

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 333 of 2007**

Samal Sai (died) through Lrs.

1. Hari Lal S/o Late Samal Sai Dewangan, 45 years.
2. Mahesh Lal S/o Late Samal Sai Dewangan, 43 years.
3. Bholu Singh S/o Late Samal Sai Dewangan, 40 years.
4. Mohan Lal S/o Late Samal Sai Dewangan, 35 years.
5. Babu Lal S/o Late Samal Sai Dewangan, 31 years.

R/o Village Kondagaon, Distt. Bastar, Chhattisgarh.

---Appellants/Lrs. of plaintiff

Versus

1. Samlu Ram S/o Mangal Ram, 63 years, R/o Village Kusma, Tahsil Kondagaon, Distt. Bastar, Chhattisgarh.
2. Raghunath S/o Mangal Ram, 58 years.
3. Dhirnath S/o Mangal Ram, 54 years.
4. Shivnath S/o Mangal Ram, 51 years.
5. Kaushalya, W/o Late Shri Jagannath, 50 years.
6. Bhagbati, W/o Jagannath, 28 years.
7. Vijendra S/o Jagannath, 25 years.
8. Madhav, S/o Jagannath, 24 years.
9. Sulekha, D/o Jagannath, 22 years.
10. Santosh S/o Jagannath, 19 years.
11. Dharamdai, S/o Mangal Ram, 56 years.
12. Shyambati D/o Mangal Ram, 52 years.
13. Mukendra S/o Sonu, 40 years.
14. Chhirli, S/o Bhagtu

All R/o Village Kondagaon, Distt. Bastar, Chhattisgarh.

15. State of Chhattisgarh, Through Distt. Magistrate, Jagdalpur, Distt. Bastar, Chhattisgarh.

---- Respondents

For Appellants	:	Mr. Prafull N. Bharat, Advocate
For State	:	Mr. Sanjeev Kumar Agrawal, Panel Lawyer

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

19/09/2019

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the plaintiff (now, his Lrs.) under Section 100 of the CPC.
2. Mr. Prafull N. Bharat, learned counsel for the appellants/legal representatives of the plaintiff would submit that both the Courts below have concurrently erred in dismissing the civil suit filed by the plaintiff holding that partition of the suit property has already happened between plaintiff and his brothers and sisters i.e. defendants, and a partition that has already been concluded cannot be reopened, which being perverse and contrary to record, gives rise to substantial question of law for determination and therefore, the second appeal deserves to be admitted for final hearing.
3. Plaintiff and defendants No. 1 to 4, 11, 12 and 14 are all brothers and sisters. Plaintiff – Samal Sai filed a civil suit for declaration of title, partition and possession claiming that he is entitled for 1/ 6th share in the suit property. Learned trial Court, while dismissing the suit of the plaintiff, held that the suit property has already been partitioned between the plaintiff and the defendants during the lifetime of their

father namely Mangal Ram and that partition is binding on the plaintiff and further held that though the partition which has already happened is unequal, but that would not make it illegal. Learned first appellate Court affirmed with the findings recorded by the trial Court and dismissed the appeal preferred by the plaintiff under Section 96 of the CPC.

4. The Supreme Court, in the matter of ***Ratnam Chettiar & Ors. Vs. S. M. Kuppuswami Chettiar & Ors.***¹, has laid down the propositions for reopening the partitions, which state as under :-

“Thus on a consideration of the authorities discussed above and the law on the subject, the following propositions emerge:

(1) A partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.

(2) When the partition is effected between the members of the Hindu Undivided Family which consists of minor coparceners it is binding on the minors also if it is done in good faith and in bona fide manner keeping into account the interests of the minors.

(3) Where, however a partition effected between the members of the Hindu Undivided Family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place. In such a case it is the duty of the Court to protect and safeguard the interests of the minors and the onus of proof

¹ (1976) 1 SCC 214

that the partition was just and fair is on the party supporting the partition.

(4) Where there is a partition of immovable and movable properties but the two transactions are distinct and separable or have taken place at different times. If it is found that only one of these transactions is unjust and unfair it is open to the Court to maintain the transaction which is just and fair and to reopen the partition that is unjust and unfair.”

5. In the aforesaid decision rendered by the Supreme Court, it has clearly been held that a partition already concluded, cannot be reopened unless it is obtained by fraud, coercion, misrepresentation or undue influence
6. Both the Courts below have concurrently held that the suit property has already been partitioned between plaintiff and his brothers and sisters and it is not a case where the concluded partition can be reopened, even otherwise, there is no evidence to hold that the partition was obtained by fraud, coercion, misrepresentation or undue influence. In that view of the matter, both the Courts below have rightly dismissed the suit filed by the plaintiff by recording the aforesaid findings in which I do not find any perversity or illegality much less any substantial question of law for determination in this second appeal.
7. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge