

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.98 of 2007

Gajanand Suryavanshi, aged about 70 years, S/o Sanwat Suryavanshi, R/o Jarhabhata, P.S. Civil Lines, Tahsil and Distt. Bilaspur (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Mahanand Suryavanshi (Dead) Through LRs

i) Smt. Rajmati Ratre, Wd/o Late Mahanand Ratre, aged about 75 years,

ii) Smt. Pyari Bai Ratre, Wd/o Shani Kumar Ratre, aged about 38 years,

iii) Rajendra Kumar Ratre, S/o Late Mahanand Ratre, aged about 35 years,

iv) Sanjay Ratre, S/o Late Mahanand Ratre, aged about 33 years,

All residents of Shivnath Marg, Jarhabhata, Bilaspur, Tahsil & District Bilaspur (C.G.)

2. State of Chhattisgarh, Through Collector, Bilaspur (C.G.)

(Defendants)
---- Respondents

For Appellant: Mr. Ram Kumar Tiwari, Advocate.

For Respondents No.1(i) to (iv): -

Mr. Govind Ram Miri, Advocate.

For Respondent No.2 / State: -

Mr. Sanjeev Kumar Agrawal, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

03/10/2019

1. This appeal preferred by the plaintiff (appellant) was admitted on the following substantial question of law: -

“Whether the judgment and decree passed by both the Courts below is perverse since both the Courts below have acted with material irregularity in omitting to

consider the admission of D.W.1-Mahanand in para 4 and D.W.2-Malik Ram in para 2 & 3 that on 20-11-1984, the plaintiff had received 25 decimal land in partition?"

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the plaint before the trial Court.)

2. The suit land bearing Khasra No.644/1, area 1.41 acres, was held by three brothers Gangaram, Sawant and Johan and all the three partitioned during their lifetime and each of them got 57 decimal land. It is admitted case of the parties herein that their fathers partitioned the suit land during their lifetime. The plaintiff is son of Sawant, whereas defendant No.1 is son of Johan. The plaintiff filed suit for declaration of title that the defendant is interfering with his suit land which is part of Khasra No.644/1 i.e. Khasra No.644/9, area 8.50 decimal, for which the defendant has executed agreement dated 20-11-1984 in his favour, therefore, the defendant has no right to interfere in the suit land which the defendant has refuted and pleaded that he had already sold the land and agreement was entered into which the trial Court has accepted and held that the plaintiff has failed to prove that Khasra No.644/9, area 8.50 decimal, includes the suit land fell on his share on partition which the first appellate Court has also concurred with against which this second appeal has been preferred in which the substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
3. Learned counsel for the appellant / plaintiff would vehemently submit that both the Courts below concurrently erred in not granting decree in favour of the plaintiff, as the agreement dated 20-11-1984 is admitted by Mahanand (DW-1) in paragraph 4 and by Malikram

(DW-2) in paragraphs 2 & 3 of their evidence, therefore, decree ought to have been granted in his favour, as such, the judgment & decree of both the Courts below deserve to be set aside.

4. Learned counsel for respondents No.1(i) to (iv) would support the judgment and decree of both the Courts below.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. Both the Courts below have held that the plaintiff has failed to prove the agreement dated 20-11-1984 and that the suit land fell in the share of the plaintiff. The agreement has neither been filed nor proved in accordance with law, except the photocopy has been placed on record which is ineligible. So far as the statement of Mahanand (DW-1), it is admitted position on record that the suit property has already been partitioned during the lifetime of their fathers. He has simply stated that partition took place in the year 1984 and after partition, they are in possession and enjoying their share and he has also admitted the fact of their share. In para 4 of his evidence, he has stated that by agreement dated 20-11-1984, some partition took place. Likewise, Malikram (DW-2) has also stated that the plaintiff got 25 decimal of land which he has sold. The aforesaid statement in no way helps the plaintiff to prove his case. The agreement dated 20-11-1984 has neither been filed nor proved in accordance with law by producing its original, whereas both the Courts below have concurrently held that the plaintiff has failed to prove that the suit land is the land which fell in his share in partition. The said finding recorded by the two Courts is a finding of

fact which is neither perverse nor contrary to record and I do not find any perversity or illegality in the said finding. I do not find any merit in the appeal. The substantial question of law is answered accordingly. The appeal deserves to be and is accordingly dismissed leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma