

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 191 of 2002**

1. Abraham alias Dhani, Aged 55 years, son of Sonia, Resident of Village Chotebodam, Tah. Jagdalpur, Distt. Bastar.
2. Danial alias Kanhai, Aged 53 years, Son of Sonia, Resident as Village Chotegodam, Tah. Jagdalpur, Distt. Bastar.
3. Malaki alias Peelu, aged 42 years, Resident of Village Chotegodam, Tah. Jagdalpur, Distt. Bastar.
4. Samual, Aged 38 years, Son of Sonia, Resident of Village Chotegodam, Tah. Jagdalpur, Distt. Bastar.

----Appellants/plaintiffs**Versus**

1. Manglu alias Musa (since deceased) through LRs:-
 - 1-(A) Chandni, aged about 60 years, W/o late Shir Manglu @ Musa.
 - 1(B) Vijay Kumar, Buti, aged about 30 years, S/o Late Shri Manglu @ Musa.

Both- R/o Village Chotegodam, Post- Bade Murma, P.S. Parpa (Fezarpur), Tahsil, Jagdalpur, District, Bastar (C.G.) Pin -494001.
2. Chhattisgarh State Through Collector, Bastar.

---- Respondent/Defendants

For Appellants	: Shri Ram Kumar Tiwari, Advocate.
For LRs. of Respondent 1	: None present.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****08/01/2019**

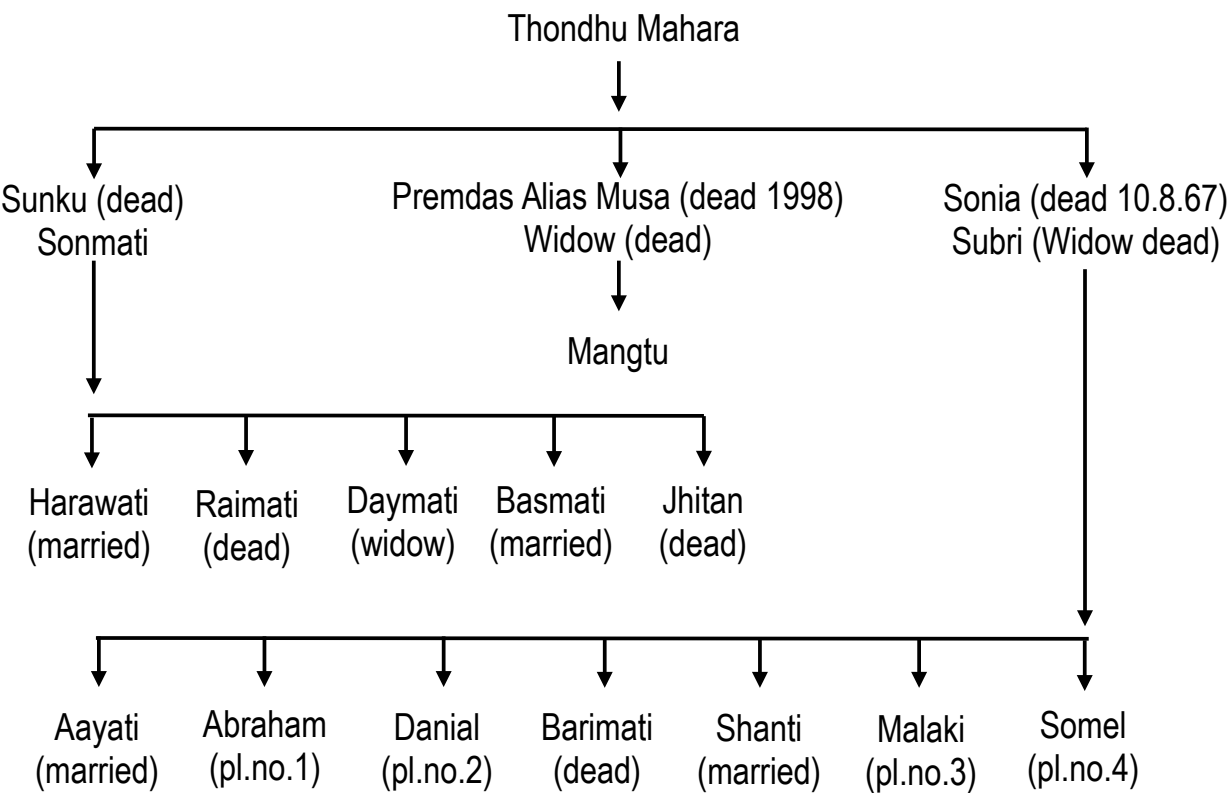
(1) The substantial question of law involved, formulated and to be answered in this plaintiffs' second appeal states as under:

“Whether the two Courts below were justified in not accepting the oral partition done between the parties and the shares of individual were also being sold and the same was not taken into consideration by the two Courts below proving the partition between the partition ?”

[For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The following genealogical tree would demonstrate the relationship among the parties:-



(2.2) The plaintiffs filed a suit for declaration against defendant No.1 [who died during pendency of this appeal] that they are sole owners of the suit land of total area 22.34 acres situated at village Chhotegadam, Tah. – Jagdalpur, Distt. Bastar;

and also claimed confirmation of their possession over the suit land and perpetual injunction against defendant No. 1 restraining him from interfering with the possession over the suit land stating *inter alia* that partition has already been effected between their father Sonia and defendant No. 1's father – Premdas @ Musa in the life time of Thoundu Mahara and, as such, they are in separate possession of their land and they are cultivating their separate land and entitled for declaration of title and permanent injunction.

(2.3) Defendant No.1 has not only filed written statement but also filed counter claim stating that there is no partition between his father and father of the plaintiffs, as such, he (defendant No. 1) is entitled for half share in the suit property.

(2.4) The trial Court, after appreciating oral and documentary evidence available dismissed the suit of the plaintiffs holding that oral partition has not been effected and allowed the counter claim filed by defendant No.1 holding that he is entitled for half share in the suit property. Plaintiffs preferred first appeal there-against. The first appellate court, on re-appreciation of evidence dismissed the appeal, leading to filing of second appeal in which the substantial question of law has been formulated, which has been set out in the opening paragraph of the judgment.

(3) Shri Ram Kumar Tiwari, learned counsel for the appellants/plaintiffs, would submit that both the courts below were unjustified in dismissing the suit of the plaintiffs by not holding that there is oral partition between the plaintiffs' father Sonia and father of defendant No. 1 and the suit property fell in the share of plaintiffs' father – Sonia, as such, they have inherited the suit property in partition, as such,

finding recorded by both the courts below being perverse is liable to be dismissed.

(4) None present for respondent No.1, though served.

(5) I have heard learned counsel appearing for the appellants and perused the record of both the courts below with utmost circumspection.

(6) It is admitted position on record that property was held by Thondhu Mahara, who had three sons namely Sunku, Premdas @ Musa (father of defendant No.1) and Sonia (father of plaintiffs) and Thondhu Mahara, during his life time separated his eldest son – Sonia by giving him agricultural land and after separation of Sonia, father of defendant No.1 – Premdas @ Musa and father of plaintiffs were staying with Thondhu Mahara during his life time. It is also an admitted fact that plaintiffs and defendant No. 1 are separately cultivating the suit land and possession thereof; the plaintiffs are in possession of 14 acres of land whereas defendant No.1 – Premdas @ Musa remained in possession of 9.17 acres of land and suit land is recorded jointly in the revenue records.

(7) Father of defendant No.1 – Premdas @ Musa filed an application for partition before the Assistant Bandobast Officer, which was granted by order dated 10.10.1995. On appeal being preferred by defendant No. 1 Manglu, the Bandobast Officer, by its order dated 23.03.1999 set aside the order dated 10.10.1995 passed by Assistant Bandobast Officer vide Ex.P-16. It is also apparent on the face of the record that there is no partition between the father of the plaintiffs and father of defendant No. 1 and the property, admittedly, continued to be possessed as a joint property and it was never partitioned by metes and bounds.

(8) In the matter of **Chinthamani Ammal V. Nandagopal Gounder**¹, the Supreme Court has held that the party raising plea of partition has to prove the same since it is presumption in regard to continuance of a joint property; and further held that even separate possession of portion of property by co-sharers itself would not lead to presumption of partition. Relevant paragraph of the report states as under:-

“17. In law there exists a presumption in regard to the continuance of a joint family. The party which raises a plea of partition is to prove the same. Even separate possession of portion of the property by the co-sharers itself would not lead to a presumption of parties. Several other factors are required to be considered therefor.”

(9) Further, in **M. Venkataramana Hebbar (dead) by Lrs.Vs. M. Rajagopal Hebbar and others**², their Lordships of the Supreme Court have held that before rejecting the suit for partition, it must be established that there had been partition between the parties by metes and bounds and held as under:-

“10. The execution of the said document is not in question. It is furthermore not in dispute that all the co-shareholders are not parties thereto. Any co-owner can cause a severance in the status of joint family by expressing his unequivocal intention to separate. Such intention can be expressed even by filing a suit for partition. But, despite such separation in the joint status, parties may continue to possess the lands jointly unless a partition of the joint family property takes place by metes and bounds.”

(10) The trial Court as well as first appellate Court have clearly recorded a finding

1 (2007) 4 SCC 163

2 (2007) 6 SCC 401

that the suit property are recorded jointly in the name of both the parties and even separate possession and cultivation of property by the plaintiffs & defendant No.1 itself would not lead to a presumption of partition and rather presumption in regard to continuance of a joint family will be raised. Both the courts below have disbelieved the oral evidence brought on record to prove the fact of oral partition between the parties, which appears to be correct appreciation of the fact and which cannot be reappreciated in jurisdiction under Section 100 of the Code of Civil Procedure as there is no evidence on record to hold that there is partition between the parties by metes and bounds.

(11) In view of above, I do not find any illegality or perversity in the findings recorded by the both the courts below warranting interference by this Court under Section 100 of the Code of Civil Procedure. The substantial question of law is answered accordingly.

(12) Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own costs.

(13) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

