

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.55 of 2005**

Paharu aged 55 years S/o Sukul Satnami, R/o Barramuda, Tah. Katghora, Dist. Korba (CG)

----- Appellants/Defendant

Versus

Itwaru Ram, Aged about 35 years, S/o Samaru, R/o Bharramuda (Mohariya Muda), Tahsil Katghora, Dist-Korba (CG)

----- Respondent

For Appellant/Defendant	: Mr.H.V.Sharma, Advocate
For Res./LR's of the Plaintiff	: Ms Hamida Siddiqui, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

22/07/2019

1. The substantial question of law involved, formulated and to be answered by this Court in this defendants' second appeal is as under:-

“Whether both the learned Courts below exceeded their jurisdiction in passing the decree declaring the mutation No.145 dated 14.05.1972 as nullity ?”

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

2. The plaintiff filed a suit for declaration of title, partition and separate possession stating inter-alia that his father Sukalu and father of the defendant namely Sukul both were brothers and their father's name was Jhuru. Jhuru had two sons namely Sukalu, the plaintiff's

father and Sukul, the defendant's father and the suit property belonged to them and no partition was taken place between them during their life-time. On behalf of the plaintiff, defendant No.1 was managing the suit land by giving share of crop after harvesting to the plaintiff, which he did not give to the plaintiff on 4.12.2001 i.e. for the year 2001 and the plaintiff came to know that the suit property was recorded in the defendant's name on 24.3.1972, against which, the plaintiff preferred appeal before the Sub-Divisional Officer, in which he remained unsuccessful leading to filing of the suit for declaring the mutation entry to be void and for declaration of title, partition and separate possession.

3. Defendant No.1 took a plea by filing written statement that the suit property has already been partitioned long back and his name has been recorded in revenue records, as such, the plaintiff's suit is liable to be dismissed. The trial Court accepted the plea of the plaintiff holding that the suit property belonged to the plaintiff's father and the defendant's father and it was never partitioned and for the sake of convenience, it was being managed by defendant No.1 and mutation entry dated 14.5.1972 is void and the plaintiff and defendant No.1 each of them have 1/2th share in the suit property negating the plea of limitation projected by the defendant. In appeal taken by the defendant, the first appellate Court principally agreed with the finding recorded by the trial Court on the question of partition that no partition has taken place between the plaintiffs and the defendant's father and dismissed the appeal affirming the judgment and decree of the trial Court, against

which, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant, 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.H.V.Sharma, learned counsel for the appellant/defendant, would submit that both the Courts below were absolutely unjustified in holding that mutation entry dated 14.5.1972 is null and void. He would further submit that additional substantial questions of law are involved in the present second appeal which may be framed.

5. Ms Hamida Siddiqui, learned counsel for the respondent/legal representative of the plaintiff, would submit that both the Courts below have concurrently held that there was no partition during life-time of the plaintiff's father and the defendant's father, as such, the property is joint family property and available for partition and further held that the plaintiff is entitled for 1/2 share in the suit property, which is the finding of fact based on evidence available on record and no further substantial question of law is involved in this second appeal.

6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.

7. So far as additional substantial questions of law are concerned. After hearing learned counsel for the appellant/defendant, I

do not find any further substantial question for determination of this second appeal. Accordingly, the prayer for additional substantial questions of law is hereby rejected.

8. The suit property is originally owned by the plaintiff's father-Sukalu and the defendant's father-Sukul as they have inherited the suit property from their father Jhuru. Ex.P-2 is the copy of Adhikar Abhilekh maintained under Section 115 of the M.P. Land Revenue Code, 1954 and that is prepared on the basis of Jamabandi of 1954-55 and that is presumed to be correct as per Section 105 (6) read with Section 115 of the M.P. Land Revenue Code, 1954 (See Banso (died) through his LR's v. Birsay and others¹) and that record of right was corrected by order dated 14.5.1972.

9. The trial Court after appreciating oral and documentary evidence available on record came to the specific conclusion that the suit land was not partitioned during life-time of the plaintiff's and the defendant's father and it was being managed by the defendant only and as the dispute arose between the parties, it has been held that the suit property is joint family property and no partition has been taken place between them as held hereinabove and therefore, the plaintiff and the defendant each of them are entitled for 1/2 share in the suit property and further held that mutation proceeding was held behind back of the plaintiff and therefore, it is void. The first appellate Court has also affirmed the finding recorded by the trial Court and reached to the

¹ S.A. No.350/2002, decided on 6.2.2019

specific conclusion that there was no partition during life-time of the plaintiff's and the defendant's father and therefore, the plaintiff and the defendant both being sons of Sukalu and Sukul respectively, each of them are entitled for 1/2 share in the suit property and further held that mutation dated 14.5.1972 was done in breach of principle of natural justice following para-12 of statement of defendant-Paharu, as such, the finding of fact recorded by two Courts below holding that there was no partition between the plaintiff's and the defendant's father and the suit property is joint family property and mutation was done in violation of principle of natural justice is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any illegality or perversity in the said finding. The substantial question of law is answered in favour of the plaintiff and against the defendant.

10. The second appeal deserves to be and is hereby dismissed leaving the parties bear their own cost(s).

11. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-