

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.108 of 2004

1. Bihari (deleted)
 2. Jhumuk S/o Mohan Aged about 25 years
 3. Paretan W/o Jhumuk Aged about 20 years
 4. Samaru S/o Hiralal Aged about 65 years
- All above R/o Village Chhiraha, Tahsil Bemetara, Distt. Durg (CG)

---- Appellants/Defendants

Versus

- 1(a) Kuwariya Bai Wd/o Gangaram, aged about 60 years,
 - 1(b) Munna S/o Gangaram, aged about 40 years,
 - 1(c) Aghanu S/o Gangaram, aged about 30 years,
- All above R/o Village – Chhirha, Tahsil Navagarh, District Durg (CG)
- 1(d) Saraswati Bai W/o Pawan, D/o Gangaram, aged about 38 years, R/o Village Khairjhhitti, Post-Pandatarai, District-Kabirdham, Distrit Durg (CG)
 - 1(e) Durpati W/o Gangu, D/o Gangaram, aged about 28 years, R/o Village – Biptara, Post-Pipariya, Tahsil & District Kabirdham (CG)
 2. Babulal S/o Shivcharan Aged about 25 years, R/o Vill. Chhiraha, Tah. Bemetara, Distt. Durg (CG)
 3. Vidhilal S/o Shivcharan aged about 15 years, through its Family Guardian Gangaram S/o Shivcharan aged about 40 years R/o Village Chhiraha, Tah. Bemetara, Distt. Durg (CG)
 4. Tijiya (deleted)
 5. State of C.G. through Collector, Durg, Dist. Durg (CG)

---- Respondents

For Appellants/Defendants :	Mr.Manoj Paranjape, Advocate
For LR's of Res.No.1/plaintiff :	Mr.Amit Kumar Sahu, Advocate
For Respondents No.2 and 3 :	None present
For Respondent No.5 :	Mr.Priyank Rathi, P.L.

Hon'ble Shri Justice Sanjay K. AgrawalJudgment On Board05/08/2019

1. The substantial question of law involved, formulated and to be answered in this defendants' second appeal is as under: -

“Whether, the suit is maintainable on the plea of adverse possession ?”

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

2. The suit property was originally held by Hangru and after death of Hangru, the suit property was succeeded by his sons namely Shivcharan and Bihari. The plaintiffs are successor-in-interest of Shivcharan, whereas defendant No.1 is Bihari and defendants No.2 to 4 are close relatives of defendant No.1-Bihari. The plaintiffs filed a suit for declaration of title, possession and permanent injunction stating inter-alia that the suit property fell in share of Shivcharan on partition and during his life-time, he was in possession and after his death, they are in possession of the suit property, as such, they are entitled for declaration of title, possession and permanent injunction and also claimed that they have perfected their title by way of adverse possession.
3. The defendants set-up a plea that no partition has been taken place between Shivcharan and Bihari, as such, the plaintiffs are not entitled to decree for declaration of title, possession and permanent injunction. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 26.7.90 held that the suit property fell in share of Shivcharan on partition between Shivcharan and Bihari and defendants No.1 and 3 have forcibly taken possession of the suit property and interfered with the plaintiffs' peaceful possession and also held that they have also perfected their title by way of adverse possession. The first appeal taken by the defendants was partly allowed by the first appellate

Court holding that the plaintiffs have not perfected their title by way of adverse possession, however, maintained the finding that there is prior partition between Shivcharan and defendant No.1-Bihari and therefore, the plaintiffs have succeeded the property of Shivcharan after his death, which fell in his share on partition. Being aggrieved and dissatisfied with the judgment and decree of the first appellate Court, this second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed by the appellants/defendants, in which, substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

4. Mr.Manoj Paranjape, learned counsel for the appellants/defendants, would submit that the first appellate Court is absolutely unjustified in granting decree in favour of the plaintiffs, therefore, it deserves to be set aside.
5. On the other hand, Mr.Amit Kumar Sahu, learned counsel for legal representatives of respondent No.1/plaintiff, would support the impugned judgment and decree.
6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
7. The first appellate Court has clearly recorded a finding that there is prior partition between Shivcharan and Bihari and the suit property fell in share of Shivcharan and the plaintiffs, who are successor-in-interest of Shivcharan, are entitled for decree by affirming the finding

recorded by the trial court, but thereafter the first appellate Court in paras-15 and 16 of the impugned judgment and decree rightly set aside a finding that the plaintiffs have perfected their title by way of adverse possession.

8. Since the first appellate Court has already set aside a finding that the plaintiffs have perfected their title by way of adverse possession, the substantial question of law as framed by this Court does not arise for consideration as the first appellate Court has rightly set aside a finding that the plaintiffs have perfected their title by way of adverse possession by affirming the decree on the ground that the suit property fell in share of Shivcharan on partition. Even otherwise, fact of partition between Shivcharan and Bihari is a finding of fact based on evidence available on record, which has not been questioned by the defendants in this second appeal.
9. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).
10. Decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-