

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 58 of 2004****Reserved on : 12.03.2019****Delivered on : 11.04.2019**

Chamru, S/o Ramnath, Caste- Kanwar, aged about 45 Years, Occupation- Agriculture, R/o Village- Bulga, P.S. Dhavarpur, Tehsil- Lundra, District- Surguja (C.G.)

---- Appellant**Versus**

1. Mankunwar, W/o Leshan, Caste- Kanwar, aged about 55 years (Deleted) as per Hon'ble Court Order dated 05.05.2017.
2. Lauturam, S/o Leshanram, Caste- Kanwar, aged about 35 Years.
3. Bhansay, S/o Leshanram, Caste- Kanwar, aged about 30 Years.
All R/o Village- Jarhadih, P.S. Dhavarpur, Tehsil- Lundra, District- Surguja (C.G.)
4. The State of Madhya Pradesh (C.G.) through Collector, Surguja (C.G.)

---- Respondents

For Appellant	:	Mr. Nishikant Sinha, Advocate.
For Respondents No. 2 & 3	:	Mr. Vivek Tripathi, Advocate.
For State/ Respondent No. 4	:	Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 09.01.2004 passed by Second Additional District Judge, Surguja (Ambikapur) (C.G.) in Civil Suit No. 2A/2002, wherein the said court dismissed the suit filed by the appellant/ plaintiff for injunction regarding land mentioned in Schedule-C of the plaint situated at Village- Bulga, Patwari Halka No.

13, Tahsil- Lundra, District- Surguja (M.P.) (Now C.G.) total Survey No. 25, area admeasuring 6.796 acres.

2. The appellant/ plaintiff and original respondent No. 1/ defendant are real brother and sister. Earlier, a suit was filed by original respondent No. 1/ Mankunwar against the appellant and her father for partition of land that is ancestral property. The land mentioned in Schedule-C is self acquired property of the appellant, but respondent No. 1 got mutated her name in half of the share of the property of Schedule-C. The suit was filed for restraining the original respondent No. 1/ Mankunwar for interfering in the land of Schedule-C.
3. As per version of original respondent No. 1/ Mankunwar, the land is not self acquired by the appellant, but it is the ancestral property and in earlier suit, it is already decided that respondent No. 1/ Mankunwar will get half share in the said property and since issue is decided in the suit in which the appellant and is father was the party, the principle of *res judicata* is applicable in the present case.
4. Learned counsel for the appellant submits as under:-
 - (i) The trial court has wrongly held that the lands of Schedule-C is not self acquired property of the appellant. It is further wrongly held that the property of Schedule-A was not acquired by Ramnath who was father of the appellant.
 - (ii) The appellant has not been provided proper opportunity to adduce evidence and principle of *res judicata* is not applicable, therefore, finding arrived at by the trial court is liable to be set aside.

5. First question for consideration before this Court is whether the property mentioned in Schedule-C is self acquired property of the appellant. The document which is related to Surguja Estate Settlement and record of right though not exhibited, goes to show that the property was recorded in the name of Sahdev who was father of Ramnath and the appellant is son of Ramnath. Hence, pleading of the appellant is not substantiated by document that property in question is self acquired property.
6. On the contrary, it is ancestral property which was earlier recorded in the name of Sahdev who is paternal grant father of the appellant. A suit was instituted by original respondent No. 1/ Mankunwar which was registered as Civil Suit No. 12-A/1992 and as per judgment of Second Civil Judge Class-II, Ambikapur dated 30.01.1996, Mankunwar will get share in the property equal to the appellant. In the said suit, the appellant and his father Ramnath, both were party, therefore, finding of the trial court which has not been challenged anywhere, attained finality. Argument on behalf of the appellant that the property in question is self acquired property is not sustainable and again, when issue is already decided between the parties in previous civil suit, the same is binding effect and principle of *res judicata* will applicable in the present case. The trial court is right in holding that the relief cannot be granted to the appellant.
7. Looking to the entire evidence, argument advanced on behalf of the appellant is not sustainable and the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of

respondents on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own cost.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge

Arun