

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.289 of 2004

Aimprasad, S/o Ramlal Sahu, aged 34 years, R/o Kalami, Tahsil Malkharauda, District Janjgir-Champa (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Daduram (Died and deleted)
2. Shyambai, Wd/o Bhagwan Das, aged 42 years
3. Sarswati Bai, D/o Bhagwan Das, aged 18 years
4. Lalita Bai, D/o Bhagwan Das, aged 16 years
5. Paras, S/o Bhagwan Das, aged 14 years
6. Kanti, S/o Bhagwan Das, aged 11 years
7. Heeralal, S/o Bhagwan Das, aged 9 years
8. Nanaki, S/o Bhagwan Das, aged 5 years

All are by caste Sahu, No.4 to 8 minors through mother Shyambai, widow of Bhagwan Das, all are R/o Village Kalami, Tahsil Malkharauda, District Janjgir-Champa.

9. Parwati Bai, D/o Bhagwan Das, aged 28 years, wife of not known, R/o Aadil, Tahsil Malkharauda, District Janjgir-Champa (C.G.)
10. Savitri Bai (Died and deleted)
11. Gayatri Bai, D/o Bhagwan Das, aged 24 years, wife of not known, R/o Bade Seepat, Tah. Malkharauda, District Janjgir-Champa (C.G.)
12. Devnarayan, S/o Ramlal, aged 37 years,
13. Tularam, S/o Ramlal, aged 27 years
14. Prem Kunwar, Wd/o Ramlal, aged 57 years

No.12 to 14 R/o Kalami, Tahsil Malkharauda, District Janjgir-Champa (C.G.)

15. Gopi, S/o Mukutram Sahu, aged 52 years, R/o Jharra, Tahsil Champa, District Janjgir-Champa (C.G.)

(Defendants)
---- Respondents

For Appellant: Mr. H.B. Agrawal, Senior Advocate with Miss Deepali Dubey, Advocate.

For Respondents No.1, 7 and 5: -

Mr. Vivek Bhakta, Advocate.

For Respondents No.12 to 15: -

Mr. Viprasen Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

13/08/2019

1. This second appeal preferred by the plaintiff was admitted by formulating the following substantial questions of law for determination: -

“1. Whether the findings in relation to ownership of the plaintiff is perverse on the face of record?

2. Whether the valuable documentary evidence has been ignored by the two Courts below in recording the findings in relation to the ownership of the suit property?”

(Parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The suit property bearing Khasra No.851/1, area 2 decimals, is the subject matter of dispute between the parties. That land originally belongs to one Daduram whose name stood recorded in the revenue records. Mahesh had two sons Motiram and Mukutram. The property is recorded in the name of Daduram, S/o Motiram, whereas, the plaintiff is great grand-son of Mahesh. It is the case of the plaintiff that Daduram was the Karta of joint family property and he made partition on 13-3-1992 which was confirmed by the Tahsildar on 16-3-1992, but defendant No.1 got the suit land mutated in his name in the revenue records leading to filing of suit for declaration of title of 2 decimals of land of Khasra No.851/1 stating inter alia that the suit land fell in the share of the plaintiff on partition and therefore he is title holder, whereas defendant No.1 Daduram and his son defendant No.2 Bhagwandas, who was subsequently substituted by his LRs, filed

written statement stating inter alia that the suit land was purchased by Daduram by sale deed dated 6-9-1944 (Ex.D-1) and they are in possession of the suit land.

3. The trial Court after appreciating oral and documentary evidence on record dismissed the suit holding defendant No.1 to be the owner of the suit property, as he has purchased the suit property by registered sale deed dated 6-9-1944 (Ex.D-1) which was maintained by the first appellate Court by accepting the finding recorded by the trial Court and now, it has been questioned in the second appeal in which substantial questions of law have been formulated which have been set-out in the opening paragraph of this judgment.
4. Mr. H.B. Agrawal, learned Senior Counsel appearing for the appellant / plaintiff, would submit that both the Courts below have concurrently recorded perverse finding that the suit land did not fall in the share of the plaintiff and it is the property purchased by defendant No.1 by sale deed dated 6-9-1944 (Ex.D-1).
5. On the other hand, learned counsel appearing for the respective respondents have supported the impugned judgment & decree.
6. I have heard learned counsel for the parties and perused the record with utmost circumspection.
7. In a suit filed by the plaintiff, he claimed that the suit land fell in his share on partition on 13-3-1992 and 16-3-1992. A careful perusal of the documents filed by the plaintiff would show that none of those documents of partition have been filed before the trial Court nor they have been exhibited and proved in accordance with law. The documents which have been filed in Exs.P-1 and P-5, the name of Daduram has been shown, whereas in Ex.P-7, the name of Motiram

was shown; likewise, in Ex.P-8, the name of Daudram was shown and in Ex.P-9, the name of Motiram was shown. Both the Courts below have concurrently come to a finding that defendant No.1 purchased the suit property on 6-9-1944 and he came in possession of the suit land. The suit property did not fall in the share of the plaintiff on partition. As such, the plaintiff has failed to prove title over the suit land, therefore, he is not entitled for decree of declaration of title and permanent injunction. The finding recorded by the two Courts below holding that the plaintiff has failed to establish his title over the suit land pursuant to the sale deed Ex.D-1 is a finding of fact based on the evidence available on record. It is neither perverse nor contrary to record. The substantial questions of law are answered accordingly and the appeal is dismissed. No order as to cost(s).

8. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma