

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 426 of 2005**

1. Jugmaniya W/o Late Rambaran (Deleted).
2. Avdhesh Prajapati S/o Late Rambaran Prajapati, aged 30 years, R/o Village Karji, Tahsil Ambikapur, District Surguja, Chhattisgarh.
3. Rajesh Prajapati, S/o Late Rambaran Prajapati, aged 25 years, Occupation Advocate, Present Address – Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh, R/o Village Karji, Tahsil Ambikapur, Distt. Surguja, Chhattisgarh.
4. Lalmani W/o Gulab Prajapati D/o Late Rambaran Prajapati, aged about 45 years, R/o Village Kunni, P.S. Lakhanpur, Tehsil Ambikapur, Distt. Surguja, Chhattisgarh.
5. Khuli Bai W/o Pulkit Nath, D/o Late Rambaran Prajapati, aged 40 years, R/o Village Rajpuri Kala, P.S. Lakhanpur, Tehsil Ambikapur, Distt. Surguja, Chhattisgarh.
6. Sumitra W/o Budhram Prajapati, D/o Late Rambaran, R/o Village Gangapur, P.S. Batauli, Tahsil Lundra, District Surguja, Chhattisgarh.
7. Lalita D/o Late Rambaran Prajapati, aged 30 years, R/o Village Karji, P.S. Darima, Tehsil Ambikapur, District Surguja, Chhattisgarh.

---Appellants/Defendants**Versus**

1. Sahab Kumhar (died) through Lrs.
 - a. Krishna S/o Late Sahab Kumhar, Aged about 50 years.
 - b. Shivilal S/o Late Sahab Kumhar, Aged about 43 years.
 - c. Kehati D/o Late Sahab Kumhar, Aged about 35 years.
 - d. Bhuri D/o Late Sahad Kumhar, Aged about 32 years.

All R/o Village Mendrakala, Post- Bhattikala, Tahsil and P.S. - Ambikapur, District Surguja, Chhattisgarh.
2. Sukhmaniya Wd/o Somar Say (deleted)
3. Tara Bai W/o Shyamlal, Aged 28 years.

---- Plaintiffs

4. Kiran D/o Somar Say, Aged 20 years.

No. 2 to 4 all R/o Village Karji, Tehsil Ambikapur, District Surguja, Chhattisgarh.

5. State of Chhattisgarh, through Collector, Surguja, Ambikapur, Chhattisgarh.

----Respondents/Defendants

For Appellants	:	Mr. A.K. Prasad, Advocate
For Lrs. of Respondent No. 1	:	Mr. D.K. Tiwari, Advocate
For State	:	Mr. Arun Shukla, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

30/07/2019

1. The substantial question of law involved, formulated and to be answered in this defendant's second appeal states as under:

“Whether the appellate Court granted the relief which was not claimed by the plaintiff in the alternative to pay the amount of sale consideration to the plaintiffs ?”

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

2. Plaintiff filed a civil suit bearing No. 78-A/91 for partition and possession of the suit property which is shown in 'Schedule A' annexed with the plaint, stating *inter alia* that the suit property is a joint family property of plaintiff and defendants No. 1, 2 and 3 and no earlier partition has taken place among them therefore, plaintiff is entitled for ½ share in the suit property by way of partition.

3. Learned trial Court dismissed the plaintiff's suit by judgment and decree dated 09/03/1996 holding that though the suit property is a joint family property but partition has already happened between the parties therefore, plaintiff is not entitled for the decree of partition and possession.
4. Being aggrieved, plaintiff preferred Civil Appeal No. 6-A/2005, whereby learned first appellate Court affirmed the finding recorded by the trial Court with regard to the prior partition happened between the parties, but granted decree for declaration of title and possession with respect to the property shown in 'Schedule B' annexed with the plaint in alternative payment of the sale consideration be made to the plaintiff by judgment and decree dated 27/04/2005, which has been challenged by the defendant by way of filing this second appeal in which substantial question of law has been formulated and set out in the opening paragraph of the judgment.
5. Mr. A.K. Prasad, learned counsel for the defendants would submit that learned first appellate Court is absolutely unjustified in granting relief of declaration of title and delivery of possession to the plaintiff as no such relief was claimed by him particularly with respect to the property mentioned in 'Schedule B' of the plaint. The only relief claimed by the plaintiff was for partition and possession of the suit property which is mentioned in 'Schedule A' of the plaint, as such, that part of the judgment and decree of the first appellate Court deserves to be set aside.
6. Mr. D.K. Tiwari, learned counsel for the plaintiff would submit that the first appellate Court is absolutely justified in granting the relief with

respect to the property mentioned in Schedule B of the plaint, and as such, the second appeal deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
8. A careful perusal of the plaint would show that plaintiff's suit for declaration of title, partition and possession was filed only with respect to the property shown in 'Schedule A' annexed with the plaint. No relief, at all, was claimed by the plaintiff with respect to the property shown in 'Schedule B' of the plaint and neither declaration of title nor recovery of possession was claimed by the plaintiff with reference to the property shown in 'Schedule B' whatsoever, though, learned trial Court has recorded a finding that defendant No. 4 – Ram Baran has purchased the suit property mentioned in 'Schedule B' on sale made by the grandfather of defendants No. 1, 2 and 3.
9. It is well-settled law that the plaintiff has to make specific averment in the plaint and claim specific relief in order to have decree in his favour, so that the other side is noticed to meet out the averment and the Court may consider the rival pleas of the parties and consider the grant of decree, if any. As no relief at all was claimed by the plaintiff with regard to the property shown in 'Schedule B' either for declaration of title or for recovery of possession, learned first appellate Court is absolutely unjustified in granting the relief of declaration of title and recovery of possession to the plaintiff with respect to the property mentioned in 'Schedule B' annexed with the plaint, which is contrary to the record and is hereby set aside.

10. Accordingly, the findings recorded in paragraphs 17 and 18 as also the reliefs granted in paragraphs 21.1 and 21.2 contained in the judgment dated 27/04/2005 passed by the first appellate Court are hereby set aside.

11. The second appeal is allowed to the extent indicated herein-above.

12. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

Harneet