plaintiff**Versus**

1. Parsu Ram Son of Shri Ramsing Gond, aged about 35 years.
2. Dongru Ram Son of Shri Ramsing Gond, aged about 33 years
3. Bhukan Bai Wife of Late Shri Ramsing Gond, aged about 71 years
4. Urmila Bai Wife of Shri Dhanush Gond, aged about 41 years
5. Kaushilya Bai Wife of Shri Balram Gond, aged about 39 years
6. Chitrekha Bai Wife of Shri Dhirpal Gond, aged about 37 years
7. Maiti Bai Wife of Late Shri Ramsing Gond, aged about 75 years
8. Dayali Son of Shri Ramsing Gond, Aged about 55 years
9. Dayal Kunwar @ Potti Bai Wife of Shri Tetku Gond, Aged about 41 years
10. Premlal Son of Shri Sudhiram Gond, Aged about 73 years
11. Baala Ram Son of Shri Premlal, Aged about 43 years
12. Ballu Son of "Not Known" "Gond" Aged about 48 years
13. Geeta Bai Wife of Shri Ramraj Gond, aged about 24 years
14. Jaleshwar Son of Shri Ballu Gond, aged about 22 years
15. Sangeeta Bai D/o Shri Ballu Gond, Aged about 18 years
16. Ballu Son of Shri Premlal Gond, aged about 37 years
17. Puniya Bai Wife of Shri Munna Gond, Aged about 33 years
18. Saam Bai Wife of Shri Budhram Das Gond, Aged about 63 years

The Respondent No. 1 to 3 and 7, 8 are residents of Village Jeetatoal, P. S. and Tahsil Kawardha, Distt Kabirdham (C.G.)

Respondent No. 5, 10 to 12, 14, 15 and 16 are residents of Village Khairjhiti, Tahsil Kawardha, District Kabirdham (C.G.)

Respondent No. 4 is resident of Village Achanakpur, P.S. Lohara, Tahsil Kawardha, District Kabirdham (C.G.)

Respondent No. 6 is resident of Village Mohanpur, Near Achanakpur, P.S. and Tahsil Kawardha, District Kabirdham, C.G.

Respondent No. 9 is resident of Village Baharmunda, near Indori, P. S. Pipariya, Tahsil kawardha, District Kabirdham C.G.

Respondent No. 13 is resident of Village Kokdiya, Near Achanakpur, P.S. Lohara, Tahsil Kawardha, District Kabirdham C.G.

Respondent No. 17 is resident of Village Karm, P.S. Khambhariya, Tahsil Saja, District Durg C.G.

Respondent No. 18 is resident of Village Chilamkhodra, P.S. Lohara, Tahsil Kawardha, District Kabirdham (C.G.)

19. State of Chhattisgarh, Through the Collector, Kawardha, District Kawardha now Kabirdham (C.G.)

---- Respondent/ Defendant- 2

For Appellants : Mr. R.N. Jha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12.03.2019

1. Heard on the question of admission and formulation of substantial question of law of second appeal preferred by the appellant/defendant under Section 100 of the Code of Civil Procedure, 1908.
2. The plaintiffs' suit for declaration of title and permanent injunction was dismissed by the trial Court. On appeal being preferred by the plaintiffs, the first appellate Court affirmed the judgment and decree of the trial and dismissed the appeal.
3. Learned counsel for the appellants/plaintiffs would submit that both the Courts below are absolutely unjustified in holding that the suit property is joint family property and partition has already been taken place between the parties by recording a finding which is perverse and contrary to record and it gives rise to substantial question of law for determination.
4. Both the Courts below have concurrently recorded a finding that the suit property is joint family property and partition has already been taken place between the parties and further held that the plaintiffs have failed to prove the valid custom in which daughters do not get share in the suit property left by their father and suit is barred by limitation. Concurrent finding recorded by two Courts below holding that suit property is joint family property and partition has already been taken place between the parties is a finding of fact based on evidence available on record. I do not find any illegality or perversity in the said finding. Even I do not find any substantial question of law for

determination of this second appeal.

5. Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of the fact recorded by two courts below unless findings are perverse. {See: Aftaruddin (dead) represented through legal representatives v. Ramkrishna Datta alias Babul Datta and others¹ and Rajkumari and another v. Ravinder Kumar (deceased) through legal representatives and others²}
6. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*, without notice to other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Pawan

1 (2018) 11 SCC 77

2 (2018) 12 SCC 681