

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 434 of 2007**

Vyaparilal, aged about 66 years, Son of Shri Tulsiram, Resident of Village Jorratola, Resident of Village Jarratola, P.H. No. 12, Tahsil Mohla, District Rajnandgaon (C.G.)

---- Appellant/Plaintiff

Versus

1. Baisakhin Bai, aged about 59 years, wife of Shri Harishchandra Yadav, Resident of Village Pdingpara, Tahsil Mohla, District Rajnandgaon (C.G.)

2. State of Chhattisgarh, Through : The Collector Rajandgaon (C.G.)

---- Respondents/defendants.

For Appellant	: Mr. PKC Tiwari, Sr. Advocate with Mr. Ashutosh Trivedi, Advocate.
For Respondent No. 1	: Mr. Ram Kumar Tiwari, Advocate.
For Respondent No. 2	: Mr. Anshuman Rabra, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/08/2019

(1) Heard on admission and formulation of substantial question of law for determination in this second appeal preferred by plaintiff under Section 100 of the CPC.

(2) Learned Senior Counsel appearing for the appellant/plaintiff would submit that both the courts below are absolutely unjustified in granting the counter claim filed by the respondent No. 1/defendant by recording a finding which is perverse to the record and that give rise to the substantial question of law for determination and the said counter claim was also barred by limitation.

(3) I have heard learned counsel appearing for the appellant/plaintiff on admission of this appeal and considered his submissions and went through the record with utmost circumspection.

(4) The Suit property was originally held by Tulsiram. Plaintiff- Vyaparilal is his son whereas defendant No. 1 – Baisakhin Bai is his daughter. Tulsiram died in the year 1977 and his wife Pankin Bai died in the year 1992 and. In a suit filed by the plaintiff for exclusive title, the defendant No. 1 filed a counter claim stating that she is title holder of the entire suit property.

(5) Trial Court held that suit property being held by Tulsiram i.e. 3.62 acres of the land will be notionally divided firstly among Tulsiram, his wife Pankin Bai and his son plaintiff and each one will get 1.20 decimal of the land in the notional partition and after the death of Tulsiram, his share again be divided between his son, daughter and wife and each one will get 0.40 acre of the land; and thereafter share of Pankin Bai i.e. 1.62 decimal will be divided in accordance with Section 15 of the Hindu Succession Act, 1956 to the legal representatives of her husband's son and daughter. Pankin Bai was the step mother of plaintiff and defendant No. 1 and, thus the share of Pankin Bai will be divided between them and each one will get 0.81 acres of the land and in total the plaintiff will get 2.41 acres of the land and defendant No. 1 will get 1.21 acres of the land. The said finding was affirmed by the first appellate Court. Likewise, plea of limitation was not pressed seriously before the trial Court in filing the counter claim, which has duly been upheld by the first appellate Court.

(6) This finding of fact arrived at by the two courts below that plaintiff will be entitled for 2.41 acres of the land in the property left by his father is a finding of fact based on

material available on record and I do not find it either perverse or contrary to record and no 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*.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-