

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 409 of 2003

1. Keshav (dead) through LR: Sunder Ram, S/o Keshav, aged about 50 years, Occupation -Working, R/o Radhapur, Tahsil Sitapur, Distt. Surguja (CG)
2. Nan Ram S/o Shri Sanjeevan, aged about 55 years.

---- Appellants

Versus

1. Sukh Lal S/o Shri Jagdev, aged about -62 years, R/o Village- Radhapur, Tahsil-Sitapur, Distt. Sarguja (CG)
2. State of Chhattisgarh through Collector, Sarguja (CG)

---- Respondents

For Appellants	:	Shri Manoj Paranjpe and Shri Anurag Singh, Advocate
For Respondent No.1	:	None appears
For State/Respondent No.2	:	Shri Aditya Bhardwaj, Panel Lawyer

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

14/08/2019

1. This appeal is directed against the impugned judgment and decree dated 21st June 2002 passed by learned Fourth Additional District Judge, Ambikapur, District-Sarguja in Civil Appeal No.166-A of 2002 arising out of judgment dated 5.9.2000 passed by First Civil Judge Class-II, Ambikapur in Civil Suit No.97-A of 1998, by which plaintiff's appeal (respondent No.1 herein) has been allowed and his suit decreed against the appellants-defendant.
2. Respondent- plaintiff filed a suit seeking declaration of title and permanent injunction on the pleadings, inter alia, that the plaintiff- Sukhlal and defendants- Keshav and Nan are successors of Jagdev and Sajeewan who were sons of Andha Chik. It was pleaded that joint family property held by

plaintiff and defendants, as shown in Schedule-"A", was partitioned in the year 1947 and in that partition, plaintiff received his share described in Schedule-"B" and defendant received their share as described in Schedule-"C". Further case of the plaintiff was that later on, in the year 1966, inter se partition had taken place between the defendants of which plaintiff had little knowledge. The plaintiff, few days before filing of the suit, came to know that the defendants, while getting revenue records mutated on the basis of their *inter se* partition, have wrongly included certain land which formed part of plaintiff's share on the basis of partition in the year 1947, and interfering with plaintiff's possession over those disputed land described in Schedule - "੨" in respect of khasra nos. 1652, 1757, 1758 & 1759, cause of action arose for filing suit seeking declaration of title and permanent injunction.

3. The defendants, in their written statement, though did not dispute the factum of partition having taken place in the year 1947, according to them, the partition was not effected as described by the plaintiff. According to the defendants, in the said partition, plaintiff was allotted 20.62 acres of land whereas, defendants were allotted 31 acres of land on the basis of consent arrived at between the parties. According to defendants, though plaintiff got a lesser share, he had agreed and consented to the same. According to defendants, when *inter se* partition between defendants had taken place in the year 1966, this fact was fully known to the plaintiff and the plaintiff despite knowing that disputed land belong to share of the defendants, did not raise any dispute and accepted the same. Therefore, the plaintiff is not entitled to any relief.
4. The learned trial Court framed as many as six issues. It dismissed the suit of the plaintiff holding that plaintiff failed to prove that in the partition, plaintiff received share as described in Schedule- "B" and defendants received share as described in Schedule -"C". Learned trial Court further recorded finding that plaintiff failed to prove that in the *inter se* partition between defendants, the so called plaintiff's share described in Schedule - "੨" was taken. Learned trial Court even held that the plaintiff failed to establish his title in respect of land described in Schedule- "B" and, therefore, not entitled to any relief.

5. However, in appeal, learned lower appellate Court held that the plaintiff had succeeded in showing that land described in Schedule-"B" belong to plaintiff and land described in Schedule-"C" belong to defendant, relying mainly on revenue records (Ex.P-1 & Ex.P-2). On that basis , learned lower appellate Court reversed the judgment and decree passed by learned trial Court and decreed the suit of the plaintiff.
6. This appeal was admitted on following substantial question of law:

"Whether the Court below is justified in law in granting decree in favour of plaintiff ignoring that the plaintiff was party to proceedings of mutation resulting in correction of records vide Ex.P/3 & Ex.P/4 ?"
7. Learned counsel for the appellant would argue that the entire dispute revolves around as to whether the land described in Schedule - "੨" was allotted to the share of the plaintiff or that of the defendants in the matter of partition between the two branches. It was argued that even though, in Ex.P-1 & Ex.P-2, land described in Schedule - "੨" is shown in the share of the plaintiff, in a subsequent revenue records of 1966 showing partition between defendants, the disputed land shown in Schedule - "੨" is recorded in the name of defendants. He would argue that this document also contains the signature of plaintiff- Sukh Lal and defendants- Keshav and Nan. That means, it is argued, the plaintiff had not only full notice and knowledge but he had also signed those revenue records admitting that land described in Schedule - "੨" belong to share of defendants, way back in the year 1966 and since then, he did not raise any dispute. Therefore, the plaintiff suit was liable to be dismissed.
8. There is no representation made by respondent No.1/plaintiff.
9. The parties have not disputed the partition having taken place in the year 1947 which is clear from their respective pleadings. However, the dispute is as to which part of the property fell to their respective share. While according to the plaintiff, he received 25.68 acres of land shown in Schedule-"B" and defendants received 25.94 acres shown in Schedule-"C", according to defendants, plaintiff only received 20.62 acres of land and

defendants received 31 acres of land as shown in Schedule "क" and "ख" respectively appended to the written statement. The learned trial Court held that the plaintiff had failed to prove, but the learned lower appellate Court relied upon revenue entries in Ex.P-1 & Ex.P-2 to hold that the plaintiff succeeded in proving that in the partition, plaintiff received land described in Schedule-"B" of the plaint and not as described by the defendants.

10.As to what share was received by the plaintiff and defendants, apart from pleadings and oral evidence. is also described in revenue records. In the revenue records prepared in the year 1956-1957, shown in Ex. P-1 and Ex. p-2, the land in dispute fell to the share of the plaintiff. However, the notings made in this regard show that the parties had not appeared before the revenue authorities and the Patwari, on the basis the possession, had recorded the entries in Ex. P-1 and Ex.P-2. That means Ex. P-1 and Ex.P-2 do not reflect the admitted position between the parties. In fact, documents- Ex. P-1 and ExP-2 were relied upon by the plaintiff but not by the defendants.

11.Ex. P-3 and Ex.P-4 are revenue entries filed by the plaintiff and are plaintiff's own document. In these revenue entries, the land recorded after partition between Nan and Keshav have been described. In Ex. P-3, share of Nan Ram has been recorded, whereas in Ex. P-4, share of Keshav Ram has been recorded. If the khasra numbers and area of the land as described in Ex. P-3 and Ex.P-4 are tallied with the disputed land as described in Schedule - "र" appended to the plaint, it would be clear that except land admeasuring 0.30 acres of land situated in Khasra No. 1652, lands situated in khasra No.1757, 1758 and 1759 are recorded in the name of one or the other defendants in their *inter se* partition in the year 1966. The certified copies of these two revenue records Ex. Ex.P-3 and Ex.P-4, unlike Ex. P-1 and Ex.P-2, contains signature of plaintiff- Sukh Lal, defendants- Nan and Keshav. It would thus appear that the plaintiff's own documents Ex. P-3 and Ex.P-4, relied upon by the plaintiff prove that at the time of partition between Nan and Keshav in the year 1966, plaintiff Sukh Lal was also signatory to the proceedings and he signed the entries made in the year 1966. This important piece of documentary evidence has been ignored by

learned lower appellate Court. The plaintiff- Sukh Lal was thus party to 1966 partition proceedings between Nan and Keshav and it is in those proceedings of partition that the land described in Schedule - "२" were shown to be in the share of defendants, except land described in khasra No. 1652 admeasuring 0.30 acres. Therefore, to that extent, the judgment and decree of the learned lower appellate Court cannot be sustained being perverse and contrary to the documentary evidence relied upon by the plaintiff himself. The finding in that regard being contrary to the evidence are therefore, unsustainable in law. However, in so far as land contained in Khasra No. 1652 is concerned, it cannot be held that it fell to share of the defendants as it is nowhere recorded either in Ex. P-2 or in Ex. P-3 or in Ex. P-4. This land comprised in Khasra No. 1652 is recorded in the name of the plaintiff as shown in Ex. P-1 and only to that extent, the plaintiff was entitled to a decree of declaration and permanent injunction.

12. Accordingly, the question of law framed by this Court is answered in the manner that the learned lower appellate Court, except the finding regarding land admeasuring 0.30 acres situated in khasra No. 1652 in Schedule - "२", was not justified in law in holding that the disputed land as shown in Schedule - "२" belong to the plaintiff, as it was contrary to the entries made in Ex.P-3 and Ex.P-4.

13. In the result, this appeal is partly allowed. The judgment and decree of the learned lower appellate Court is varied and modified in the manner that the plaintiff's suit is decreed only in respect of 0.30 acres of land situated in khasra No. 1652 of village Radhapur, Revenue Circle- Sitapur, Tehsil -Ambikapur, District- Sarguja. The plaintiff is declared title holder of the aforesaid land and defendants are restrained from interfering with plaintiff's possession in respect of the aforesaid land. The plaintiff's claim in respect of remaining land as described in Schedule - "२" appended to the plaint is dismissed.

14. Parties shall bear their respective costs. Let an appellate decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge