

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 460 of 1997****Reserved on : 11.03.2019****Delivered on : 29.03.2019**

1. Prembai, W/o Shri Balaram Satnami, aged about 35 Years, R/o Village- Nawapara, Tahsil Pundaria, District- Bilaspur (M.P.) Now (C.G.)
2. Utra Bai, W/o Shri Paritram Satnami, aged about 32 Years, R/o Village- Lachhanpur, Chirhutti, Police Station Lormi, District- Bilaspur (M.P.) Now (C.G.)
3. Vedram Alias Premlal, S/o Shri Khorbahra, aged about 24 Years, R/o Nawapara, Tahsil Pundaria, District- Bilaspur (M.P.) Now (C.G.)

---- Appellants**Versus**

1. Rajkumar Alias Ram Kumar, S/o Shri Jalha Satnami, aged about 22 Years, R/o Village Pundaria, District- Bilaspur (M.P.) Now (C.G.)
2. Mohit Kumar, S/o Shri Jalha Satnami, aged about 10 Years, through Guardian Suhagabai, aged about 50 Years, R/o Village Pundaria, District- Bilaspur (M.P.) Now (C.G.)
3. Suhaga Bai (Deleted) As Per Hon'ble Court order dated 08.02.2019.
4. Sundaria Bai (Deleted) As Per Hon'ble Court order dated 08.02.2019.
5. Bedan Bai, D/o Khorbahar Satnami, aged about 22 Years, R/o Nawapara, Tahsil Pundaria, District- Bilaspur (M.P.) Now (C.G.)
6. Narbavdia Dead Through Lrs.
 - 6(A) Shri Jawahar (Deleted) as per Hon'ble Court order dated 08.02.2019.
 - 6(B) Tibul, S/o Konda Satnami, aged about 60 Years, R/o Village (Samrupara) Pandariya, Tehsil Pandariya, Civil & Revenue District- Kabirdham (C.G.)
 - 6(C) Gora, S/o Konda Satnami, aged about 55 Years, R/o Village (Samrupara) Pandariya, Tehsil Pandariya, Civil & Revenue District- Kabirdham (C.G.)
7. Balha Dead Through Lrs.
 - 7(A) Smt. Jagri Bai, W/o Late Shri Balha, aged about 75 Years, R/o Village Samrupara, Pandariya, Tahsil Pandariya, District- Kabirdham (C.G.)

7(B) Rohit Kumar (already on record as respondent No.8 in this appeal) S/o Late Shri Balha, aged about 45 Years, R/o Village Samrupara, Pandariya, Tahsil Pandariya, District- Kabirdham (C.G.)

7(C) Sukhiram, S/o Late Shri Balha, aged about 40 Years, R/o Village Samrupara, Pandariya, Tahsil Pandariya, District- Kabirdham (C.G.)

7(D) Smt. Shanti, D/o Late Shri Balha, aged about 36 Years, R/o Village Samrupara, Pandariya, Tahsil Pandariya, District- Kabirdham (C.G.)

7(E) Smt. Kanti, D/o Late Shri Balha, aged about 30 Years, R/o Village Samrupara, Pandariya, Tahsil Pandariya, District- Kabirdham (C.G.)

7(F) Smt. Janki Bai, D/o Late Balha, aged about 25 Years, R/o Village Samrupara, Pandariya, Tahsil Pandariya, District- Kabirdham (C.G.)

8. Rohit Kumar, S/o Shri Balha, aged about 12 Years, through Guardian Father Balha, S/o Shri Khetu, Samrukapa, Pundaria, District- Bilaspur M.P. (Now C.G.).
9. The State of Madhya Pradesh (Now C.G.) through the Collector, Bilaspur M.P. (Now C.G.)

---- Respondents

For Appellants : Mr. Rituraj Barman, Advocate.

For Respondents : Mr. Upendra Bharat, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 25.06.1997 passed by Seventh Additional District Judge, Bilaspur, District- Bilaspur (C.G.) in Civil Suit No. 9A/1996, wherein the said court decreed the suit filed by respondent No. 1 to 3/ plaintiffs for land bearing survey No. 32/12, 26, 18/1, 32/10, 32/7 area admeasuring 0.049, 0.417, 0.571, 0.239 & 0.289 Hectare respectively and also passed decree of injunction in their favour.
2. As per the appellants, the property was owned by Kheduram. Dhundu,

Balha & Jalha are his three sons and Narbavdia is his daughter. In the said property, respondent Rajkumar, Mohit Kumar & late Suhagabai who are successor of Jalha have no right, but the trial court has passed decree in their favour contrary to the facts and legal aspect of the matter.

3. Learned counsel for the appellants submits as under:-

(i) The trial court committed error in deciding issue No. 1, 3 & 4 in favour of respondent No. 1 to 3/ plaintiff that they have share in the property and deceased Kheduram made oral partition during his lifetime and gave the property mentioned in Schedule A to respondent No. 1.

(ii) The trial court committed error in holding that respondent No. 1 to 3 have proved oral partition. The trial court also committed error in holding that statement of Mohitram (PW-1), Malludas (PW-2) and Balha (DW-2) have proved oral partition which is not challenged in the cross-examination.

(iii) The trial court committed error in holding that since land have been recorded in the Rin Pustika (Ex.P/1), therefore, story of partition is liable to be accepted while the revenue record is kept for paying the land revenue.

(iv) Finding of the trial court regarding injunction is also not proper, therefore, the same is liable to be set aside.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial court is based on relevant material

placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. Admittedly, Kheduram died in the year 1976-77. There was mutation proceeding before the court of Nayab Tahsildar, Pandariya which is registered as Revenue Case No. 1A-6/82-83 in which name of respondent No 1 to 3 was recorded in place of Jhalha who died in the year 1982. Admittedly, Jalha was son of Kheduram and appellants are claiming right as successor of Dhundu who was also son of Kheduram.
6. From plain allegation and evidence of respondent No. 1 to 3, it is established that partition already took place between successor of Kheduram that is why record of right was separated since year 1976 and thereafter, parties are independently cultivating the land as owner of their share. In support of their version, they produced different Bhu-Adhikar Pustika (Ex. P/1) and (Ex. P/2) where respondent No. 1 to 3 are shown to be independent owner of the property for which the trial court decreed the suit in their favour.
7. The total land owned by Kheduram was about 18 acres and it was already partitioned as per record and the trial court awarded decree for land which is about 4 acres & 14 dismil. Rest of the land is divided between other successor of late Kheduram or to their branch.
8. The trial has elaborately discussed the entire evidence and recorded finding on each of the issue and after reassessing the same, this Court has no reason to record contrary finding. When the partition already took place, there is nothing on record for reopening of

partition. The appellants are claiming title of share of Dhundu who was son of Kheduram, but they cannot claim share in the property allotted to Jalha. They cannot say that the successor of Jalha who is another son of Kheduram are not entitled for their share. When partition already took place and respondent No. 1 to 3 got 4.14 acres of land in partition as supported by the document, the same is not liable to be interfered with by this Court. No one pleaded that Kheduram was having land in his share which can be partitioned after passing of Kheduram. When the entire property is already partitioned, finding of the trial court is not liable to be disturbed.

9. Accordingly, the appeal is dismissed. The decree is passed against the appellants and in favour of the respondents on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own cost.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge