

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 417 of 2007**

1. Mahadeo Prasad (Dead) Through Lrs.
 - 1.1 - (A). Smt. Ramkali Choudhary Wd/o Late Mahadev Prasad Choudhary Aged About 62 Years R/o House No. 59/507, Behind Kali Mandir, Bhoipara, Tehsil And District Raipur.
 - 1.2 - (B). Kumari Sarojani Choudhary D/o Late Mahadev Prasad Choudhary Aged About 43 Years R/o House No. 59/507, Behind Kali Mandir, Bhoipara, Tehsil And District Raipur.
 - 1.3 - (C). Vijay Kumar Choudhary S/o Late Mahadev Prasad Choudhary Aged About 40 Years R/o Staff Colony, B /F 3/3 Vikram Nagar, Post Khor, Tehsil Jawad, District Neemach (M. P.).
 - 1.4 - (D). Kumari Savitri Choudhary D/o Late Mahadev Prasad Choudhary Aged About 38 Years R/o House No. 59/507, Behind Kali Mandir, Bhoipara, Tehsil And District Raipur.
 - 1.5 - (E). Kumari Usha Choudhary D/o Late Mahadev Prasad Choudhary Aged About 31 Years R/o House No. 59/507, Behind Kali Mandir, Bhoipara, Tehsil And District Raipur.
 - 1.6 - (F). Kumari Nanda Choudhary D/o Late Mahadev Prasad Choudhary Aged About 31 Years R/o House No. 59/507, Behind Kali Mandir, Bhoipara, Tehsil And District Raipur.
 - 1.7 - (G). Kumari Maya Choudhary D/o Late Mahadev Prasad Choudhary Aged About 23 Years R/o House No. 59/507, Behind Kali Mandir, Bhoipara, Tehsil And District Raipur.,
 - 1.8 - (H). Smt. Kiran Kashyap W/o Shri Sanjay Kashyap Aged About 36 Years D/o Late Mahadev Choudhary, R/o B - 110, NH - 3, NTPC / VSTPS Vindyanagar, District Sidhi (Madhya Pradesh).
2. Smt. Gomati Devi W/o Jivanlal Choudhari Aged About 59 Years R/o Amapara, Khapra Bhatti Raipur, Tahsil And District Raipur Chhattisgarh. (Plaintiffs) **---- Appellants**

Versus

Ghana Ram S/o Thakur Ram Choudhari Aged About 67 Years R/o Gram Kharora, Tahsil And District Raipur Chhattisgarh. (Defendant),
--- Respondent

For Appellants:	Shri B. P. Sharma, Advocate along with Shri Sameer Uraon, Advocate.
For Respondent:	None.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

09.05.2019

1. This appeal has been preferred by the Plaintiffs under Section 100

of the Code of Civil Procedure, 1908 questioning the propriety of the judgment and decree dated 17.07.2007 passed by the ^{10th} Additional District Judge, Raipur in Civil Appeal No.4-A/2007, by which, the lower appellate Court while affirming the judgment and decree dated 16.01.2007 passed by the First Civil Judge, Class-II, Raipur in Civil Suit No.15-A/2006 has dismissed the appeal.

2. Learned counsel for the Appellants submits that the judgment and decree, as passed by the Courts below holding that the plaint Schedule 'B' and 'D' properties are not the ancestral properties of the Plaintiff's father, namely, Thakur Ram Choudhary, is apparently contrary to law. It is submitted by him that the Plaintiffs are in possession over these properties and the documentary evidence produced by them would show very specifically that these properties belong to their father, and therefore, they are entitled to two-third share as claimed by them. However, without considering the evidence in its proper manner, the Courts below have committed an illegality in dismissing their claim with regard to the plaint Schedule 'B' and 'D' properties.

3. I have heard learned Counsel for the Appellants and perused the entire records of the Courts below carefully.

4. A suit was instituted by the Plaintiffs claiming partition and separate possession by submitting *inter-alia* that the properties described in plaint Schedule 'A', 'B', 'C' and 'D' are their ancestral properties as it was owned by their father Thakur Ram Choudhary. It is pleaded further that after the death of their father, it was inherited by them (Plaintiffs) and their brother (Defendant) in equal share, and therefore, the Plaintiffs are entitled to two-third share over these properties.

5. In order to establish the fact that these properties are originally held by their father, the Plaintiffs have produced their evidence and after considering the evidence, it was held by the trial Court that the plaint Schedule 'A' and 'C' properties alone are held by their father and accordingly decreed the suit in relation to these suit lands, i.e. the plaint Schedule 'A' and 'C' properties. The Plaintiffs' claim, in so far as it relates to plaint Schedule 'B' and 'D' properties, has been dismissed on finding that in absence of any cogent and reliable documentary evidence showing the ownership of their father coupled with the admission of Mahadev Prasad Choudhary (P.W.1) that these lands belong to the Government, it cannot be held that the suit lands described in the plaint Schedule 'B' and 'D' are owned by their father. In consequence, the Plaintiffs' claim has been dismissed as such.

6. The aforesaid finding has been affirmed further by the lower appellate Court in an appeal, preferred by the Plaintiffs upon considering the statement of the parties, particularly the statement of Plaintiff-Mahadev Prasad (P.W.1), where he himself has admitted the fact that two rooms used for "*Bayara*" (a kind of small room for keeping domestic animals as well as their foods) forming the part of the plaint Schedule 'B' property, are constructed over the Government land. Besides, it reflects further from his testimony that a notice (Ex.P.1) for removal of alleged encroachment was not only issued to him but a fine amount of Rs.60/- (Rupees Sixty only) was also imposed. In view of the said fact, it is evident that the Plaintiff's father is not the owner of the property as described in plaint Schedule 'B'. Likewise, a shop which was situated at plaint Schedule 'D' also belongs to the Government as evidenced by his testimony. In such an eventuality, it is

difficult to hold that the plaint Schedule 'B' and 'D' properties are the ancestral properties of their father Thakur Ram Chaudhary, as contended by the Plaintiffs. The Courts below have, therefore, not committed any illegality in refusing the Plaintiffs' claim with regard to the plaint Schedule 'B' and 'D' properties.

7. In view of the forgoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. The Appeal being devoid of merits is, accordingly, dismissed at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE