

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.184 of 2005

1. Gendlal, Aged about 32 years, S/o Anand Ram, Caste Mahar, R/o Village Kalyanpur, P.H.No.26, Tahsil Dongargarh, Distt. Rajnandgaon (C.G.)
 2. Smt. Jaytura Bai (Died and deleted)
- (Plaintiffs)
---- Appellant

Versus

1. Devkibai, Aged about 35 years, W/o Vijay Kumar Mahar, R/o Khutapara, Dongargarh, Distt. Rajnandgaon.
 2. The State of Chhattisgarh. Through Collector, Rajnandgaon.
- (Defendants)
---- Respondents

For Appellant: Mr. Parag Kotecha, Advocate.

For Respondent No.1 / Defendant No.1: -

None present though served.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

05/11/2019

1. This second appeal preferred by the plaintiffs / appellant was admitted for hearing on the following substantial questions of law: -

“(i) Whether the Courts below were justified in holding that Devkibai is entitled to receive equal share along with Gendlal and Jaytura Bai from entire property held by Anandram at the time of his death in the year 1993?

(ii) Whether the Courts below have correctly interpreted the provision contained in proviso to Section 6 of the Hindu Succession Act, 1956 in the matter of succession in the present case?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The suit property was originally held by Anandram. The plaintiffs are

his son and widow (now deleted), respectively, whereas defendant No.1 is his daughter. The two plaintiffs instituted a suit for declaration of title and for permanent injunction against the defendants stating inter alia that the plaintiffs (son and wife of Anandram), both, constituted a coparcenary, but the order of partition was passed by the Tahsildar on 31-7-2001 and 1.16 acres of land was given to defendant No.1, whereas, she is not entitled for the same and that order was also affirmed by the Sub-Divisional Officer (Revenue) on 31-1-2002. Both the authorities have ignored Section 6 of the Hindu Succession Act, 1956, as daughter will not be entitled for equal share with son and wife, and therefore the suit be decreed in their favour.

3. Defendant No.1 filed her written statement and setup a plea that the plaintiffs have appeared before the revenue court and plaintiff No.1 also filed reply in which he has not disputed that defendant No.1 is entitled 1.16 acres of land and also not disputed the fact of partition and even he has branded the partition application under Section 178 of the Chhattisgarh Land Revenue Code, 1959 as undisputed and therefore the application under Section 178 of the Chhattisgarh Land Revenue Code, 1959 can be looked into by the Gram Panchayat and as such, the suit deserves to be dismissed.
4. The trial Court upon appreciation of oral and documentary evidence on record, dismissed the suit holding that prior partition has been proved between the parties as apparent from the pleadings of the revenue court and plaintiff No.1 has also admitted the fact of partition proceeding before the revenue court which has been affirmed by the first appellate Court in appeal preferred by the plaintiffs against which this second appeal has been preferred by the plaintiffs / appellant herein in which substantial questions of law have been formulated

which have been set-out in the opening paragraph of this judgment.

5. Mr. Parag Kotecha, learned counsel appearing for the appellant / plaintiff No.1, submits that both the Courts below have committed legal error in holding that Devki Bai – daughter of Anandram will also take $\frac{1}{3}$ share along with the plaintiffs in view of the provision contained in the proviso to Section 6 of the Hindu Succession Act, 1956, therefore, the judgments & decrees of both the Courts below deserves to be set-aside.
6. None present for defendant No.1 / respondent No.1 herein, though served.
7. I have heard learned counsel for the appellant and considered his submissions and went through the record with utmost circumspection.
8. Admittedly, the suit property was held by Anandram and defendant No.1 being his daughter filed an application for partition that she is entitled for $\frac{1}{3}$ share in the suit property in which the plaintiffs were noticed and plaintiff No.1 filed his reply and did not dispute the fact that earlier partition has taken place and defendant No.1 has got 1.16 acres of land and even plaintiff No.1 has said the application for partition as undisputed and accordingly, the Tahsildar made order for partition on 31-7-2001 granting 1.16 acres in favour of defendant No.1 which was unsuccessfully assailed by plaintiff No.1 in appeal before the Sub-Divisional Officer (Revenue) and which was dismissed by order dated 31-1-2002, thereafter, the suit has been preferred. In the suit, the plaintiffs though have made a passing reference to the order of partition and to the order of affirmation by the Sub-Divisional Officer (Revenue), but did not call in question and impugn the said order of the Tahsildar as affirmed by the Sub-Divisional Officer (Revenue), as such, the order of partition between the parties has become final in

absence of challenge laid by the plaintiffs in the suit from which this second appeal has arisen.

9. Now, the trial Court as well as the first appellate Court have categorically held, relying upon the statement of Gendlal (PW-1) – plaintiff No.1 with reference to the revenue proceeding and particularly the reply filed by plaintiff No.1 (Ex.D-3) that partition between the parties is admitted and thereafter, the application for formal partition in terms of Section 178 of the Chhattisgarh Land Revenue Code, 1959 was moved and that was ultimately granted and further that the order of partition has already been approved by the appellate authority i.e. the Sub-Divisional Officer (Revenue). In that view of the matter, both the Courts below are absolutely justified in holding that partition had already taken place between the parties and they are in possession in their respective shares pursuant to the partition and therefore the plaintiffs are not entitled for decree. Apart from this, the plaintiffs only sought declaration of their share, neither they claimed fresh partition nor challenged the partition already made by the order of the Tahsildar as affirmed by the Sub-Divisional Officer (Revenue).
10. The submission of learned counsel for the appellant is that the property was the coparcenary property of plaintiff No.1 – son of Anandram and plaintiff No.2 – wife of Anandram with Anandram which constituted coparcenary was also not found favour with by both the Courts below. The first appellate Court has clearly held with reference to Section 6 of the Hindu Succession Act, 1956 that only male members are included in coparcenary, females cannot be included in the coparcenary and the suit property is not the coparcenary property. Such a finding is finding of fact based on the evidence available on record and I do not find any merit in the second appeal. Both the

substantial questions of law are answered in favour of the defendant and against the plaintiff. The second appeal is dismissed leaving the parties to bear their own cost(s).

11. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma