

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.59 of 2009

Smt.Saraj Bai, W/o Bahararam, aged 50 years, R/o
 Village – Ghivri, Tehsil Saja, Distt.Durg (CG)
 (plaintiff)
 ----- Appellant

Versus

1. Bhukhan, S/o Khem Singh Lodhi, aged 45 years,
2. Gyan Singh, S/o Khem Singh Lodhi, aged 41 years,
3. Indramani, S/o Bhukhan Lodhi, aged 27 years,
4. Amrika Bai, W/o Motilal, aged 47 years,
 (All R/o Village – Toran, Tehsil – Saja, Distt.
 Durg (CG)
5. Rajesh, S/o Sukhilal, aged 26 years,
6. Omprakash, S/o Sukhilal, aged 23 years,
 (Both R/o Village – Muglatola, Tehsil – Saja,
 Distt. Durg (CG)
7. Mahesh S/o Gyan Singh, aged 18 years, R/o Village –
 Toran, Tehsil Saja, Distt. Durg (CG)
 (Defendant No.1 to 6 & 8)
8. State of Chhattisgarh through the Collector, Distt.
 Durg (CG)

----- Respondents

For Appellant/Plaintiff	: Mr.Shobhit Koshta, Advocate
For Res.No.1 to 7/ Defendants	: Mr.Sunil Otwani and Mr.Amit Soni, Advocates
For Respondent NO.8	: Mr.Rahul Jha, Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

20/11/2019

1. This plaintiff's second appeal under Section 100 of
 the CPC was admitted for hearing by formulating the
 following substantial questions of law: -

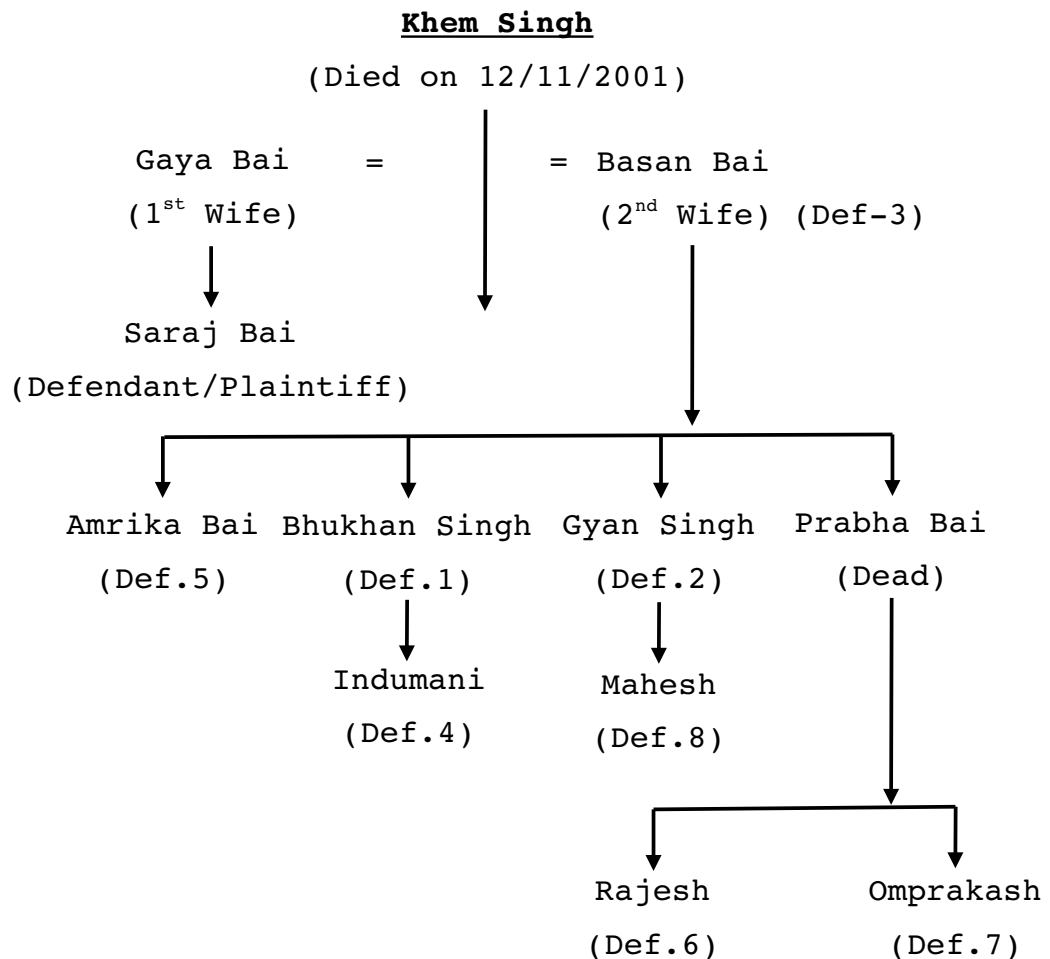
“1. Whether the lower appellate Court has
 erred in holding that previously partition
 has taken place between the parties ?

2. Whether the lower appellate Court has
 erred in holding that Khasra No.48/6 & 49/1

area 1.72 acres was the self-acquired property of Basan Bai ?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The following genealogical tree would demonstrate the relationship between the parties:-



3. The suit property was originally held by Khem Singh. He had two wives namely Gaya Bai and Basan Bai. The plaintiff is daughter of first wife of Khem Singh namely, Gaya Bai. Basan Bai, who was defendant No.3 in the suit, is second wife of Khem Singh and defendants No.1 & 2 are sons of Khem Singh out of his wedlock with second wife Basan Bai. Prabha Bai (dead now) & Amrika Bai (defendant

No.5) were daughters of Khem Singh out of his wedlock with second wife Basan Bai. On 18.10.2002, plaintiff-Saraj Bai instituted a suit claiming partition and possession stating inter-alia that she has 1/2 share in the suit property alleging that the suit property is ancestral property of her father and in order to deprive her right, defendants NO.1 to 3 got their names mutated in revenue records. Khem Singh died on 12.11.2001 and after his death, defendants No.1 to 3 refused to give share to her necessitating filing of the suit claiming the aforesaid reliefs for partition and possession.

4. The defendants in their written statement set-up a plea that the suit land has already been partitioned orally by their father Khem Singh during his lifetime in the year 1982 between him (Khem Singh) and his two sons namely Bhukhan Singh (defendant No.1) and Gyan Singh (defendant No.2) and the plaintiff is only entitled to get the partition with respect to 0.26 hectares of land left by her father Khem Singh at the time of his death. It was further stated that the suit land bearing Khasra No.48/6 and Khasra No.49/1 admeasuring 1.72 acres are self-acquired property of Basan Bai, which was purchased by her by registered sale deed dated 16.5.1983 and she has

executed a registered Will on 11.2.2002 in favour of defendant No.8-Mahesh, as such, the suit deserves to be dismissed.

5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 30.4.2008, decreed the suit in part holding that the suit property was inherited by the plaintiff along with others after death of Khem Singh and the plaintiff has title/interest in the suit land and negatived the plea of oral partition set-up by the defendants and further held that Basan Bai is not owner of the part of suit land bearing Khasra No. 48/6 and Khasra No.49/1 and no right or title could be conferred upon defendant No.8-Mahesh on the basis of Will dated 11.2.2002 (Ex.D-5) allegedly executed by Basan Bai in his favour and further held that the plaintiff has failed to prove that the suit land bearing Khasra No.175/3 area 0.70 hectares was purchased from the income of ancestral property and held that the plaintiff would only be entitled for 0.806 hectare of land and decreed the suit for possession in respect of the said share. On appeal being preferred by the defendants under Section 96 of the CPC, the first appellate Court reversed the judgment and decree of the trial Court holding that partition was effected in the year 1982 among Khem

Singh and defendants No.1 & 2 and the suit land bearing Khasra No.48/6 and Khasra No.49/1 area 1.72 acres was purchased by Basan Bai as the same has not been purchased by her from income of ancestral property and that has been validly bequeathed by Basan Bai vide Ex.D-5 in favour of defendant No.8- Mahesh and the plaintiff is entitled for 0.26 hectares of land left by her father Khem Singh. Questioning the judgment and decree of the first appellate Court, the plaintiff has preferred this second appeal under Section 100 of the CPC before this Court, in which substantial questions of law have been formulated which have been set-out in the opening paragraph of this judgment.

6. Mr.Shobhit Koshta, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in reversing the well merited and well reasoned judgment of the trial Court particularly with regard to the fact of partition by holding that partition was effected in 1982 among defendants No.1 & 2 and their father Khem Singh. He would further submit that widow Basan Bai was alive on the date of partition, therefore, she was also entitled for share in the partition held in 1982. Since widow was not given partition, therefore, it cannot be held that a valid partition was

effectuated between Khem Singh and defendants No.1 & 2 and in order to hold that valid partition has taken place, it must be proved that legal partition giving share to the persons who are entitled including widow/step-mother has taken place. He would also submit that the defendants have not filed a copy of sale deed by which Basan Bai is allegedly said to have been purchased the suit land bearing Khasra No.48/6 and Khasra No.49/1 area 1.72 acres, as such, it is not proved that it is her self-acquired property and these properties were not ancestral properties of Khem Singh, as such, the appeal deserves to be allowed and the judgment and decree of the first appellate Court deserves to be set aside.

7. Mr.Amit Soni, learned counsel for respondents No.1 to 7/defendants, while supporting the impugned judgment and decree, would submit that partition was effected between Khem Singh and defendants No.1 & 2, which is duly established, but merely on the ground that Basan Bai was not given share in the property held by Khem Singh, as such, a valid partition cannot be brushed aside. He would also submit that the lands bearing Khasra No.48/6 and Khasra No.49/1 area 1.72 acres were self-acquired property of Basan Bai purchased by registered sale deed dated 16.5.1983 and therefore, that property

has rightly bequeathed in favour of defendant No.8-Mahesh by Will dated 11.2.2002, as such, the appeal deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(For the sake convenience, substantial question of law No.2 would be taken first)

Answer to substantial question of No.2:-

9. The plaintiff pleaded that the entire suit lands including the lands bearing Khasra Nos.48/6 and 49/1 admeasuring 1.72 acres were ancestral properties in the hands of Khem Singh, therefore, after death of Khem Singh on 12.11.2001, she would also be entitled for share in that suit property, in which the defendants claimed that so far as the land bearing Khasra Nos.48/6 and 49/1 admeasuring 1.72 acres are concerned, it is self-acquired property of Basan Bai, which she purchased by registered sale deed dated 16.5.1983 and thereafter she bequeathed the said property in favour of defendant No.8-Mahesh on 11.2.2002.

10. It is appropriate to note that the defendants claimed that Basan Bai has purchased the suit land by registered sale deed dated 16.5.1983 though sale

deed dated 16.5.1983 was not produced before the trial Court as well as before the first appellate Court and as such, this Court has no advantage to look into the said document to hold that the said property was purchased by Basan Bai and that was her self-acquired property. The trial Court in para-11 of the judgment has clearly recorded a finding that the defendants have not produced any documentary evidence to hold that the property was purchased by Basan Bai out of her own income. No document has been filed except the documents i.e. Adhikar Abhilekh (Ex.P-4) and kistabandh khatouni (Ex.D-2) in which name of Basan Bai is recorded as agriculturist. It is well settled law that revenue record does not create/confer any right or title over the suit land. It is only for the purpose of collecting revenue and to keep the records up to date, as such, the trial Court has taken reasonable view of the matter that it is not the self-acquired property of Basan Bai in absence of documentary evidence particularly sale deed by which Basan Bai is said to have been purchased the suit land bearing Khasra Nos.48/6 and 49/1 admeasuring 1.72 acres, it cannot be held that it was the self-acquired property of Basan Bai merely on the basis of revenue records, which the first appellate Court unnecessarily interfered with without there being

any material evidence on record and only on the basis of presumption of Ex.P-4, which is only copy of Adhikar Abhilekh as it has already been held that revenue record does not confer any title and held that the land bearing Khasra Nos.48/6 and 49/1 admeasuring 1.72 acres was self-acquired property of Basan Bai, as such, finding recorded by the first appellate Court is perverse and liable to be set aside and that of the trial Court is restored, in which it has been held that these properties were not the self-acquired property of Basan Bai.

Answer to substantial question of law NO.1:-

11.It is the case of the plaintiff that no partition has taken place during lifetime of Khem Singh, who died on 12.11.2001, whereas the defendants in para-3 of their written statement set-up a plea that partition took place during lifetime of Khem Singh between him (Khem Singh) and his two sons Bhukhan Singh (Defendant No.1) and Gyan Singh (defendant No.2), which the trial Court did not accept assigning valid reasons including that second wife Basan Bai was alive as she died on 21.4.2003 that she was not given any share in the suit property as she was admittedly entitled for share at that time.

12. Mulla's Hindu Law, 23rd Edition, in Section 314 it has been clearly stated that a wife cannot

herself demand a partition, but if a partition does take place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband.

13. It is admitted position on record that Basan Bai was not given any share in the alleged partition which took place in the year 1982. In order to have valid defence of prior partition setting up a plea, it must be pleaded and established that valid partition in the eye of law has taken place giving share to the persons who are so entitled to share in the property.

14. In the instant case, it is quite established that Basan Bai was not given any share in the alleged partition which took place between Khem Singh and defendants No.1 and 2, whereas Basan Bai, widow of Khem Singh, at that time, was fully entitled for share on the said partition and as such, the trial Court has rightly held that partition held in the year 1982 was not legal partition at all and it cannot be termed as partition and even if, it was taken place, it cannot be branded and styled as valid partition in the eye of law. It cannot be said as defence in a suit for partition filed by the plaintiff. The first appellate Court is totally unjustified in

accepting the partition which was not found legal in the eye of law and thereby fallen in legal error in invalidating the decree of the trial Court and thereby the impugned judgment and decree has become invalid in law, as such, the judgment and decree of the first appellate Court is set aside by answering the substantial questions of law in favour of the plaintiff and against the defendants and that of the trial Court is restored.

15. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

16. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-