

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.351 of 2006

Hari Chand, aged about 50 years, S/o Ramdayal, By Caste Kuwar,
R/o Village Jaisinghtola, Post Gendatola, Tahsil Churiya Distt.
Rajnandgaon (CG)

(Plaintiff)
---- Appellant

Versus

1. Tilak Chand, aged about 43 years, S/o Ramdayal, By Caste Kuwar,
R/o Village Jaisinghtola, Post Gendatola, Tahsil Churiya, Distt.
Rajnandgaon (CG)

---- Defendant

2. The State of Chhattisgarh through the Collector, Distt. Rajnandgaon
(CG)

---- Respondents

For Appellant/Plaintiff	:	Mr.Aditiya Tiwari, Advocate
For Respondent No.1/Defendant	:	Mr.Abhishek Sharma, Advocate
For Respondent No.2	:	Ms Shivali Dubey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

30/08/2019

1. The second appeal preferred by the plaintiff was admitted for
hearing by formulating the following substantial question of law:-

“Whether the first appellate court has committed an error
in holding that there was a previous partition in the family
in which the plaintiff was separated ?”

[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 plaintiff and the defendant both are brothers being son of
Ramdayal. The plaintiff filed a suit for declaration of agricultural land
bearing Khasra No.101 area 2.64 acres, Khasra No.153/3 area

0.61 acre, Khasra No.754 area 0.80 acre and Khasra No.759 area 3.85 acres, total 7.90 acres of land as an ancestral property and he is also owner along with the defendant and recording of name of the defendant exclusively in revenue records is illegal.

3. The defendant filed his written statement and denied the averments made in the plaint stating inter-alia that the plaintiff has separated by giving 6.26 acres of land, as such, he is not entitled for declaration.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 11.11.2003, decreed the suit. On appeal being preferred by the defendant, the first appellate Court set aside the judgment and decree of the trial Court by holding that there is previous partition in the family in which the plaintiff was separated from his father and the defendant. against which, this second appeal under Section 100 of the Code of Civil Procedure has been preferred by the appellant/plaintiff in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.
5. Mr.Aditya Tiwari, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in holding that there is previous partition between the plaintiff and the defendant and has committed legal error in setting aside the judgment and decree of the trial Court and dismissing the suit.
6. On the other hand, Mr.Abhishek Sharma, learned counsel for respondent No.1/defendant, would support the impugned judgment and decree.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. The question for consideration would be whether the first appellate Court is justified in holding that there is previous partition between the plaintiff and the defendant and the plaintiff was separated from the family by giving his share ?
9. The plaintiff has been examined as PW-1. He has categorically admitted in para-8 of his statement that 10 decimal land was given by the defendant for constructing his house and 6.26 acres of agricultural land was given to him in panchayat meeting for cultivation. Anjoriram (PW-2) has also stated in para-9 of his statement that Ramdayal, father of the plaintiff, has already separated the plaintiff and they are living and cultivating separately. Likewise, Tilak Singh (DW-1) in his statement has stated that he has already given 10 decimal and 6.26 acres of land for constructing house and for agricultural purpose. Garibaram (DW-2) has also admitted the fact of separating the plaintiff by giving his share in the property held by his father. The first appellate Court after appreciating oral and documentary evidence available on record has clearly held that the plaintiff has already been given his share in the suit property and he has separated from the family. The first appellate Court has also held that mother of the plaintiff and the defendant is still alive, but she has not been examined, father of the parties i.e. Ramdayal was alive at the time of institution of suit, but he was not impleaded. Taking into consideration the aforesaid fact, the first appellate Court has set aside the judgment and decree of

the trial Court and dismissed the suit. Finding recorded by the first appellate Court that there was previous partition between the plaintiff and the defendant is finding of fact based on evidence available on record, in which I do not find any perversity or illegality. The substantial question of law is answered in favour of the defendant and against the plaintiff.

10. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

11. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-