

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 276 of 2002

1. Khuti @ Sukru, S/o Sukdeo Panka, Aged About 31 Years
2. Telngu, S/o Sukhdeo Panka, Aged About 23 Years

Both R/o Jagdalpur, District Bastar (M.P.) (Now Chhattisgarh)

---- Petitioner

Versus

1. Bhagat (Dead) Through Lrs.
1 - a Farshu S/o Late Bhagat R/o Village Farsaguda, P.S. Manpuri, Jagdalpur, District Bastar Chhattisgarh.
1-b Budhram S/o Late Bhagat R/o Village Farsaguda, P.S. Manpuri, Jagdalpur, District Bastar Chhattisgarh.
1-c Indar S/o Late Bhagat R/o Village Farsaguda, P.S. Manpuri, Jagdalpur, District Bastar Chhattisgarh.
1-d Mohan S/o Late Bhagat R/o Village Farsaguda, P.S. Manpuri, Jagdalpur, District Bastar Chhattisgarh.
1-e Kamalochan S/o Late Bhagat R/o Village Farsaguda, P.S. Manpuri, Jagdalpur, District Bastar Chhattisgarh.
2. Amal Saay Aged About 71 Years, R/o Village Bhond Tahsil Jagdalpur., District : Bastar(Jagdalpur), Chhattisgarh
3. Musammat Mangaldei, Wd/o Of Guddi Aged About 61 Years R/o Village Farsaguda Thana Bhanpuri District Bastar (Madhya Pradesh) Now Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
4. Jhitru S/o Anant Panka Aged About 56 Years No.1, 2 R/o Village Bhond Tahsil Jagdalpur, District Bastar Madhya Pradesh Now Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
5. M.P. State Now Chhattisgarh State Through Collector, Bastar, Jagdalpur, District Bastar Madhya Pradesh Now Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
6. Peeladas S/o Amar Alias Chhendi Aged About 51 Years Kumbharras Tahsil Dantewada District Dantewada., District : Dantewada, Chhattisgarh
7. Smt. Sudaay W/o Saha Aged About 53 Years Farsaguda, Tahsil Jagdalpur., District : Bastar(Jagdalpur), Chhattisgarh
8. Smt. Mangli (Dead) Through Lrs.
8- A Foolmony Alias Kunda W/o Aytu Aged About 40 Years, Caste Panka, Village Kavadgaonpara, Sub Post Mundgaon, Tahsil Jagdalpur, District Bastar
8-B Ghanoram, S/o Late Mehatar, Aged About 35 Years, Caste

Panka, Village Farsaguda, Tahsil Jagdalpur, District Bastar

---- Respondents

For Petitioner
For Respondent No.1
For Respondent No.5

Ms. Neha Shukla, Advocate
Shri Mayank Chandrakar, Advocate
Shri Sudeep Verma, Dy. GA

Hon'ble Justice Mr. Prashant Kumar Mishra

Order On Board

19/02/2019

1. The Courts below have dismissed the plaintiffs' suit for partition and separate possession.
2. Relationship between the parties is mentioned in para 3 of the Trial Court's judgment. The suit property belongs to Adhar, who had four sons and one daughter namely, Anant, Amar @ Chhedi, Sada and Ajar and Mitki. According to the plaintiffs, Adhar had 6.61 Acres of land in the year 1943. In due course of time, the joint family acquired more lands and eventually they came to own and possess 22.05 Acres. The plaintiffs prayed for half share for themselves and 1/3rd share from the remaining half share belonging to the defendant No.1. After the full blown trial, the Trial Court held that the plaintiffs have failed to prove that there exists a joint family of plaintiffs and defendant No.1. Similarly, other material issues were also decided against the plaintiffs.
3. Before the First Appellate Court, the appeal was filed on 30.09.2000. The appeal was admitted for hearing on 10.12.2000 and the proceeding continued for service of notice till 05.03.2002. Appellants' counsel moved an application for adjournment on 27.03.2002 on the ground that the arguing counsel has gone to

Bilaspur. Prayer for adjournment was moved on 11.04.2002 and thereafter on 03.05.2002. On this date, the First Appellate Court refused to adjourn the appeal and dismissed the same for non compliance of the Court order, probably in exercise of powers under Order 17 Rule 3 of CPC.

4. A close reading of the impugned final order of the First Appellate Court would reveal that the appellants have been punished for the mistake of the lawyer. It is not a case where the appeal was pending for years together. The order sheet would further reveal that till 05.03.2002, the respondent No.6 Peeladas in the appeal was not served and the appellants were directed to pay process fee. On 05.03.2002, the appeal was dismissed as against respondent No.6 for non payment of process fee for service to the said respondent. This itself is illegal and has been done in error of jurisdiction for the reason that an appeal cannot be decided in piecemeal. The first appeal could not have been dismissed only against one of the respondent keeping it alive for hearing against other respondents/defendants. I say so because in the event, the first appeal would have been allowed on merits, there would be two conflicting decrees passed at different point of time in one single suit. The first decree would be a decree of dismissal of appeal which amounts to dismissal of suit against respondent No.6 Peeladas and the second decree would be allowing the suit or the appeal against the other respondents. Even otherwise, in a suit for partition, status of all the parties to the suit is that of plaintiffs, inasmuch as if the suit is decreed, all the parties would get share in the property, therefore, dismissing the suit only against Peeladas would not enable the Court to pass

an effective decree in a suit for partition. If the suit is dismissed against Peeladas, the Court cannot allow any share to him subsequently.

5. Even on the date when the first appeal was dismissed, it was the duty of the Court to have adjourned the matter for sometime enabling the appellants to engage another counsel or cost could have been imposed on the appellants. In my considered view, the Appellate Court has committed serious error of jurisdiction by dismissing the appeal in the absence of counsel/senior counsel engaged by the appellants. The Court should not adopt hyper-technical and pedantic approach while hearing the appeals, particularly when the rights of the parties, concerning the agricultural lands which are their only source of livelihood, are involved.
6. In the result, the substantial question of law is answered in favour of the appellants. The impugned final order passed by the First Appellate Court is set aside and the matter is remitted back to the First Appellate Court for hearing the appeal on merits.
7. The appeal stands allowed to the extent indicated above.

Sd/-

Prashant Kumar Mishra
Judge

Nirala