

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 312 of 2004**

1.A. Muneshwar, S/o Late Jagato, age 35 years.

B. Khorte, S/o Late Jagato, aged 30 years.

C. Mangra, S/o Late Jagato, age 28 years.

D. Premsay, S/o Late Jagato, age 25 years.

E. Kondo, d/o Late Jagato, age 41 years.

F. Mangno, d/o Late Jagato, age 38 years.

All r/o village Bhanwradand, P.S. & Tehsil Sitapur, District Surguja (C.G.)

2. Jugnuram (Dead) through LRs:-

2.A. Lagnu, S/o late Jugnu, aged about 30 years,

2.B. Jainath, S/o late Jugnu, aged about 20 years,

2.C. Udainath, S/o late Jugnu, aged about 18 years,

All R/o Village Bhanwardand, Tahsil Sitapur, District Surguja (C.G.)

3. Kubderam, S/o Tuluram, age 53 years.

4. Temeram, S/o Tuluram, age 51 years.

5. Terra, s/o Tuluram, age 49 years.

6. Devnath Ram, S/o Tuluram, age 47 years.

All r/o village Bhanwaradand, Tehsil Sitapur, Distt. Surguja (C.G.)

---- Appellants/Defendants

Versus

1. Khoda Ram, s/o Budha Ram, age 55 years, r/o village Bhanwradand, Tehsil Sitapur, Distt. Surguja (C.G.)

(Plaintiff)

2. The State of Chhattisgarh, through Collector, Surguja, Ambikapur (C.G.)

---- Respondents/defendants.

For Appellants	:	Mr. A.K. Prasad, Advocate.
For Respondent No. 1	:	Mr. Rajeev Shrivastava & Shri Avinash Choubey, Adv.
For Respondent No. 2	:	Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

23/08/2019

(1) The substantial questions of law involved, formulated and to be answered in this second appeal preferred by defendants state as under:

“1. Whether the lower appellate Court was not justified in reversing a well reasoned judgment and decree passed by the trial Court ?

2. Whether the lower appellate Court was not justified in passing a decree for partition having already given a finding that a previous partition had taken place long long back between the parties ?

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

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The suit property was originally held by Kahariya Uraon. He had three sons namely Jhera, Tulu and Budha. The plaintiff is son of Budha whereas defendants are sons of Tulu. The plaintiff filed a suit for declaration of title in the property shown in Schedule “C” attached with the plaint and for recovery of possession in the property shown in Schedule “D” attached with the plaint and also claimed that the order dated 31.12.1994 (Ex.P-4) passed by the Tehsildar, Sitapur is illegal and ineffective stating *inter alia* that suit property was partitioned during life time of his grandfather Kahariya

Uraon between his two sons Tulu and Budha, which was shown in Schedule "B" attached with the plaint and the property, which fell in the share of his father - Budha is mentioned in Schedule "C" attached with the plaint, as such, the fact of partition between plaintiff's father Budha and defendants' father Tulu was admitted and declaration of title was only sought with respect to property shown in Schedule "B" of the plaint and recovery of possession with respect to the property shown in Schedule "D" of the plaint.

(2.2) By filing written statement, the defendants denied the plaint allegations and pleaded that the plaintiff is not entitled for decree of declaration of title.

(2.3) The trial Court, after appreciating the oral and documentary evidence available on record, dismissed the suit holding that property mentioned in Schedule "C" of the plaint fell in share of plaintiff's father and after the death of plaintiff's father, it fell in his share and order passed by the Revenue Officer dated 31.12.1994 is binding upon him and he is not entitled for any recovery of possession.

(3) The plaintiff - Khodaram preferred first appeal there-against. The first appellate Court though declined to grant declaration of title with respect to property shown in schedule "C" attached with the plaint but yet granted decree of declaration of title and possession with respect to property shown in Schedule "B" attached with the plaint and also declared that the order dated 31.12.1994 (Ex.P-4) is null and void, against which instant second appeal under Section 100 of the CPC has been preferred by the defendants in which the substantial question of law has been formulated and set out in the opening paragraph of the judgment.

(4) Mr. A.K. Prasad, learned counsel appearing for the appellants/defendants would

submit that the plaintiff admittedly and undisputedly did not claim any relief of declaration of title and partition with respect to property shown in Schedule "B" attached with the plaint as the partition has already been taken place during life time of plaintiff's father and defendants' father and, therefore, the first appellate Court could not have granted decree with respect to property shown in Schedule "B" of the plaint, which is absolutely unsustainable and contrary to law.

(5) On the other hand, Mr. Avinash Chubey, counsel for respondent No. 1- plaintiff would support the impugned judgment & decree and submit that first appellate Court is absolutely justified in granting decree in favour of the plaintiff, which does not call for any interference in the instant appeal.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(7) As noticed hereinabove, the suit property was originally held by Kahariya Uraon. He had three sons namely Jhera, Tulu and Budha. Jhera has already earlier separated from his father after taking his share and, thereafter, Khahariya Uraon partitioned the property shown in Schedule "B" attached with the plaint between plaintiff's father Budha and defendants' father Tulu and the property fell in share of Budha is indicated in Schedule "C" attached with the plaint, as such, fact of partition is admitted between the parties by the plaintiff in the plaint. The plaintiff only claimed that his title be declared in the property shown in Schedule "C" of the plaint and sought recovery of possession in the property shown in Schedule "B" of the plaint, which is a part of property shown in Schedule "C" of the plaint. The plaintiff admittedly and rightly did not claim any relief of

declaration of title and partition in the property shown in Schedule “B” of the plaint as it was already partitioned and the property, which fell in the share of plaintiff's father is mentioned in Schedule “C” of the plaint, which the trial Court has rightly dismissed by its judgment and decree, but the first appellate Court after having recorded a finding that plaintiff has though not claimed any declaration of title and partition in the property shown in Schedule “B” of the plaint, yet proceeded to grant the decree of declaration of title and possession of the property shown in Schedule “B” of the plaint after having held that previous partition has already taken place between the plaintiff's father Budha and defendants' father - Tullu, which is contrary to the well settled law in this behalf.

(8) The Supreme Court in the matter of **Bachhaj Nahar Vs. Nilima Mandal and another**¹ has clearly held that relief should be based on the strength of not only evidence but pleading and without pleading and an opportunity of hearing to the other side, no relief can be granted. Paragraph 23 of the report states as under :-

“23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a

1 (2008) 17 SCC 491

civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.”

(9) In view of the principle of law laid down by the Supreme Court the matter of **Bachhaj Nahar** (supra) and particularly considering the fact that no relief was claimed by the plaintiffs with respect to the property shown in Schedule “B” of the plaint and the same is not the property, which fell in share of plaintiff's father, thus, the first appellate Court has exceeded his jurisdiction in granting relief, which was neither claimed nor it was subject matter of the trial before the court of first instance, as such, the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court. Substantial question of law is answered accordingly in favour of defendants and against the plaintiff.

(10) Resultantly, the judgment and decree of the first appellate Court is set aside and judgment and decree of the trial Court is restored. Consequently, the second appeal is allowed and the plaintiffs' suit stands dismissed. No cost(s).

(11) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

