

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.219 of 2005**

1. Phooldas, S/o. Ghasiyadas, aged about 57 years,
2. Dhyandas, S/o. Ghasiyadas, aged about 47 years,
3. Sukrit Bai, W/o. Ghasiyadas, aged about 77 years,

All resident of Kartala, Jhorkhipara, Tahsil Pali, District Korba (CG)

---- Appellants/Defendants

Versus

1. Itwara Bai, W/o. Sondas, aged about 54 years, Resident of Kartala, Jhorkhipara, Tahsil-Pali, District Korba (CG)

---- Respondent/Plaintiff

2. Dharamadas, S/o. Ghasiyadas, aged about 51 years, Resident of Kartala, Jhorkhipara, Tahsil-Pali, District-Korba (CG)

3. State of Chhattisgarh Through Collector, Korba (CG)

---- Respondents/Defendants

For Appellants/Defendants : Ms Hamida Siddiqui, Advocate

For Respondent No.1/Plaintiff : None present

For Respondent No.3/State : Mr.Priyank Rath, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15/07/2019

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

“Whether the 1st appellate Court has decided the suit ignoring the material evidence ?”

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

2. The suit property was originally held by Ghasiyadas. The plaintiff is his daughter, defendants No.1 to 3 are his sons and defendant No.4 is his widow. Ghasiyadas partitioned his property during his life-time in the year 1983. It is the case of the plaintiff that the suit land bearing Khasra Nos.501 and 478/2 fell in her share in which her name stood recorded in revenue records, but after death of her father in the year 1993, the defendants got their names mutated in revenue records, which she questioned before the revenue Courts and ultimately, she felt necessity for filing the suit and filed the instant suit for declaration of title and for restraining the defendants from interfering with her peaceful possession.

3. The defendants filed their written statement controverting the averments made in the plaint stating inter-alia that the suit property fell in their share.

4. The trial Court after appreciating oral and documentary evidence available on record by its judgment and decree dated 3.7.2003 dismissed the suit finding no merit. In appeal preferred by the plaintiff, the first appellate Court reversed the finding of the trial Court and decreed the suit. Being aggrieved and dissatisfied with the judgment and decree passed by the first appellate Court, this second

appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

5. Ms Hamida Siddiqui, learned counsel for the appellants/defendants, would submit that material documents i.e. Exs.D/2 to D/4 have not been taken into consideration by the first appellate Court while reversing the judgment and decree passed by the trial Court. Therefore, the judgment and decree passed by the first appellate Court deserves to be set aside.

6. None present for the respondents though served.

7. I have heard learned counsel for the appellants/defendants and considered her submissions made herein-above and also went through the records with utmost circumspection.

8. The fact of partition by Ghasiyadas during his life-time is not in dispute. The only dispute is whether the suit land fell in share of the plaintiff or in favour of the defendants. The first appellate Court after appreciating statement of plaintiff-Itwara Bai (PW-1) and testimonies of the defendants witnesses Fuldas (DW-1), Hapetharam (DW-2) and Umendra Singh (DW-3) came to the specific conclusion that the suit property fell in share of the plaintiff in partition and her name was also recorded in revenue records. The trial Court has also held that the suit property fell in share of the plaintiff in partition, but dismissed the suit on

the ground of non-joinder of necessary party, which the first appellate Court has reversed and held that suit is properly constituted. In fact, the finding of the trial Court in paras-6 and 7 that the suit property fell in share of the plaintiff has become final as the defendants did not question that part of finding in appeal preferred by the plaintiff and the first appellate Court has also held after appreciating the evidence available on record that the suit property fell in share of the plaintiff, as such, it is finding of fact based on evidence available on record.

9. Exs.D/1 and D/2 relate to mutation over the suit land. It is well settled that mutation is only for the purpose of getting the revenue records up-to-date and for collection of revenue. It neither confers nor extinguishes any title in favour of any party. The first appellate Court has rightly granted decree in favour of the plaintiff, which is neither perverse nor contrary to record.

10. Accordingly, the second appeal deserves to be and is hereby dismissed. The defendants shall bear their own cost and cost of the plaintiff.

11. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-