

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.161 of 2004

Vimala Bai (Dead) Through LRs

(Defendant No.1)

1. Ramakant, S/o Late Vishnudutt Shukla, aged about 50 years,
2. Rajnikant, S/o Late Vishnudutt Shukla, aged about 48 years,
3. Dinukant, S/o Late Vishnudutt Shukla, aged about 42 years,
4. Bhuneshwar Prasad, S/o Late Vishnudutt Shukla, aged about 40 years,

All R/o Vill. Kohrauda, Tah. & Distt. Baloda Bazar-Bhatapara (C.G.)

5. Smt. Shanta, D/o Late Vishnudutt Shukla, W/o Ashok Shukla, aged about 44 years, R/o Jabdapara, Sarkanda, Bilaspur, Tah. & Distt. Bilaspur (C.G.)

---- Appellants

Versus

1. Shivnarayan, aged 44 years, S/o Chandrika Prasad Shukla
(Plaintiff)

2. Harnarayan, aged 42 years, S/o Chandrika Prasad Shukla

Both R/o Koharauda, Tah. Baloda Bazar, Distt. Raipur (C.G.)

3. State of Chhattisgarh, Through Collector, Raipur (C.G.)
(Defendants No.2 & 3)
---- Respondents

For Appellants:	Mr. Ravindra Sharma, Advocate.
For Respondent No.1:	Mr. Y.C. Sharma, Advocate.
For Respondent No.3 / State: -	Mrs. Meha Kumar, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. AgrawalJudgment On Board01/03/2019

1. The substantial question of law involved, formulated and to be answered in the defendant No.1's second appeal is as under: -

“Whether the judgment and decree passed by the first

appellate court is perverse?”

(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 sole plaintiff filed suit for declaration of title, partition and possession with regard to Khasra Nos.811/2, 819/1 and 820/1, total area 1.518 hectares and claimed $\frac{1}{3}$ share in the suit property in which after due service of summons, the defendants were proceeded ex parte and after the application under Order 18 Rule 4 of the CPC was filed and the plaintiff was examined. Thereafter, the trial Court, after appreciating oral and documentary evidence on record, dismissed the suit. It is pertinent to mention here that Shivnarayan, the plaintiff herein, had also filed Civil Suit No.40-A/2002 (Shivnarayan v. Vimala Bai and others) before the trial Court and both the suits were heard separately and were decided separately by separate judgments and both the suits were dismissed. When appeal was preferred, the first appellate Court allowed the appeal and also read into the evidence recorded in Civil Suit No.40-A/2002 finding some technical difficulty. Now, the second appeal has been preferred.
3. Mr. Ravindra Sharma, learned counsel appearing for the LRs of defendant No.1 / appellants herein, would submit that the first appellate Court is absolutely unjustified in reading into the evidence of Civil Suit No.40-A/2002 and granting the appeal in absence of the order of consolidation before the trial Court, particularly in the civil suit there is no evidence at all to grant decree in favour of the plaintiff except reading into the evidence of the other case and the

first appeal could not have been granted.

4. Mr. Y.C. Sharma, learned counsel appearing for the plaintiff / respondent No.1 herein, would support the impugned judgment & decree.
5. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also perused the record with utmost circumspection.
6. It is true that two suits were filed by the plaintiff against the common defendants with one exception, they were tried separately and decided separately and were dismissed by separate judgments & decrees. But when appeals were preferred by the plaintiff, in Civil Appeal No.5A/2003 from which this second appeal has arisen, the first appellate Court has recorded following findings: -

3. यह भी स्वीकृत तथ्य है कि शिवनारायण, हरनारायण तथा विष्णुदत्त शुक्ला तीनों भाई हैं, चंद्रिका प्रसाद की संतान हैं। व्यवहार वाद क्रमांक-40 अ/2002 जिससे संबंधित अपील 6 ए/2003 है, का निराकरण आज ही इसी न्यायालय के द्वारा किया जा रहा है, जिसमें प्रस्तुत मौखिक एवम् दस्तावेजी साक्ष्य, इस अपील से संबंधित व्यवहार वाद क्रमांक- 41 अ/2002 से संबंधित है तथा इस अपील से संबंधित व्यवहार वाद में अपीलार्थी वादी की ओर से प्रस्तुत साक्ष्य सिविल अपील क्रमांक 6 ए/2003 से संबंधित व्यवहार वाद क्रमांक- 40 अ/2002 के अपील से संबंधित व्यवहार वाद क्रमांक- 41 अ/2002 के वादी के वाद पत्र एवम् प्रस्तुत दोनों प्रकरण के दस्तावेजी एवम् मौखिक साक्ष्य को ध्यान में रखते हुए दोनों अपीलों का निराकरण सुविधा की दृष्टि से दोनों व्यवहारवादों के वाद पत्र के अभिवचनों एवम् साक्ष्यों का एक दूसरे प्रकरण में संकलन करते हुए अपील का निराकरण किया जा रहा है।

7. Not only this, the first appellate Court actually read into the evidence of Civil Suit No.40-A/2002 in paragraphs 12, 13 and 14 and granted the appeal filed by the plaintiff. The first appellate

Court was expected to read into the evidence and take into consideration the record of the civil suit against which the appeal was preferred, unless common evidence was recorded pursuant to the order of consolidation of the trial Court, if any, which is not the case herein, as admittedly, no order of consolidation was passed by the trial Court and separate evidence of the plaintiff was recorded in both the cases. Therefore, the first appellate Court was required to consider only oral and documentary evidence on record of Civil Suit No.41-A/2002 from which the appeal had arisen. The first appellate Court committed an illegality in reading into the evidence of other civil suit between the same parties without an order of consolidation of both the civil suits and thereby committed an illegality in granting the appeal. Accordingly, the judgment and decree passed by the first appellate Court is hereby set-aside and the matter is remitted to the first appellate Court to consider the appeal afresh on the basis of evidence recorded in Civil Suit No.41-A/2002 within three months from the date of receipt of a copy of this order, as the first appeal was filed on 10-2-2003. The second appeal is allowed.

8. The substantial question of law is answered accordingly and the appeal is allowed to the extent indicated herein-above. No order as to cost(s).
9. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge