

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 16-1-2019

Judgment delivered on 31-01-2019

FA No. 152 of 2004

1. Sumer Singh s/o. Laxman Singh, aged about 62 years.
2. Yugal Kishore s/o. Sumer Singh, aged about 41 years.
3. Bhirendra Kumar s/o. Sumer Singh, aged about 29 years.
4. Bhaiyendra Kumar s/o. Sumer Singh, aged about 27 years.
5. Labhvendra Kumnar s/o. Sumer Singh, aged about 24 years.
6. Gainendra Kumar s/o. Sumer Singh aged about 19 years.

All residents of village Amati, Post Nikum, Tahsil & District Durg (CG).

---- Appellants.

Versus

1. Bhav Singh s/o. Laxman Singh, aged about 64 years.
2. Parmanand s/o. Bhav Singh, aged about 55 years.
3. Brigu Kumar s/o. Bhav Singh, aged about 37 years.
(1, 2 and 3 residents of village Amati, Post Nikum, Tahsil and District Durg).
4. Som Dutt, s/o. Sumer Singh (dead)
 - (a) Chitral ekha, aged about 36 years.
 - (b) Kaushendra Kumar, aged about 17 years.
 - (c) Anirudh, aged about 13 years.
 - (d) Ku. Hema, aged about 15 years.
 - (e) Ku. Nita, aged about 11 years.No. (b) to (e) minors through their mother Chitralekha widow of Som Dutt. All residents of village Amati, Post Nikum, Tahsil and Dist. Durg.
5. Sheikh Shamim, s/o. Sheikh Chand, aged about 34 years, resident of Pacharipara, Main Hospital Ward, Ward No.22, Tahsil & Dist. Durg.
6. Smt. Satya, w/o. Vipra Charan Yadav, aged about 35 years.
7. Nar Singh s/o. Ram Gond, aged about 35 years.
No. 6 & 7 residents of village Birejhar, Tahsil and District Rajnandgaon.

8. Damodar s/o. Bhav Singh, aged about 27 years.

9. Jayant, s/o. Bhav Singh, aged about 25 years.

Respondents No. 8 & 9 residents of village Birejhar, Tahsil and Dist. Rajnandgaon.

10. State of Chhattisgarh through Collector, Rajnandgan.

---- Respondents

For appellant	:	Mr. S.N. Nande, Advocate.
For respondent/State	:	Mr. Raghavendra Verma, GA.
Other respondents	:	None.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellants have preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 15-5-2004 passed by the District Judge, Rajnandgaon in Civil Suit No. 9-A/1999 wherein the said court dismissed the suit filed by the appellants for partition, declaration and permanent injunction regarding the land situated at village Birejhar, District Rajnandgaon mentioned in part 1 to 4 of Schedule-A of the plaint.
2. Appellants are the plaintiffs of the suit and respondents are the defendants. One Laxman Singh is father of the appellant No.1 Sumer Singh and respondent No.1 Bhav Singh. Six sons of the appellant Sumer Singh have been arrayed as appellants No. 2 to 6 and respondent No.4.

Respondent No.1 Bhav Singh and his four sons have been arrayed as respondents no. 2, 3, 8 and 9. Later-on some legal representatives were brought on record due to death of respondent No.4 Som Dutt. There was Hindu Undivided Family headed by father Laxman Singh comprising with his two sons Bhav Singh and Sumer Singh. Laxman Singh had agricultural lands at village Amatki, Masabhat, Nikum and Matewa in District Durg and in village Birejhar in District Rajnandgaon. Agricultural holding at village Birejhar (city property) being ancestral in nature was later-on recorded in mutation proceeding into four separate agricultural holdings. Land recorded in document (Ex.P/11 and P/13) is mutated in the name of Bhav Singh and land recorded in document (Ex.P/10 & P/12) is recorded in the name of Sumer Singh. These documents contained the land approximately 65 acres. It is alleged by the respondents that mutation in revenue record was merely an agreement and not partition as family did not dissolve and remained in continuation. In the meantime, lands recorded in the above four documents were sold to satisfy needs of family members. The recorded owner did not affect the transfer proportionately that is why other co-parcener suffered and property to be managed equally and property be re-accounted. They

placed reliance on the decision of Hon'ble the Supreme Court in the matter of **Mohammad vs. Nemichand and another, reported in AIR 1986 MP 155, State of Karnataka vs. Register General, High Court of Karnataka, reported in (2000) 7 SCC 333 and Omprakash vs. State of HP, reported in AIR 2001 HP 19.**

3. On the other hand, learned counsel for the respondents supporting the judgment and decree passed by the trial Court would submit that Laxman Singh had affected the partition and after partition each account holder had full right to alienate the property, therefore, transfer of the property is legal and once a partition is always a partition, therefore, no relief can be granted to the appellants for re-accounting the land in dispute. He would further submit that the finding of the trial Court is based on factual and legal aspect of the matter and same is not liable to be interfered with while invoking jurisdiction of the appeal.
4. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
5. The first question for consideration of this court is whether the property in question is still property of Hindu Undivided Family. From the oral and documentary evidence adduced by both sides, it is clearly established that earlier the title

land was measuring 268.40 acres and same was separately recorded in the name of Bhav Singh as per Ex. P/11 and 13 and in the name of Sumer Singh as per Ex.P/10 and 12. Each account holder had measuring to about 65 acres and more. From the evidence, it is clearly established that after separation of record, each side had executed a number of sale deeds in favour of different persons and sold the property of their respective records. No sale deed was filed before the trial Court and it is not clear from the record as to how-much land is sold by one side and how much land is sold by other side. When each side has sold the land as full owner of the property, they or their legal representatives cannot say that property of each account is undivided property. In absence of sale deed executed by each side, it cannot be calculated as to how-much land is sold by one or other side, therefore, it cannot be ascertained as to how-much land is sold by one side and how much can be deducted for re-accounting the land in question.

6. Looking to the factual aspect of the matter, it is clear that the land was sold by each side after partition of the land and family is not undivided family. It is settled principle of law that once a partition is always a partition and it cannot be re-opened after long lapse of time. The principle of estoppel

will apply to each side and they are debarred to say that the land in question is joint property. The trial Court has elaborately discussed the entire issue and recorded a finding that relief of re-accounting cannot be granted to present appellants.

7. After re-assessing the oral and documentary evidence, this court has no reason to substitute contrary finding because finding of the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material. Considering all the facts and evidence on record, this court is of the opinion that the case laws cited by learned counsel for the appellants are clearly distinguishable from the facts of the present case.
8. Accordingly, decree is passed against the appellants and in favour of respondents as under:
 - (I) The appeal is dismissed with cost.
 - (ii) Appellants to bear the cost of respondents throughout.
 - (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