

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.417 of 2003**

Lachan Ram, aged 41 years S/o. Umed Ram Marar R/o. Daldal, Sivani
Tahsil Raipur, Distt. Raipur (CG)

---- Appellant**Versus**

1. Umend Ram (deleted)
2. Kanta Prasad, aged 35 years, S/o Umend Ram
3. Ramesh, aged 22 years, S/o Umend Ram
4. Chandpal, aged 12 years, S/o Umend Ram
5. Kanti Bai, aged 26 years, D/o Umend Ram
6. Kamalhin Bai, aged 36 years, D/o Umend Ram
7. Urmila Bai, aged 15 years, D/o Umend Ram

No.4 & 7 Minors through mother Geeta Bai All R/o Daldal Sivani,
Tahsil Raipur, Distt. Raipur (CG)

8. State of Chhattisgarh Through the Collector, Raipur (CG)

---- Respondents

For Appellant/Plaintiff	:	Mr.L.C.Dash, Advocate
For Respondents No.2 to 7	:	Mr.D.N.Prajapati, Advocate
For Respondent No.8/State	:	Mr.R.K.Jaiswal, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****4/2/2019**

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by the plaintiff is as under:-

“Whether the Courts below was justified in law in holding the partition as not proved ignoring uncontroverted of testimony of Lachhan Ram (PW-1), Tiharu Ram Patel (PW-2), Shivdayal (PW-3) ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The suit property was held by Umend Ram. The plaintiff is son of Umend Ram from his first wife. After death of first wife, Umend Ram performed second marriage with Geeta Bai. Apart from the plaintiff, Umend Ram had three more sons from his second wife namely Kantaprasad, Ramesh and Chandpal and three daughters namely Kantibai, Kamalhin Bai and Urmila Bai. The plaintiff filed a suit for declaration of title, permanent injunction and partition stating inter-alia that partition has already been taken place between him and Umend Ram, therefore, he is entitled for $\frac{1}{2}$ share in the suit property.
3. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 28.4.2003, granted decree for $\frac{1}{8}$ th share in the suit property, which has been modified by the First Appellate Court by granting decree for $\frac{1}{6}$ th share. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been framed by this Court, which has been set out in the opening paragraph of this judgment.
4. Mr.L.C.Dash, learned counsel for the appellant/plaintiff, would submit that the First Appellate Court is absolutely unjustified in not granting $\frac{1}{2}$ share in the suit property on the basis of oral partition taken place between him and his father Umend Ram.

5. On the other hand, Mr.D.N.Prajapati, learned counsel for respondents No.2 to 7, would support the impugned judgment and decree.
6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
7. Right to property is governed by law of succession applicable to properties. Merely because earlier oral partition has allegedly taken place that would not give right to the plaintiff to get more share than he is entitled under the applicable law of succession. He cannot claim more share than what he is entitled. Therefore, the First Appellate Court applying the provisions contained in Section 6 of the Hindu Succession Act, 1956 held that the plaintiff is entitled for 1/6th share in the suit property. The finding recorded by the First Appellate Court is neither perverse nor contrary to record. I do not find any merit in this second appeal. The substantial question of law is answered in favour of the defendants and against the plaintiff.
8. Accordingly, the second appeal is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).
9. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-