

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 116 of 2007**

Rangnath Yadav, son of Late Shri Nanheram Yadav,
Aged about 49 years, R/o Village Nirtu, Tahsil
Takhatpur, District Bilaspur, Chhattisgarh,
Present Address Assistant Grade II, Collectorate
Janjgir, District Janjgir-Champa, Chhattisgarh.

--- Appellant/Plaintiff

Versus

1. Lakhanlal Yadav, Son of Late Shri Nanheram Yadav,
Aged about 59 years, R/o Village Nirtu, Tahsil
Takhatpur, District Bilaspur, Chhattisgarh.
2. Dinesh Kumar, Son of Lakhanlal Yadav, Aged about
29 years, R/o Village Nirtu, Tahsil Takhatpur,
District Bilaspur, Chhattisgarh.
3. State of Chhattisgarh, Through the Collector,
Bilaspur, Chhattisgarh.

---- Respondents/Defendants

For Appellant : Mr. R.R. Soni, Advocate
For State : Mr. Sanjeev Agrawal, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

22/10/2019

1. Heard on admission and formulation of substantial
question of law in this second appeal preferred
by the appellant/plaintiff under Section 100 of
the CPC.

2. Mr. R.R. Soni, learned counsel for the appellant/plaintiff would submit that both the Courts below have gravely erred in holding that plaintiff is not entitled for decree declaring sale deed dated 10/01/2000 executed by his father namely Nanheram Yadav in favour of defendant No. 2 to be void as the said suit land fell in plaintiff's share in the second partition, as such, the findings recorded by both the Courts below, being perverse, gives rise to substantial question of law for determination in this second appeal.

3. Nanheram Yadav had four sons namely Rangnath, Lakhanlal, Ramlal and Tengnu. It is the case of the plaintiff that the total suit land held by his father Nanheram Yadav, as per 'Schedule 1A' annexed with the plaint, was partitioned firstly between all five of them i.e. Nanheram Yadav and his four sons in his lifetime, which is shown in 'Schedule B' annexed with the plaint. He further partitioned the land which fell in his share during the first partition between all his four sons which is shown in 'Schedule C' of the plaint and the suit land bearing khasra Nos. 714/1, 719 and 728 total area 0.49 decimal fell in

plaintiff's share and therefore, Nanheram could not have alienated the said suit land in favour of his grandson i.e. defendant No. 2, as such, decree be granted in his favour declaring that the aforesaid alienation of the suit land has not conferred any title on defendant No. 2.

4. Upon appreciating the oral and documentary evidence on record, learned trial Court has held that plaintiff has failed to prove that the suit land fell in his share in the second partition and consequently, learned trial Court dismissed his suit which was affirmed by the first appellate Court against which this second appeal has been preferred.

5. It is not in dispute that as per plaintiff's own showing, suit land bearing khasra Nos. 714/1, 719 and 728 total area 0.49 decimal fell in the share of his father Nanheram Yadav in the first partition held by him during his lifetime. Moreover, Plaintiff has failed to prove that suit land was given to him by his father in the second partition.

6. Both the Courts below have assigned cogent reasons and clearly held that plaintiff has failed to prove that his father namely Nanheram

Yadav had given the suit land to him in second partition.

7. The aforesaid finding recorded by both the Courts below that plaintiff has failed to prove that suit land held by his father Nanheram Yadav fell in his share during the second partition, therefore, he is not entitled for decree as claimed by him, is a finding of fact based on evidence available on record which is neither perverse nor contrary to record and does not give rise to any substantial question of law for determination in this second appeal.
8. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. Consequently, all the pending applications are hereby disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge