

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 452 of 2006**

Atwaram, son of late Aluram, aged about 45 years, Caste : Orano,
Occupation : Agriculturist, resident of village : Balrampur, Police
Station : Balrampur, Tehsil : Pal, District : Surguja (C.G.)

---- Appellant/defendant No. 1

Versus

1. Bhugul, son of late Jageshwar, aged about 35 yearsPlaintiff

2. Nirmal, son of late Aluram, aged about 40 years, ...Defendant No. 2

All are resident of village : Balrampur, Police Station : Balrampur,
Tehsil : Pal, District : Surguja (C.G.)

4. State of Chhattisgarh through the Collector, Surguja (C.G.)

---- Respondents/defendants

For Appellant/defendant No. 1 : Mr. V.K. Pandey, Advocate

For Respondent No. 1 : Mr. Ram Kumar Tiwari, Advocate.

For Respondent No. 4 : Mr. R.K. Bhagat, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/08/2019

(1) Heard on the question of admission and formulation of substantial question of law on this second appeal preferred by defendant No. 1 under Section 100 of the Code of Civil Procedure, 1908.

(2) Originally the suit property was held by Aluram. He had three sons namely Jageshar, Atwaram and Nirmal. The plaintiffs are son and widow of Jageshwar whereas defendants No. 1 & 2 are the sons of Aluram. Two plaintiffs filed a suit for partition stating inter alia that in a partition, the suit property fell in share of Jageshar as

the defendant No. 1 has already sold his share, therefore, they are title holder of the land bearing Khasra No. 70/711, area 0.356 hectare. The defendant No. 1 set up a plea that there is no prior partition among them and, therefore, the plaintiffs are not entitled for the decree as claimed.

(3) The trial Court accepted the case of the plaintiffs and decreed the suit holding that the partition has already been taken place during life time of Aluram among them; suit property fell in share of Jageshar and the plaintiffs are successor-in-interest of Jageshar; and defendant No.1 Atwaram has already sold the land on 20.02.1986 vide Ex.D-1 and granted decree in favour of the plaintiffs. On an appeal being preferred, it was upheld by the first appellate Court by the impugned judgment & decree, against which instant second appeal under Section 100 of the Code of Civil Procedure has been preferred.

(4) Learned counsel appearing for the appellant/defendant No. 1 are absolutely unjustified in granting decree in favour of the plaintiffs holding that partition has already taken place during the life time of their father – Aluram and, therefore, the appeal involves substantial question of law for determination.

(5) I have heard learned counsel appearing for the appellant/defendant No. 1 and considered his submissions and went through the record with utmost circumspection.

(6) Both the courts below have concurrently recorded a finding that the partition has already been taken place between the all the three sons of the Aluram, during life time of Aluram; suit property fell in share of Jageshar and the plaintiffs are successor-in-interest of Jageshar. The fact of partition is a finding of fact based on material available on record and I do not find it either perverse or contrary to the record and no question of law much less substantial question of law is involved in this appeal.

(8) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed without notice to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

