

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 67 of 2005**

1. Charan Das S/o Bhurelal Aged About 50 Years R/o Village Dhobani, Tahsil Singa, Distt.- Raipur Chhattisgarh ,
2. Shoba Ram S/o Bhurelal Aged About 48 Years R/o Village Dhobani, Tahsil Singa, Distt.- Raipur Chhattisgarh
3. Kabir Charan S/o Bhurelal Aged About 40 Years R/o Village Dhobani, Tahsil Singa, Distt.- Raipur Chhattisgarh
4. Gopal S/o Bhurelal Aged About 37 Years R/o Village Dhobani, Tahsil Singa, Distt.- Raipur Chhattisgarh
5. Smt. Bhagbati S/o Raruha Sahu Aged About 53 Years W/o Purshottam Sahu R/o Bansankara, Tahsil Simga, Distt. Raipur Chhattisgarh

---- Appellants/ Plaintiffs**Versus**

1. Bhau S/o Raghu Sahu Aged About 47 Years R/o Village Kirawai Tahsil Simga, Distt. Raipur Chhattisgarh , Chhattisgarh
2. Ishwari S/o Raghu Sahu Aged About 39 Years R/o Village Kirawai Tahsil Simga, Distt. Raipur Chhattisgarh , District : Raipur, Chhattisgarh
3. Parbat Bai S/o Raghu Sahu Aged About 60 Years R/o Village Kirawai Tahsil Simga, Distt. Raipur Chhattisgarh , District : Raipur, Chhattisgarh
4. Ram Bai S/o Raghu Sahu Aged About 50 Years R/o Village Kirawai Tahsil Simga, Distt. Raipur Chhattisgarh , District : Raipur, Chhattisgarh
5. Ramhin Bai S/o Raghu Sahu Aged About 42 Years R/o Village Kirawai Tahsil Simga, Distt. Raipur Chhattisgarh , District : Raipur, Chhattisgarh
6. Rambati Bai S/o Raghu Sahu Aged About 40 Years R/o Village Kirawai Tahsil Simga, Distt. Raipur Chhattisgarh , District : Raipur, Chhattisgarh
7. State Of Chhattisgarh S/o Through Collector Raipur Chhattisgarh , District : Raipur, Chhattisgarh

---Respondents

For Appellants/ Plaintiffs	:	Mr. H.V. Sharma, Advocate
For Respondents No. 1 to 6	:	Mr. C.D. Sharma, Advocate
For State/ Respondent No. 7	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****15.07.2019**

1. This second appeal filed by plaintiffs was admitted for hearing by
formulating following substantial question of law:-

“Whether the Courts below were not justified in holding that there was no partition between Raruha and Raghu and the finding to this effect is perverse?”

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

2. The suit property situated at villages Kirwai and Dhobani was held by one Bhikhari. He had two sons namely Raruha and Raghu. Raruha was the original plaintiff but he died during the pendency of the suit and his legal representatives were brought on record. The defendants are the sons and widow of Raghu. Raruha-plaintiff instituted a suit for declaration of title and permanent injunction on 20.09.1994 stating *inter alia* that the suit property which was originally held by his father, was partitioned between him and his late brother Raghu 30 years prior to the date of institution of suit. The suit lands situated in villages Dhobani and Kirwai, were given to him and the land at village Bansankara, was given to the father of defendants No. 1 & 2 i.e. Raghu. As such, partition had already been taken place between two brothers and most of the property Raghu had already sold during his lifetime as he was involved in the litigation. Therefore, he has exclusive title and possession over the suit land situated at villages Dhobani and Kirwai, as mentioned in 'schedule A' annexed with the plaint. The defendants filed their joint written statement stating *inter alia* that the suit property situated at villages Dhobani and Kirwai were never subjected to partition and the property situated at village Bansankara was the property of Raghu held by him from his in-laws and as such, partition has only been taken place by the order of Tehsildar, Simga dated 17.02.1994 and, as such, the suit deserves to be dismissed.
3. The trial Court after appreciating oral and documentary evidence on record, came to a specific conclusion that no partition had taken place

between Raruha and Raghu and the plaintiff is not in exclusive possession of the suit land and it is the joint family property of plaintiff Raruha and defendant No. 1 & 2. The partition now, had been effected by the order passed by the Tehsildar vide Exhibit P-19 on 17.02.1994. On appeal being preferred, the first appellate Court principally agreed with the findings recorded by the trial Court and dismissed the appeal and affirmed the judgment and decree of the trial Court against which the second appeal has been preferred in which the substantial question of law has been formulated which has been set out in the opening paragraph of this judgment.

4. Mr. H.V. Sharma, learned counsel for the appellants/ plaintiffs referring to the plaint averments and the statement of the witnesses would submit that the finding recorded by the trial Court as affirmed by the first appellate Court that there was no partition between Raruha and Raghu is grossly perverse and contrary to the record and therefore it is liable to be set-aside.
5. Mr. C.D. Sharma, learned counsel for the defendants would submit that the trial Court has rightly reached to a conclusion that there was no partition between Raruha and Raghu which has rightly been affirmed by the first appellate Court. The finding of fact so arrived in by the two Courts below are binding to this Court and therefore, the second appeal deserves to be dismissed.
6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
7. The trial Court after appreciating oral and documentary evidence on record came to a specific conclusion that the suit property situated at two villages namely Dhobani and Kirwai were never subjected to partition between Raruha and Raghu and declined to decree the suit filed by the

plaintiff. The appellate Court has also considered the plea of appellants/ plaintiffs and agreeing with the finding of the trial Court in all the issues, dismissed the appeal. Learned counsel for the appellants/ plaintiffs has failed to point out that any material evidence has been omitted by the trial Court while arriving at such finding. He could not demonstrate any perversity in the finding so recorded. On the basis of material on record, it is rightly held by two Courts below that there was no partition between Raruha and Raghu. The said finding is a finding of fact based on evidence available on record. It is neither perverse nor contrary to the record. I do not find any merit in the second appeal, therefore, it deserves to be and is hereby dismissed. No cost(s).

8. Decree be drawn accordingly.

**Sd/-
(Sanjay K. Agrawal)
Judge**