

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment reserved on 12-03-2019**

**Judgment delivered on 11-04-2019**

**First Appeal No. 176 of 2003.**

Jamuna Prasad Jaiswal s/o. Ramsurat Sahu aged 37 years, r/o. Village Makro, Tehsil Pal, Ramanujganj, District Surguja, CG.

**---- Appellant.**

**Versus**

1. Motilal Jayaswal s/o. Ganga Vishan Jayaswal, aged 47 years.
2. Jawaharlal Jayaswal s/o Ganga Vishan Jayaswal aged 45 years.
3. Moharlal Jayaswal s/o Ganga Vishan Jayaswal age 39 years.
4. Anant Jayaswal s/o Ganga Vishan Jayaswal age 36 years.
5. Smt. Radha Devi wd/o late Ganga Vishan, age 70 years.  
All r/o. Village Kodaki, Tehsil Pal, Ramanujganj, District Surguja, CG.
6. State of CG through Collector, Surguja, CG.

**– Respondents.**

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|---------------------------|---|-------------------------------|
| For appellant             | : | Mr. Nishikant Sinha, Advocate |
| For respondent No.6/State | : | Mr. Afroz Khan, Panel Lawyer  |
| for other respondents     | : | None                          |

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**SB: Hon'ble Shri Justice Ram Prasanna Sharma**

**CAV JUDGMENT**

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 26-7-2003 passed by the Additional District Judge, Link Court, Ramanujganj (CG) in Civil Suit No.9-A/2002 wherein the said court dismissed the suit filed by the original appellant/plaintiff namely Jamuna Prasad Jayaswal for partition of land mentioned in Schedule A-1 to A-6 of the plaint, total area about 99 acres and for declaration of title and possession of half of his share.

2) As per version of the respondents, the property in question is already partitioned and about 29 acres of land was gifted to respondents Jawaharlal Jayaswal and Motilal Jayaswal by Ramsurat in the year 1955 and that property is recorded in their names since 1955 and after partition all the shareholders are in possession of the land of their share, therefore, no ground for re-opening the said partition is available to the appellant. The appellant himself is in possession of land of his share since 1976 therefore, suit filed on 8-8-1995 is clearly barred by limitation. As per statement of the respondents and the document D/3 which is gift-deed, it is established that 29 acres of land was gifted to Motilal by Ramsurat and again gifted 27 acres of land to Jawaharlal Jayaswal as per document D/1 in the year 1955 and the said land was recorded in the name of Motilal Jayaswal and Jawaharlal Jayaswal .

3) Learned counsel for the appellant would submit as under:

- i) The court below failed to consider that the defendants who are claiming a previous partition could not prove the same and the very nature of the property remains as a joint family property among the co-sharers/coparcener like the appellant/plaintiff and the respondents/defendants.
- ii) The court below failed to consider that the burden of proving partition was on the respondents/defendants and they had to prove it by cogent reliable and unrebutted evidence. The court below has wrongly recognised a family arrangement to be a partition in this case.
- lii) The defendants could not prove their acquisition of the property referred to by them in their written statement either on the strength of self acquisition of their father or on the strength of the gift deed executed in their favour by the grand father.
- iv) The court below ignored material oral and documentary evidence regarding the real controversy between the parties.
- v) The court below has wrongly held that the suit is barred by limitation and has further wrongly held that a proper court fees has not been paid on the plaint.

4) On the other hand, learned counsel for the State would submit that the finding of the trial court is based on proper marshalling of the evidence which does not call for any interference by this court while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6. From the evidence, it is clearly established that property in question is self acquired property of Ramsurat and he had all the right to dispose of his property and same is gifted in the year 1955 which is not questioned for 40 years and suit was brought in the year 1995, therefore, finding of the trial court is correct that suit for said land is barred by limitation as the appellant based his claim as per record of right Ex.P/3 to P/7 which is of the year 1944-1945. No document was filed for the period after the year 1944-1945, therefore, the trial court is right in holding that the property is not recorded jointly in the year 1995 in absence of any documentary evidence.

7. As per document Ex.P/2, land measuring 15 acres situated at village Makro is recorded in the name of Deen Dayal. Land mentioned in Ex.P/4 measuring 12 acres is not recorded in the name of Ramsurat, therefore, it is not established before the trial Court that the land mentioned in Schedule A-3 of the plaint was owned by Ramsurat. As per Ex.P/2, land measuring 15 acres

which is recorded in the name of Deen Dayal is mentioned in Schedule-A of the plaint, but same is not property of Ramsurat as per record of right. Looking to the oral and documentary evidence it is clear that the land mentioned in Schedule A-1 to A-6 was not undivided property of joint Hindu family of Ramsurat. The appellant maintained his claim on the basis of pleading that entire property mentioned in Schedule A1 to A6 is the property of Ramsurat but the same is not proved to be property of Ramsurat, therefore, the trial court is right in holding that the appellant is not entitled for half of share in property mentioned in Schedule A-1 to A/6 of the plaint.

8. As per Ex.D/5 to Ex.D/8 it is established that the land situated at village Makro and Chemi is already recorded independently in the name of the respondents which shows that partition of the property already took place and there is no ground for re-opening of the partition. Therefore, the trial Court was not in a position to grant to relief to the appellant for declaration his share in the property and possession. The finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

9. As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondents and against the appellant as under:

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

Sd/-

**(Ram Prasanna Sharma)**  
JUDGE

Raju