

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.316 of 2006Judgment reserved on: 5-12-2019Judgment delivered on: 9-12-2019

1. Smt. Manaye Bai, Wd/o Itwaruram Gond, Aged about 62 years,
2. Kachro Bai, W/o Govind Sai Gond, Aged about 36 years,
3. Govindram, S/o Itwaruram Gond, Aged about 30 years,
4. Balgovind, S/o Itwaruram Gond, Aged about 28 years,
5. Smt. Sohaga Bai, W/o Samund Say, Aged about 23 years,

All residents of Village Raurwahi, Th. Bhanupratappur, Distt. Kanker (C.G.)

6. Smt. Rajbati Bai, W/o Dhaniram Gond, Aged about 20 years, R/o Village Koyelibeda, Th. Anatarh, Distt. Kanker (C.G.)
7. Ku. Manju, S/o Samund Say, Aged about 07 years (Minor), Thru Guardian M/o Sohaga Bai, W/o Samund Say, R/o Village Raurwahi, Tahsil Bhanupratappur, Distt. Kanker (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Mangtin Bai, W/o Jhumuklal, R/o Village Sarndi, Th. Narayanpur, Distt. Bastar (C.G.)
2. Santi Bai, W/o Devram, Aged about 25 years, R/o Village Chindgown
3. Ku. Amila Bai, D/o Bhanwar Sing, Aged about 16 years
4. Ku. Kanavli Bai, D/o Bhanwar Sing, Aged about 11 years
5. Ku. Lateshvari, D/o Bhanwar Sing, Aged about 9 years
6. Ku. Bhunashwari, D/o Bhanwar Sing, Aged about 8 years

No.3 to 6 Minor Through Guardian Bhanwar Sing Gond, All R/o Village Magardah, Th. Balod, Distt. Durg (C.G.)

7. Dukali Bai, W/o Chamru Gond, Aged about 30 years, R/o Raurwahi,

Tahsil Bhanupratappur, Distt. Kanker (C.G.)

8. State of Chhattisgarh, Through Collector, Kanker North Bastar
(C.G.)

(Defendants)
---- Respondents

For Appellants: Mr. Prakash Tiwari, Advocate.

For Respondents No.1 to 6: -

Mr. Parag Kotecha, Advocate.

For Respondent No.8 / State:

Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the appellants / plaintiffs was admitted for hearing by formulating the following substantial question of law: -

“Whether both the Courts below were justified in dismissing the suit holding that the suit property has not fallen in the share of original plaintiff-Itwaruram in the earlier partition during life-time of Jiharam?”

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

2. The suit property was originally held by Jiharam. He had four sons namely Chainu, Chain, Aaytu and Itwaruram. Itwaruram was the plaintiff before the trial Court who died during the pendency of suit and defendant No.1 is the widow of Chain, whereas, defendant No.2 is daughter of Aaytu and defendant No.3 is daughter of Chainu. The plaintiff filed suit for declaration of title stating inter alia that the suit land is situated at Village Raurwahi, Tahsil Bhanupratappur, Distt. Kanker, comprising of total area 18.99 acres and since he is

the title holder of the suit land, as the suit land fell in his share on prior partition held between him and his three brothers during the lifetime of Jiharam in which he is in possession, therefore, he is the title holder of the suit land which the defendants denied and stated that the plaintiff as well as the defendants all have share in the suit property, as such, the plaintiff cannot claim exclusive title over the suit land.

3. Upon evaluation of oral and documentary evidence, the trial Court by its judgment & decree dated 29-10-2004 dismissed the suit holding that the plaintiff has failed to prove that the suit land fell in his share in the prior partition held between them during the lifetime of Jiharam. On appeal being preferred by the plaintiff, the first appellate Court affirmed the said judgment & decree of the trial Court and dismissed the appeal against which this second appeal has been preferred in which the substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
4. Mr. Prakash Tiwari, learned counsel appearing for the appellants herein / plaintiffs, would submit that both the Courts below have concurrently erred in holding that the suit land did not fall in the share of the plaintiff on prior partition. He referred to the statement of Mankuram (DW-2) to buttress his submission in which Mankuram has clearly admitted that the suit land fell in the share of the plaintiff on partition. Therefore, the suit ought to have been decreed by both the Courts below. He also referred to the statement of Mango Bai (DW-1) to demonstrate that the plaintiff is title holder

of the suit land. Therefore, the finding recorded by the two Courts below that the suit land did not fall in the share of plaintiff Itwaruram is a perverse finding and deserves to be set-aside. He would rely upon a decision of the Supreme Court in the matter of Thulasidhara and another v. Narayanappa and others¹ and would submit that as the findings are perverse, this Court must interfere with the finding of fact.

5. Mr. Parag Kotecha, learned counsel appearing for respondents No.1 to 6 herein / defendants, would support the judgment & decree of both the Courts below and would submit that the finding of fact so arrived at is based on the evidence available on record, it is neither perverse nor contrary to record. The statement of Mankuram (DW-2) has to be read as a whole wherein he has clearly admitted that all the parties are cultivating the suit land, as such, the plaintiff has failed to establish that the suit land fell in his share on partition, that too to the extent of 18.99 acres.
6. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the record with utmost circumspection.
7. As noticed herein-above, the suit property was originally held by Jiharam and the original plaintiff – Itwaruram was one of his sons claiming that the entire suit property fell in his share and therefore he is entitled for declaration of title that the suit land is exclusively held by him in which the defendants setup the plea that it is the joint family property of all the four brothers after the death of

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Jiharam and eventually that has been accepted by both the Courts below holding that the plaintiff has failed to prove that in partition, the suit land – 18.99 acres fell in his share alone and dismissed the suit.

8. The star submission raised by learned counsel for the appellants / plaintiffs is based upon the testimony of Mankuram (DW-2) who is one of the witnesses only and not any of the defendants before the trial Court pointing out certain lines in the testimony of the said witness specifically paras 4 & 5 to hold that the suit property exclusively fell in the share of Itwaruram, whereas taking the statement of Mankuram (DW-2) as a whole reveals that though he has said that it was partitioned between the sons of Jiharam including the plaintiff, but in para 1, he has categorically stated that in one part of the suit land total 18.99 acres Itwaruram – the plaintiff, was cultivating and legal representatives of remaining three sons of Jiharam, who are the defendants arrayed in the suit, are cultivating in other three parts. He maintained further that one part of the suit land was held by Itwaruram who has died and now being held by his legal representatives and remaining parts of land are being held by legal representatives of other three brothers of Itwaruram who are defendants in the suit. The statement made by Mankuram (DW-2) in para 4 is referable to that part of the suit land in which the plaintiff was cultivating. He never said that the entire land 18.99 acres fell in the share of the plaintiff. It is referable to his share in the part of suit land and is situated at Village Raurwahi. In para 5, he has reiterated the same statement which he has made

in para 4. As such, reading the statement of Mankuram (DW-2) in paras 1, 4 & 5, as a whole, clearly reveals that on one part of the suit land, the original plaintiff was cultivating which is being cultivated by his legal representatives, now and other part of suit land $\frac{3}{4}$ is being cultivated by legal representatives of remaining three brothers who are defendants herein.

9. Even otherwise, documentary evidence on record Ex.P-2 which is based on Section 115 of the Chhattisgarh Land Revenue Code, 1959 i.e. in the copy of Adhikar Abhilekh, names of four sons of Jiharam is recorded which is prepared on the basis of Jamabandi 1954-55 and which is record of rights prepared under the Madhya Pradesh Land Revenue Code, 1954 and which has presumptive value to be correct until the contrary is proved. No evidence has been brought on record to hold that the entry made in the Adhikar Abhilekh Ex.P-2 recording the names of all four sons of Jiharam is incorrect or contrary to any record.
10. As such, it cannot be held that the suit property fell in the exclusive share of the plaintiff and therefore he is the exclusive title holder of the suit land. The finding recorded by the two Courts below that the suit property did not fell in the share of the plaintiff alone to the extent of 18.99 acres is a pure and simple finding of fact based on the evidence available on record. It is neither contrary nor perverse warranting interference in exercise of the jurisdiction of this Court under Section 100 of the CPC, rather the finding so recorded is based on record and is binding to this Court. Therefore, affirming the judgment & decree of the first appellate Court dismissing the

appeal, this second appeal is dismissed. The plaintiff will bear his own cost as well as that of the defendants.

11. Counsel fee ₹ 3,000/-, if certified.

12. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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