

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.2 of 2008

1. Anusuiya, W/o Tomanlal, aged about 43 years, R/o Near Power House Manpur, Tahsil Manpur, District Rajnandgaon (C.G.)
(Plaintiff No.2)
2. Kanti Bai @ Shanti Bai, W/o Tirathram Soni, aged about 53 years, R/o Goutri Chowk, Doundi Lohara, District Durg (C.G.)
(Plaintiff No.3)
---- Appellants

Versus

1. Leelaram Soni, aged about 46 years, S/o Lakhan Soni, R/o Village Gariyaband, Tahsil Gariyaband, District Raipur (C.G.)
2. State of Chhattisgarh, Through the Collector, Raipur (C.G.)
(Defendants)
3. Baldau, S/o Lakhan Soni, aged about 40 years, R/o Village Gariyaband, District Raipur (C.G.)
(Plaintiff No.1)
---- Respondents

For Appellants: Mr. H.S. Patel, Advocate.

For Respondents No.1 and 3: -

Not noticed.

For Respondent No.2 / State: -

Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

09/09/2019

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by plaintiffs No.2 and 3.
2. Mr. H.S. Patel, learned counsel appearing for the appellants / plaintiffs No.2 & 3, would submit that both the Courts below are absolutely unjustified in holding that the plaintiffs are not entitled for the relief of partition and possession by recording a finding which is perverse to the record.
3. The plaintiffs filed suit for declaration of title and partition and for

delivery of possession against defendant No.1 Leelaram Soni in which defendant No.1 set up a plea that except Khasra No.87/2, area 0.178 hectare, and Khasra No.836/1, area 0.020 hectare, total area 0.198 hectare, rest of the lands are his self-acquired property and there is already partition between the plaintiffs and defendant No.1 Leelaram Soni on 19-1-1996 and the house came into the share of plaintiff No.1 and the suit land bearing Khasra Nos.87/2 & 836/1 came in the share of defendant No.1 and immovable properties were given to plaintiffs No.2 & 3 and on that basis, defendant No.1 has got his name mutated in the revenue records.

4. Upon appreciation of oral and documentary evidence, the trial Court came to the conclusion that except Khasra Nos.87/2 & 836/1, rest of the property are self-acquired property of defendant No.1 and the plaintiffs have not embraced the entire family property for partition, rather embraced the self-acquired property of defendant No.1 which was purchased by defendant No.1, therefore, suit for partition and possession cannot be decreed to which the first appellate Court principally agreed and dismissed the appeal clearly recording a finding that in a suit for partition all the ancestral property including the ancestral joint family house has not been included rather the property which is not the joint family property or ancestral property has been included, therefore, the suit has rightly not been decreed by the trial Court.
5. In the considered opinion of this Court, the concurrent finding recorded by the two Courts below holding that the suit is not properly constituted, it did not embrace all the ancestral property of the parties available to be partitioned and embraced the self-acquired property of defendant No.1, is a finding of fact based on the evidence available on

record. It is neither perverse nor contrary to record. I do not find any merit in the second appeal much less the substantial question of law for determination. The second appeal deserves to be and is accordingly dismissed, *in limine*. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma