

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 428 of 2005**

Purander S/o Bhagwan Singh, Aged about 45 years, R/o Village Bansula, Tahsil Saaipali, District Mahasamund, Chhattisgarh.

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

1. Smt. Yashoda Wd/o Bhagwan Singh.
2. Dinbandhu S/o Arjun Singh.
3. Ramha Bai D/o Bhagwan Singh.
4. Kapura Bai D/o Bhagwan Singh.
5. Lalita D/o Bhagwan Singh.
6. Mathura D/o Bhagwan Singh.

Respondents No. 5 and 6 are minor, through natural guardian mother Smt. Yashoda Bai Wd/o Bhagwan Singh.

All are R/o Village Bansula, Tahsil Saraipali, District Mahasamund, Chhattisgarh.

7. State of Chhattisgarh, Through Collector Mahasamund, District Mahasamund, Chhattisgarh.

--- Respondents/Defendants

For Appellant	:	Mrs. Renu Kochar, Advocate
For State	:	Mr. Arun Shukla, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****02.07.2019**

1. Heard on question of admission and formulation of substantial question of law in this second appeal preferred by the plaintiff under Section 100 of the Code of Civil Procedure (henceforth "CPC").

2. The plaintiff - Purander, filed a civil suit for declaration of title, partition and permanent injunction against his father i.e. Bhagwan Singh stating *inter alia* that partition has not taken place and the suit property, mentioned in Schedule 'A' of the plaint, is the ancestral property of his father, therefore, he is entitled for his share of the said property by way of partition.
3. The trial Court, after conducting a full-fledged trial, dismissed the civil suit No. 264-A/03 vide order dated 05/11/2003 holding that the suit property is not the ancestral property of plaintiff's father i.e. Bhagwan Singh and on the contrary, is his self-acquired property, in which partition has already taken place.
4. Against the order passed by the trial Court, Civil Appeal No. 04A/2004 was preferred by the plaintiff, which was also dismissed by the first appellate Court vide order dated 22/06/2005, by agreeing with the findings recorded by the trial Court.
5. In this second appeal preferred by the plaintiff, against the order passed by the first appellate Court, Mrs. Renu Kochar, learned counsel for the plaintiff submits that the concurrent findings recorded by both the Courts below, while dismissing the civil suit as well as the first appeal, are perverse and bad in law, as both the Courts below have failed to consider that the property purchased by plaintiff's father was out of income and nucleus of the family property, and therefore, the second appeal involves substantial question of law for determination and hence, deserves to be allowed.

6. I have heard learned counsel for the appellant/plaintiff, considered her submissions and perused the records with utmost circumspection.
7. Plaintiff's civil suit for declaration of title, partition and permanent injunction was dismissed by the trial Court holding that the suit property is a self-acquired property of his father and not his ancestral property. It is also held that plaintiff's father, Bhagwan Singh, in his lifetime, had already separated his son i.e. the plaintiff, by giving him some land and as such, he is not entitled for any share by way of partition of the suit property, which has been affirmed by the first appellate Court. Thus, both the Courts below have concurrently held that the suit property, now left, is the self-acquired property of plaintiff's father, Bhagwan Singh, who has already given land to the plaintiff and has separated him long back. The plea raised by the plaintiff that the self-acquired property has been taken out of nucleus of the ancestral property has no basis in the pleadings. As such, the concurrent finding recorded by both the Courts below is a finding of fact based on material available on record, which is neither perverse nor contrary to law and I do not find any substantial question of law involved in this second appeal.
8. Accordingly, this second appeal deserves to be and is hereby dismissed at the motion stage.

Sd/-
(Sanjay K. Agrawal)
Judge