

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 407 of 2008**

Laxman Ram, S/o Dewar, Caste – Rajwar, Aged about 53 years, R/o Girvarganj, Tahsil – Surajpur, District – Sarguja (C.G.)

-----Appellant/plaintiff

Versus

1. Lakhan Ram, S/o Dewar, Caste Rajwar, Aged about 53 years,

2. Rakesh, S/o Lakhan Ram, Caste- Rajwar, Aged about 36 years,

Both are R/o Village – Girvargaj, Tahsil – Surajpur, District – Sarguja (C.G.)

3. Muliya Bai, D/o Dewar, W/o Vighanram, Caste- Rajwar, Aged about 50 years, R/o Village Namadgiri, Tahsil – Surajpur, District – Sarguja (C.G.)

4. Dayalo Bai, D/o Dewar, W/o Rajaram, Caste – Rajwar, Aged about 40 years, R/o Village Pasla, P.S. & Tahsil – Surajpur, District – Sarguja (C.G.)

5. Bifaiya, D/o Dewar, W/o Prem Sai, Caste – Rajwar, Aged about 39 years, R/o Manjhapara, Shivnandanpur, Tahsil – Surajpur, District – Sarguja (C.G.)

6. State of Chhattisgarh, Through Collector, Sarguja, Ambikapur, District – Sarguja (C.G.)

-----Respondents

For Appellant : Shri D.N. Prajapati, Advocate.
For Respondent No. 6 : Shri Akash Pandey, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/11/2019

(1) Heard on the question of admission and formulation of substantial question of law of this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 27.09.2008 passed by Second Additional District Judge (F.T.C.), Surajpur, District Sarguja in Civil Appeal No. 15-A/2006, affirming the judgment & decree of Civil Judge, Class-I, Surajpur dated 28.07.2006 passed in Civil Suit No. 263-A/2004, dismissing the suit.

(2) Learned counsel appearing for the appellant/plaintiff would submit that concurrent finding recorded by both the courts below holding that plaintiff is not entitled for $\frac{1}{2}$ share in the property shown in Schedule 'B' of the plaint, is perverse and contrary to the record and, therefore, the appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) The dispute is between plaintiff **and** his brothers i.e. defendants No. 1 & 2 & his sisters i.e. defendants 3 to 5. The plaintiff filed a suit for declaration of title and partition stating *inter alia* that suit property shown in Schedule 'B' of the plaint is self acquired property of his father, in which, he is

entitled for $\frac{1}{2}$ share as there is no partition between the parties with regard to the property shown in schedule 'B' of the plaint.

(4) The defendants, by filing written statement, denied the plaint averments.

(5) The trial Court, upon appreciation of oral and documentary evidence available on record, dismissed the suit holding that the property shown in schedule 'B' of the plaint has already been partitioned between late Dewar, father of the plaintiff and his brother defendant No. 1 and the said property shown in Schedule 'B' of the plaint fell in share of plaintiff's father Dewar, which he has already sold to son of defendant No. 1 namely Rakesh, as such, the plaintiff is not entitled for the decree as claimed. On an appeal being preferred by the plaintiff thereagainst, the first appellate Court, after re-appreciation of oral & documentary evidence available on record, affirmed the judgment and decree of the trial Court while dismissing the appeal. Against which, instant second appeal has been preferred.

(5) Thus, concurrent findings recorded by both the courts below holding that the partition has already been taken place with regard to property shown in Schedule 'B' of the plaint; and the said partition has taken

place during the life time of father of plaintiff and defendant No.1 namely Dewar; and that the property shown in Schedule 'B' of the plaint fell in share of plaintiff's father Dewar, who has already sold the same to the son of defendant No. 1 for legal necessity. The said findings arrived at by both the courts below are finding of fact based on material available on record and I do not find it either perverse or contrary to record and question of law much less substantial question of law is involved in this appeal.

(6) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side. No costs

Sd/-

(Sanjay K. Agrawal)
Judge

D/-