

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 16-01-2019

Judgment delivered on 28-03-2019

FA No.121 of 2001

1. Sahodra Bai aged 55 years, wd/o. Gend Singh Chandrakar.
 2. Damini Bai aged 34 years, d/o. Gend Singh Chandrakar .
 3. Rohini aged 31 years, d/o. Gend Singh Chandrakar.
 4. Sarita aged 32 years d/o. Gend Singh Chandrakar.
 5. Mohini aged 29years d/o. Gend Singh Chandrakar.
- All r/o. Raipur, Dist. Raipur.

---- Appellant/defendant

Versus

1. Rambai aged 63 years wd/o. Gend Singh Chandrakar.
2. Rashmi aged 25 years d/o. Gend Singh Chandrakar,
3. Vidhya aged 29 years d/o. Gend Singh Chandrakar,
4. Santosh Kumar aged 35 years, s/o. Gend Singh Chandrakar.
5. Toran Kuamr aged 33 years, s/o. Gend Singh Chandrakar.
6. Rudranath aged 60 years ,s/o. Bihawan Lal Chandrakar.
7. State of Chhattisgarh through Collector, Raipur, Dist. Raipur (CG).

**---- Respondent/plaintiffs 1, 2 3
and defendants No.6 to 9.**

For appellants : Mr. H.V. Sharma, Advocate.

For respondents : None

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 13-8-2001 passed by the 2nd Additional District Judge, Balodabazar, in Civil Suit No. 20-A/2000 wherein the said court declared share of wife, sons, daughters of one Gend Singh and each successor will get 1/9th share of suit land measuring 8.152 hectares situated at village Bhatbhera, Patwari Halka No. 31, Tahsil Simga, Dist. Raipur.

2) The land in question ad-measuring 8.152 hectares was recorded in the name of Gend Singh at the time of his death on 15-2-1994. It is alleged that earlier partition took place between Gend Singh and his two sons namely Santosh Kumar and Toran Kumar. Santosh Kumar and Toran Kumar were given 7.139 hectares of land. Rest of the land was 9.958 hectares as per record and some land was sold by Gend Singh, at the time of his passing land measuring 8.152 hectares was recorded in his name. The revenue authorities recorded the names of appellants No. 2 to 5 who are daughters of Gend Singh in the said land that is why wife of Gend Singh namely Ram Bai and his daughters namely Rashmi and Vidhya filed a suit for their share and the trial Court declared their share as mentioned above.

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

i) The respondents namely Ram Bai,

Rashmi and Vidhya/plaintiffs suppressed the fact before the trial Court that partition already took place and they did not mention the total property earlier recorded in the name of Gend Singh, therefore, finding of the trial Court is not based on factual matrix of the case.

- ii) Partition already took place between the parties, therefore, the trial court was not justified in allotting share to respondents No. 1 to 6, therefore, finding of the trial Court is liable to be reversed.

4. I have heard learned counsel for the appellant and perused the records of both the courts below including the judgment and decree.

5. There is no document in the record of the trial Court that property was ancestral property i.e., property of Gend Singh's father or his ancestors. All the records of rights go to show that the property was recorded in the name of Gend Singh and in absence of evidence contrary to the record it appears that the property was self-acquired property of Gend Singh. From the order of the Revenue court which is placed in the record of the trial Court, it appears that Gend Singh had two wives namely Ram Bai and Sahodra Bai. Respondents Santosh Kumar, Toran Kumar Rashmi and Vidhya were two sons and two daughters of Gend

Singh and Ram Bai. Ram Bai was first wife of Gend Singh and appellants Damini, Rohini, Sarita and Mohini are four daughters of Gend Singh and Sahodra Bai. As per record during proceeding of trial court both wives namely Ram Bai and Sahodra Bai were alive, therefore, Sahodra Ba being second wife is not entitled to share of Gend Singh, but daughters namely Damini, Rohini, Sarita and Mohini are entitled for share as per Section 16(3) of the Hindu Marriage Act, 1955 and Ram Bai, Rashmi, Vidhya, Santosh and Toran will also get share in the property of Gend Singh.

6. From the record of rights, though the documents are not exhibited, it appears that total land in the name of Gend Singh was 9.958 hectares and earlier 7.139 hectares of land was allotted to respondents Santosh Kumar and Toran Kumar by Gend Singh. In all the property comes out to near 17 hectares of land. As property was not proved as ancestral property, the right opened to successor of Gend Singh's sons only on the date of passing of Gend Singh. i.e., 15-2-1994. Some time some land was sold by Gend Singh and now the property of Gend Singh comes to 8.152 hectares and the property which was given to Santosh Kumar and Toran Kumar is 7.139 hectares, in all comes out to 15 hectares of land. 15 hectares of land will be divided between wife Ram Bai, sons Santosh Kumar and Toran Kumar and Daughters Rashmi and Vidhya, Damini, Rohini, Sarita and Mohini. It will be divided

between nine successors. Each share holder will get about 1.6 hectares of land. For distribution of land it is also to be seen whether the land is irrigated or unirrigated and what is the percentage of fertility of the total land. If any share holder wants to get irrigated and fertile land, he will get less share in comparison to share holder who will get unirrigated and non-fertile land. Gend Singh already allotted 7.139 hectares of land to Santosh Kumar and Toran Kumar who were real brothers of respondents Rashmi and Vidhya and sons of Ram Bai, therefore, Ram Bai, Rashmi and Vidhya will get their share from the land measuring 7.139 hectares which is already allotted to Santosh Kumar and Toran Kumar. Rest of the land will be divided between daughters of Gend Singh namely Damini, Rohini, Sarita and Mohini. Land allotted to Santosh Kumar and Toran Kumar was in excess of their share and they can retain 1.6 hectares each and rest of the land shall be allotted to their mother namely Ram Bai and their sisters Rashmi and Vidhya.

7). The trial court has lost sight of the fact that the land was already allotted to Santosh Kumar and Toran Kumar in excess of their share, excess land can be allotted to their mother and sisters, therefore, finding of the trial court that Vidhya, Rashmi and Ram Bai will get share in the property which is recorded in the name of Damini, Rohini, Sarita and Mohini is not proper. It is settled

principles of law that once the property is partitioned, all the share holders should be made party at the time of partition. In the present case, all the shareholders were not made party to earlier partition, therefore, respondents No. 1 to 5 cannot claim in the property which is now in the share of appellants No. 2 to 5. Respondents No. 1 to 3 can claim share in the property which is recorded in the name of Santosh Kumar and Toran Kumar. They cannot exceed to their share. The trial court has not focussed the effect of earlier partition, therefore, finding of the trial Court is not liable to be sustained and same is hereby set aside. The appeal is liable to be allowed.

8. Accordingly, the decree is passed in favour of appellants and against the respondents No. 1 to 5 as under:

- i) The suit filed by the respondents No. 1 to 3 is dismissed with cost allowing the appeal.
- 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