

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 54 of 2006****Judgment reserved on 09/12/2019****Judgment delivered on 11/12/2019**

1. Sukaluram S/o Bunau Sinha (died) through Lrs.

(I) Aatma Ram Sinha, S/o Late Sukaluram, Aged about 35 years.

(ii) Goutarhin Bai, Wife of Late Sukaluram, Aged about 55 years.

Both are R/o Village Bhansula, Tahsil Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.

(iii) Jantri Bai, W/o Chaitram, D/o Sukaluram, Aged about 37 years, R/o Daihanpara, Jadutola, District Rajnandgaon, Chhattisgarh.

--- Appellants/Lrs. Of defendant No. 1**Versus**

1. Ramanand S/o Bunau sinha, Aged about 43 years, R/o Village Bhansula, Tahsil Ambagarh Chowki, Distt. Rajnandgaon, Chhattisgarh.

2. Smt. Dhela Bai D/o Bunau Sinha, Aged about 47 years, W/o Jagdev Singh Rao, R/o village Kohila Lamti, Tahsil and Distt. Rajnandgaon, Chhattisgarh. **— Plaintiffs**

3. State of Chhattisgarh, Through Collector, Distt. Rajnandgaon, Chhattisgarh. **— Defendant No. 2**

--- Respondents

For Appellants : Mr. Anup Majumdar, Advocate
For Respondents : Mr. Aditya Tiwari, Advocate
For State : Ms. Shivali Dubey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by defendant No. 1 (now, his Lrs.) was admitted for hearing on the following substantial question of law :-

“Whether the finding of both the Courts below that the plaintiffs and defendant No. 1 are entitled for equal share of the suit property, is contrary to the provisions of Section 8 of the Hindu Succession Act ?”

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

2. The suit property admeasuring 14.80 acres in total situated at Village Bhansula, Rajnandgaon was originally by Bunau. He died in the year 1997 leaving behind two sons i.e. plaintiff No. 1 namely Ramanand and defendant No. 1 namely

Sukaluram; and one daughter i.e. plaintiff No. 2 namely Dhelabai.

3. The two plaintiffs brought a civil suit stating *inter alia* that their father Bunau originally held 19.68 acres of land out of which he sold 4.88 acres of land leaving behind 14.80 acres of total land which is referred to as the suit land. After Bunau's death, the name of his heirs got mutated in the revenue records. It was also pleaded that during the lifetime of Bunau itself, plaintiff No. 1 and defendant No. 1, with mutual consent, partitioned the suit land in a family arrangement wherein both of them got $\frac{1}{2}$ share each after which they separated and cultivated their own share of land separately. Thereafter, defendant No. 1 filed an application for partition before the Naib Tahsildar wherein by its order dated 29/11/2001, the Naib Tahsildar partitioned the suit land granting 4.80 acres of land to plaintiff No. 1, 10 acres of land to defendant No. 1 and no land at all to plaintiff No. 2. The said order, being absolutely illegal, necessitated the filing of the suit by the plaintiffs claiming that order dated 29/11/2001 passed by the Naib Tahsildar be declared null and

void and that the plaintiffs as well as defendant No. 1, all three of them are entitled for $1/3^{\text{rd}}$ share each in the suit land.

4. Defendant No. 1 set up a plea that the order of the Naib Tahsildar is in accordance with law and earlier partition has already taken place with mutual consent of the parties, therefore, plaintiffs' suit deserves to be dismissed.

5. Learned trial Court struck five issues to decide the suit and ultimately, held the partition already taken place between the parties in the year 1969-70 was only a family arrangement, there was no legal partition in the eye of law, therefore, each of the plaintiffs as well as defendant No. 1 are all entitled for equal $1/3^{\text{rd}}$ share of the suit property and vide its judgment and decree dated 31/03/2004 decreed the suit of the plaintiffs.

6. On appeal preferred by defendant No. 1, learned first appellate Court maintained the judgment and decree of the trial Court and vide its judgment and decree dated 07/10/2005 dismissed the appeal of defendant No. 1 against which this second appeal under Section 100 of the CPC has been preferred by him in which substantial question

has been formulated and set out in the opening paragraph of this judgment.

7. Mr. Anup Majumdar, learned counsel appearing for the appellant/defendant No. 1 (now, his Lrs.) would submit that both the Courts below are absolutely unjustified in granting $1/3^{\text{rd}}$ share of the suit land to each of the plaintiffs as partition has already taken place between the parties during the lifetime of their father Bunau wherein he had been given $\frac{1}{2}$ share of the suit land which he is cultivating separately and the $1/3^{\text{rd}}$ share allotted to each of the plaintiffs is contrary to Section 8 (a) of the Hindu Succession Act and Section 8 of the Act would not be applicable as the suit land has already been partitioned between plaintiff No. 1 and defendant No. 1 during the lifetime of Bunau.

8. Mr. Aditya Tiwari, learned counsel appearing for the respondents/plaintiffs No. 1 and 2 would support the judgment and decree passed by both the Courts below and would submit that both the Courts below are absolutely justified in holding that each of the plaintiffs along with defendant No. 1 are entitled for $1/3^{\text{rd}}$ share of the suit

property, as such, the second appeal deserves to be dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and perused the records with utmost circumspection.

10. The suit property was originally held by Bunau in which plaintiffs, being the son and daughter of Bunau, have claimed $1/3^{\text{rd}}$ share stating that it is their father's property in which they along with their brother i.e. defendant No. 1 are entitled for $1/3^{\text{rd}}$ share each and the order of partition passed by the Naib Tahsildar on 29/11/2001 is absolutely illegal as he has granted 4.80 acres of land to plaintiff No. 1 and 10 acres of land to defendant No. 1 and no land at all to plaintiff No. 2.

11. Learned trial Court has clearly held that though suit land has been partitioned earlier, but it was a mere family arrangement and is not legal and binding in the eye of law and therefore, granted decree in favour of the plaintiffs holding that each of plaintiffs as well as defendant No. 1, being sons and daughter of Bunau, are entitled for $1/3^{\text{rd}}$ share of the suit

property which was affirmed by the first appellate Court.

12. The judgment and decree passed by both the Courts below has been questioned by defendant No. 1 on the basis of Section 8 (a) of the Hindu Succession Act, 1956, which reads as under :-

"8. General rules of succession in the case of males. - The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter -

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;"

13. According to Class I of the Schedule, the son and daughter, both are Class I heirs and admittedly, plaintiffs and defendant No. 1, all three being the sons and daughter of Bunau, are entitled for equal share of the suit land, as such, both the Courts below have rightly granted 1/3rd share to each of the heirs of Bunau i.e. plaintiffs and defendant No. 1 which is strictly in accordance with law.

14. Mr. Majumdar, learned counsel for the appellant/defendant No. 1 now contends that since partition has already taken place between

plaintiff No. 1 Ramanand and defendant No. 1 Sukaluram during the lifetime of Bunau, it cannot be reopened, therefore, both the Courts below have committed grave illegality.

15. Both the Courts below have held partition did take place between the parties earlier but that was a mere family arrangement and cannot be termed as legal in the eye of law. The said finding recorded by both the Courts below is a finding of fact based on evidence available on record which is neither perverse nor contrary to record and therefore, even no question of law has either been proposed or framed in this regard by this Court during the time of hearing on admission, as such, this point which has already been concluded cannot be permitted to be reopened at this juncture. Even otherwise, that is a pure and simple finding of fact.

16. In view of the aforesaid discussion, the substantial question of law is answered in negative. The judgment and decree passed by both the Courts below holding that each of the plaintiffs as well as defendant No. 1, all three of them are entitled for $1/3^{\text{rd}}$ share of the suit

property is totally in accordance with Section 8(a) of the Hindu Succession Act.

17.The Second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

18.Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet