

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.176 of 2001**

Anuk Sai (dead) through Lrs

1.a. Sanjay Kumar Singh, S/o Late Anuk Sai, aged about 40 years

1.b. Satish Kumar Singh, S/o Late Anuk Sai, aged about 33 years

1.c. Smt. Moti Kunwar Wd/o Late Anuk Sai, aged about 65 years

1.d. Shanti Prasad Singh D/o Late Anuk Sai, aged about 48 years

1.a to 1.d are R/o Village Selma, Tahsil and P.S. Batauli, District Surguja (CG)

1.e. Pramila Singh W/o. Thakur Prasad Singh, aged about 37 years, R/o Umroli, Lakhanpur, District Surguja (CG)

---- Appellants

Versus

1. Alam Sai S/o Late Siber Sai, aged about 55 years

2. Kashi Ram, S/o Late Siber Sai, aged about 50 years

3. Jhunki (died)

4. Thakur Prasad (dead) through Lrs

4.B. Samat Singh S/o Late Thakur Prasad, aged about 30 years

4.C. Santan Singh S/o Late Thakur Prasad, aged about 27 years

4.D Balkeshwar Singh S/o Late Thakur Prasad, aged about 24 years

All are agriculturist and R/o Village Silma, P.S. & Tahsi. Batauli, District Surguja (CG)

5. Basant Singh (dead) Through Lrs

5.A Smt. Urmila W/o late Basant Singh, aged about 56 years

5.B Shri Singh Bahadur Singh, S/o Basant Singh, aged about 28 years

5.C Shivshankar Singh, S/o Basant Singh, aged about 33 years

5.D Ramashankar Singh, S/o Basant Singh, aged about 25 years

5.E Rohit Shankar Singh, S/o Basant Singh, aged about 23 years

6. The State of Chhattisgarh, through the Collector, Surguja, Ambikapur (CG)

---- Respondents

For Appellants	:	Mr.A.K.Prasad, Advocate
For Res.No.1 to 3	:	Ms Rajkumari Yadav, Advocate appears on behalf of Mr.Subhash Yadav, Advocate
For Res.No.4 and 5	:	None present
For Respondent No.6	:	Mr.Rahul Tamaskar, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

02.01.2019

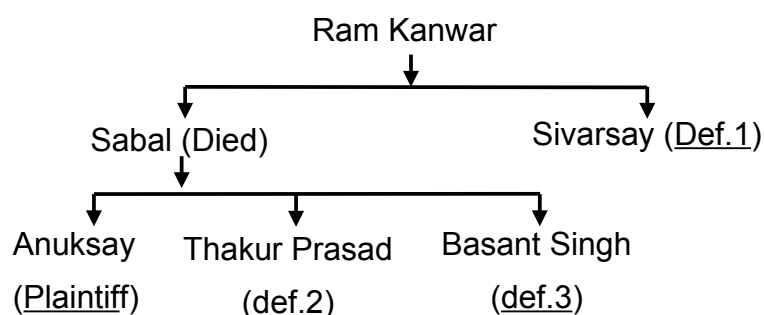
1. The substantial questions of law involved, formulated and to be answered in the plaintiff's second appeal are as under:-

“(i) Whether lower appellate court was not justified in holding that property in dispute is not owned by Sabal Sai, father of the present appellant and respondents No.4 and 5 ?

(ii) Whether the lower appellate Court was not considered the plea of adverse possession raised by the appellant ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The following genealogical tree will demonstrate the relationship among the parties:-



3. Original plaintiff-Anuk Sai died during the pendency of second appeal. His legal representatives were brought on record who are appellants herein. Plaintiff-Anuk Sai, son of Sabal Sai filed a suit for declaration of title and permanent injunction in respect of suit land described in Schedule "B" of the plaint stating inter-alia that the land shown in Schedule "A" of the plaint was self-acquired property of his father-Sabal Sai and the land shown in Schedule "A" was settled in his favour on 6.10.1951 by Deputy Commissioner, Land Reforms, Surguja in accordance with the provisions contained in the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (hereinafter called as 'the Act of 1950') and the Rules made thereunder and since then his father was in possession and after his death he and defendants No.2 & 3 are in possession. Sabal Sai had gifted the suit property in favour of the plaintiff and defendants No.2 & 3 and when defendant No.1 had started revenue proceeding that he is owner of $\frac{1}{2}$ of the suit property shown in Schedule "A" of the plaint, the plaintiff has filed the suit for declaration of title and permanent injunction.
4. Defendant No.1 filed his written statement stating inter-alia that the suit land described in Schedule "A" was Manwar land, which was service land in the hands of their father-Ram Kanwar as he was working as Gawatiya of the village in the merged State of Surguja. Though after death of Ram Kanwar, patta was granted in the name of Sabal Sai, father of the plaintiff being elder member of the family, but nature of land was remained as joint family property of the

plaintiff's and his father, as such, the property being ancestral property, he is also entitled for ½ of the share and the suit deserves to be dismissed.

5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 9.10.98, decreed the suit holding that patta was granted in favour of father of the plaintiff and defendants No.2 and 3 and gift of property of Schedule "B" was validly made in favour of the plaintiff.
6. On appeal being preferred by defendant No.1, the said finding was reversed by the First Appellate Court holding that the property in question was Manwar land belonging to father of Sabal Sai and defendant No.1 and both brothers are having equal right in the property and the gift deed was not to be proved.
7. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial questions of law have been framed by this Court, which have been set-out in the opening paragraph of this judgment.
8. Mr.A.K.Prasad, learned counsel for the appellants/plaintiff, would submit that Shri Sabal Sai, father of the plaintiff and defendants No.2 and 3 was granted patta of the suit land in accordance with the Act of 1950 and the Rules made thereunder and that is statutory grant under the Act of 1950 and it is exclusively self-acquired property of his father with defendants No.2 and 3. He would further submit that the First Appellate Court is absolutely unjustified in

holding that it is joint family property of father of plaintiff and defendant No.1 as patta granted in favour of Sabai Sai was never challenged by defendant No.1 at any point of time as it was granted way back on 6.10.1951 (Ex.P/1) and the instant suit was filed on 11.9.84, in which such defence of property being jointly has been taken for the first time, which was accepted by the First Appellate Court, which is perverse and contrary to record and liable to be set aside.

9. On the other hand, Ms.Rajkumari Yadav, learned counsel for respondents No.1 to 3, would submit that the First Appellate Court is absolutely justified in holding the property to be joint family property of father of Sabal Sai and defendant No.1, as such, the second appeal deserves to be dismissed.

10. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.

11. In order to answer the substantial question of law No.1, it would be expedient to consider the nature of patta granted to father of the plaintiff and defendants No.2 and 3 vide Ex.P/1. The Deputy Commissioner, Land Reforms, Surguja in exercise of powers conferred under rule 6 of the Rules made under Section 91(2) (p) of the Act of 1950 granted patta in favour of Sabal Sai, father of the plaintiff and defendants No.2 and 3 reserving the rights of a raiyat.

Document i.e. patta (Ex.P/1) states as under:-

Patta under rule 6 of rules framed under section 91 (2) (p) of Madhya Pradesh Abolition of Proprietary Rights (Estates,

Mahals, Alienated Lands) Act, 1950 (1 of 1951)

This is to certify that under section 54(1) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951), and in pursuance of rules 6 of the rules made under section 91(2)-(p) of the said Act in Revenue Case No.390of1950-51/I-A/17 of the court of D.C. Land Reforms dated the 6.10.1951 the rights of a raiyat have been reserved to Sabalsai, son of Ram Kanwar resident of Selma, tahsil Ambikapur district Surguja, in respect of the land situated in mouza Selma, tahsil Ambikapur, district Surguja as detailed below:-

Khasra No.	Area.	Rent			Remarks
(1)	(2)	(3)			(4)
Manwar	Area	Rs.	As.	P.	
355	4.92	24	6		
356	3.42				
357	0.25				
391	1.47				
775	0.53				
797	1.11				
1033	1.90				
1405	1.61				
1406	0.05				
1433	0.28				
1442	2.33				
1558	2.16				
143	1.43				
145	0.42				
14	21.88	24	6		

Dated 6.10.1951

Deputy Commissioner
Land – Reforms
Surguja

12. Section 54(1) of the Act of 1950 states as under:-

“54. Accrual of raiyati right to a proprietor or under tenure.-(1) Where any land not included in the home-farm was under the personal cultivation of a proprietor, the Deputy Commissioner, may in accordance with the rules made by the State Government in this behalf,

reserve to such proprietor the rights of a raiyat in the whole or part of such land and shall determine the revenue thereon. ”

13. In exercise of the powers conferred under rule 6 of the Rules made under Section 91(2) (p) of the Act of 1950, patta was granted in favour of late Shri Sabal Sai, which is statutory grant under Section 54 (1) of the Act of 1950 to preserve the rights of a raiyat and by this order Sabal Sai is the person in whose favour raiyat rights have been reserved and the said order has become final in absence of challenge being made by defendant No.1 within the reasonable time from the date of issuance of said document in favour of father of the plaintiff and defendants No.2 and 3 as it was granted way back on 6.10.51 and in the suit filed by the plaintiff for declaration of title and permanent injunction, defendant No.1 cannot challenge collaterally the correctness and validity of the said document after lapse of more than 30 years from the date of said grant and that too without seeking any declaration of that document to be illegal by way of counter-claim, as such, the trial Court has rightly held that Sabal Sai was the only person in whose favour the competent authority has reserved the rights of a raiyat and he is title-holder of the suit land and entitled to gift the suit property to the plaintiff and defendants No.2 and 3, as such, the First Appellate Court is absolutely unjustified in holding that defendant No.1 was also having right, title and interest in the property which was granted by the Deputy Commissioner, Land Reforms, Surguja in favour of father of the plaintiff and defendants No.2 and 3, as such, the First Appellate Court is totally unjustified in reversing the judgment and

decree of the trial Court. The substantial question of law is answered in favour of the plaintiff and against defendant No.1. In view of finding recorded hereinabove, it is inexpedient to consider the substantial question of law No.2.

14. For the foregoing reasons, the second appeal is allowed. The judgment and decree passed by the First Appellate Court is hereby set aside and the judgment and decree passed by the trial Court is hereby restored. No cost(s).

15. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-