

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 71 of 2005**

1. Bhurelal (dead) Through LRs

(a) Charan Das, Aged about 50 years, S/o Bhurelal.

(b) Shoba Ram, Aged about 48 years, S/o Bhurelal.

(c) Kabir Charan, Aged about 40 years, S/o Bhurelal.

(d) Gopal, aged about 37 years, S/o Bhurelal.

All R/o Dhobani, Tahsil Simga, Distt. Raipur.

2. Smt. Bhagbati, aged 53 years, D/o Raruha Sahu, W/o Purshottam Sahu, R/o Bansankara, Tahsil Simga, District Raipur (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Bhau, aged 47 years, S/o Raghu Sahu

2. Ishwari, aged 45 years, S/o Raghu Sahu

3. Parbat Bai, aged 60 years, D/o Raghu Sahu

4. Ram Bai, aged 50 years, D/o Raghu Sahu

5. Ramhin Bai, aged 42 years, D/o Raghu Sahu

All R/o Village Kirawai, Tahsil Simga, Distt. Raipur (C.G.)

6. State of Chhattisgarh, Through Collector, Raipur (C.G.)

(Defendants)
---- Respondents

For Appellants/Plaintiffs: Mr. H.V. Sharma, Advocate.

For Respondents No.1 to 5: -

Mr. Yogesh Kumar Chandra and Mr. Rishi Rahul Soni,
Advocates.

For State/Respondent No.6: -

Mr. Aakash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15.07.2019

1. This second appeal by plaintiff was admitted for final hearing on the 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 findings 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, Dhobani & Khairghat was held by one Bhikhari. The suit was originally filed for declaration of title for the land situated in the village Khairghat. He (Bhikhari) 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 daughter of Raghu. Raruha-plaintiff instituted a suit for declaration of title and permanent injunction on 27.09.1994 stating *inter alia* that the suit property which was originally held by his father, was partitioned between him and his late brother Raghu 35 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 village Khairghat, 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. He relies upon the decision of this Court in **Mahadevi & Others v. Omprakash & Others**¹ in which it has been held that sons living separately and enjoying their share and also transferring property out of their share, the effect of partition is held to be proved. He further relied upon the decision of Supreme Court in the matter of **Smt. Bhimabai Mahadeo Kambekar (D) Through LR v. Arthur Import and Export Company and others**², in which it has

1. 2008(1) C.G.L.J. 40

2. AIR 2019 Supreme Court 719

been held that mutation in revenue records does not create or extinguish title nor it has presumptive value in respect of title.

5. Mr. Chandra & Mr. Soni, learned counsels 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 village namely Khairghat was 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. I do not find any merit in the second appeal, therefore, it deserves to be and is hereby dismissed. No order as to cost(s).
9. Decree be drawn-up accordingly.

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