

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 199 of 2002**

Sukh Lal (Since dead)

a: Sahadeo Paatra, son of late Sukhlal, aged about 49 years,

b: Ramkumar Paatra, Son of Late Sukhlal, aged about 46 years,

Both are resident of Narayanpur, Tahsil Narayanpur, Distt. Bastar (C.G.)

----Appellant

Versus

1. Padmini (Since dead)

2. Gajanand, S/o Rameshwar Paatra, aged about 55 years, Both Resident of Village Tahsil Narayanpur, District Bastar (C.G.)

3. The State of Chhattisgarh through Collector Bastar, District Bastar (C.G.)

---- Respondents

For Appellant : Shri R.N. Jha, Advocate.

For Respondent No. 2 : Shri Harshal Chouhan, Advocate.

For Respondent No. 3 : Shri Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

15/02/2019

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

“Whether the first appellate Court is justified in reversing the finding of the trial Court by holding that the suit property is joint family property by recording a finding which is perverse to the record ?

(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) Original plaintiff – Suklal filed a suit for declaration of title and possession stating inter alia that he is owner of the suit land bearing Khasra Nos. 965 & 2097, total area 6.83 acres, which is self acquired property of his father Mandhar, who died in the year 1972-73 and after death, plaintiff is continuing in possession of the suit land.

(2.2) By filing written statement, the defendant denied the claim of the plaintiff stating inter alia that partition has already taken place between the parties way back in the year 1967-1968 vide Ex.D-4 and, as such, suit be dismissed with cost(s).

(2.3) The trial Court decreed the suit in plaintiff's favour whereas that was reversed by the first appellate Court dismissing the suit vide impugned judgment & decree .

(2.4) Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellants/plaintiffs in which the substantial question of law has been formulated for consideration, which has been set out in the opening paragraph of the judgment.

(3) Mr. R. N .Jha, learned counsel appearing for the appellants/plaintiff would submit that the first appellate court is absolutely unjustified in reversing the well merited judgment and decree of the trial Court, which is liable to be set aside.

(4) On the other hand, counsel for respondent No. 2/defendant would support the impugned judgment & decree.

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

(6) The main dispute arose between the parties is that in the suit land bearing Khasra Nos. 965 & 2097, total area 6.83 acres, plaintiff claimed the suit land to be the exclusive property of his father Mandhar, whereas according to defendant, plaintiff's father was his cousin and partition has taken place vide Exs.D-4 & D-5 way back in the year 1967-1968.

(7) Partition has taken place between plaintiff's father – Mandhar & defendant – Rameshwar vide Ex. D-5, which states as under:-

"आवेदन-पत्र क्रमांक-890 दिनांक-27/06/1984 द्वारा माँग किये जाने पर तह० नारायणपुर के रा० प्र० क्र० 8/A-27/67-68 में से प्रतिलिपि प्रदाय की गई।

—X—
लिस्ट बाबत हिस्सा बटवारा

ग्राम नारायणपुर प०ह०नं० २५(अ) नारायणपुर रा० नि० मं० नारायणपुर
जिला-बस्तर सन् १९६७-६८ ई०

नम्बर शुमार	नाम कास्तकार	खसरा नम्बर	टेक्टर	एकड़	किस्म भूमि	लगान	कै०
१	२	३	४	५	६	७	८
१	मन्धर वल्द...जाति हल्बा, निवासी-निज ग्राम	९६५ २०९७ १	०.१४ १.३०५	०.३८ ३.२३	वाड़ी गभार	०.२६ २.७४	
	भूमिस्वामी						
	योग	२	१.४५९	३.६१	— —	३.००	
२	रामेश्वर सुकभन	२०९७ २	१.३०५	३.२२	गभार	२.७४	
	जाति हल्बा निवासी						

निज					
ग्राम भूमिस्वामी					
योग दोनों का	३	२.७६४	६.८३	— —	५-७४
Both Parties agreed. They have No. Objection partition confirmed. s.d/Illegible १.३.६८				सही/— फागूराम पटवारी ह०नं० २५(अ) नारायणपुर १.३.६८	

(8) A careful perusal of the aforesaid partition would show that the suit property bearing Khasra Nos. 965 & 2097/1, total area 3.61 has been given to the plaintiff's father –Mandhar, whereas the suit property bearing Khasra No. 2097/2, area 3.22 acres has been given to original defendant Rameshwar and in which both the parties have made no objection on 1.3.1968. Even, plaintiff - Sukhlal (PW-1) has admitted in his statement that as per partition defendant is in possession of 3 acres, 25 decimal of the land which has fallen in his share in partition.

(9) Since partition has already taken place between the plaintiff and defendants on the application filed by them for partition under Section 178 of the Land Revenue Code before the Tahsildar, Narayanpur and they are in possession of their respective lands as per order of partition, I do not find any illegality and perversity in the impugned judgment and decree passed by the first appellate court dismissing the suit of the plaintiffs.

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

(11) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

