

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.290 of 2001

1. Smt. Mangli Bai, Widow of Sudama Maina, Aged 35 years,

1(A) Bisahu, S/o Sudama, aged 14 years,

(B) Bilasabai, S/o Sudama, aged 12 years,

(C) Lalji, S/o Sudama, aged 13 years,

(D) Fulbai, S/o Sudama, Aged 5 years,

Appellants No.1(A) to 1(D) minors through their next friend and natural guardian mother Smt. Manglibai, Wd/o Sudama are R/o Village Darmohli, Tehsil Pendra Road, District Bilaspur, M.P. (now C.G.)

(Defendants)
---- Appellants

Versus

1. Smt. Bisamat Bai (Dead) Through LR

1.a Dwarika Prasad Bhaina, S/o Amarjit Bhaina, R/o Village Surangtola, Masurikhar, Police Station Marwahi, District Bilaspur (C.G.)

(Plaintiff)

2. State of Madhya Pradesh (now State of Chhattisgarh), Through the Collector, Bilaspur, M.P. (now C.G.)

(Defendant No.2)
---- Respondents

For Appellants:	Mr. Rakesh Pandey, Advocate.
For Respondent No.1:	Mr. Vivek Bhakta, Advocate.
For Respondent No.2 / State:-	Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

14/01/2019

1. This is defendants' second appeal under Section 100 of the CPC and was admitted for hearing on the following substantial questions of law: -

“i). Whether the learned lower Appellate Court was justified in reversing the finding of the Trial Court holding that the suit land was not the joint property of the parties?

2). Whether the documents proposed to be filed showing the property of Ramdin would materially alter the finding of the Court below?”

2. The plaintiff's father namely Kashiram and the defendants' grandfather namely Buddhu were brothers and they were sons of Ramdin. The plaintiff instituted a suit for declaration of title and possession of suit land on the ground that she being daughter of Kashiram, in the property of Kashiram, she has right and title over the suit property and the suit land was attached on the application filed by the defendants necessitating the filing of suit for declaration and permanent injunction in which the defendants laid a counter-claim along with written statement that the suit property is the joint family property of their father Buddhu and the plaintiff's father Kashiram and, therefore, they are also entitled for share and decree of partition. Upon due appreciation of oral and documentary evidence on record, the trial Court allowed the counter-claim holding that the suit property is the joint family property of Kashiram & Buddhu and the plaintiff and the defendants both are entitled for half share in the suit property. On appeal being preferred by the plaintiff, the first appellate Court reversed that finding and set aside the finding on the counter-claim and held that the property is the self-acquired property of Kashiram and therefore only the plaintiff is entitled for declaration of title which has been questioned in this second appeal.
3. Mr. Rakesh Pandey, learned counsel appearing for the appellants / LRs of defendant No.1, would submit that the first appellate Court is

absolutely unjustified in setting aside the judgment & decree of the trial Court. Additional document filed before this Court would clearly show that it is the ancestral property in the hands of Ramdin and therefore the trial Court is absolutely justified in granting decree of partition in favour of the parties and as such, the judgment & decree of the first appellate Court be set aside, as the document in question i.e. Jamabandi of the year 1927-28 is relevant for considering the appeal on merits.

4. Mr. Vivek Bhakta, learned counsel appearing for the plaintiff / respondent No.1, would support the judgment & decree of the first appellate Court and would submit that it is the case of the defendants that partition between the plaintiff's father and the defendants' grand-father had already taken place after the death of Ramdin, therefore, the decree of counter-claim has rightly been set aside by the first appellate Court.
5. I have heard learned counsel for the parties and considered their rival submissions and went through the records with utmost circumspection.
6. Before considering the appeal, it would be appropriate to take-up the second substantial question of law first along with the application under Order 41 Rule 27 of the CPC, as the second question is based on the application under Order 41 Rule 27 of the CPC filed by the defendants.
7. The objection to the said application is that this document is filed in order to fill-up the lacuna and further it is the case of the defendants in the written statement itself that partition had already taken place and therefore the document is not necessary to be admitted in

appeal. In my considered opinion, since it is the case of the defendants in written statement / counter-claim that partition between the plaintiff's father and the defendants' grand-father had already taken place immediately after the death of Ramdin and that this document was not filed before the two Courts and has been filed for the first time before this Court in which it is not clear as to whether Ramdin only owned the suit land or any other land which he held, as it is the case of the defendants that partition had already taken place between the parties, I do not find any merit in the impugned application and it is accordingly rejected. The document is neither relevant nor necessary for just and proper disposal of the suit, as partition had already taken place between the plaintiff's father and the defendants' grand-father. The second substantial question of law is answered accordingly and application is rejected.

8. Now, coming to the first substantial question of law, the first appellate Court has rightly held that once partition has taken place between the parties as admitted in the counter-claim filed by the defendants itself, the question of again granting decree for partition does not arise. I am of the considered opinion that since partition has admittedly taken place between the parties (between the plaintiff's father and the defendants' grand-father) on their own showing by the defendants, the first appellate Court is absolutely justified in holding that again the suit property cannot be subjected to re-partition which in the considered opinion of this Court, is the finding of fact, particularly when in the year 1954-55 the name of the plaintiff is recorded in the revenue records and the revenue records thereafter have also been corrected. The finding of fact is

based on evidence available on record in which I do not find any illegality or perversity in the said finding. The first substantial question of law is answered accordingly.

9. Consequently, the second appeal is dismissed. There will be no order as to cost(s).
10. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma