

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 356 of 2006**

Motilal, S/o Dharamlal Marar, Aged about 52 years, R/o Village : Neurgaon Khurd,
Patwari Halka No. 5, Kawardha, District : Kabirdham (C.G.)

----Appellant/Plaintiff

Versus

1. Dandu Ram, S/o Dharam Marar (since deceased) Through legal heirs:

(A) Sham Bai, Widow of Dandu Ram, Aged about 65 years,

(B) Kachara Bai, W/o Ram Marar, Aged about 42 years,

(C) Jidhan Marar, S/o Dandu Ram Marar, Aged about 40 years.

(D) Sidhdha Ram, S/o Dandu Ram Marar, Aged about 38 years,

Occupation : Shiksha Karmi, presently R/o Junwani (Leemo), Near Gandai,
District Rajnandgaon, Chhattisgarh.

(E) Kewara Bai, W/o Shobha Ram Marar, R/o Village : Barpelatola, Tehsil :
Kawardha, District : Kabirdham, Chhattisgarh

(F) Shiv Prasad, S/o Dandu Ram Marar, Aged about 32 years,

(G) Shivcharan, S/o Dandu Ram Marar, Aged about 30 years,

(H) Kewari Bai, W/o Mani Ram Marar, Aged about 28 years.

Respondents No. 1(A) to (C) & (F) to (H) above all residents of Village: Neurgaon
Khurd, Post Office: Neurgaonkala, Tehsil : Kawardha, District Kabirdham,
Chhattisgarh.

2. Takhat Ram, S/o Dharam Marar, Aged about 70 years.

3. Harilal, S/o Veer Singh Marar, Aged about 60 years,

4. Nandu Ram, S/o Veer Singh Marar, Aged about 40 years.

Respondents No. 2 to 4 above all residents of Village : Neurgaon, Tehsil :
Kawardha, District : Kabirdham, Chhattisgarh

5. State of Chhattisgarh, Through the Collector, District : Kabirdham,
Chhattisgarh

----Respondents/defendants

For Appellant : Mr. Rajeev Shrivastava & Mr. Avinash Choubey, Advocate
For Respondent No. 5 : Mr. R.K. Bhata, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

23/10/2019

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in not granting the decree in favour of plaintiff based on title and in alternative on the basis of adverse possession, by recording a finding, which is perverse to the record and, therefore, appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) Father of plaintiff namely Dharamlal Marar and father of defendants No. 1 and 2 namely Dharamu Marar are real brothers. Plaintiff - Motilal brought a suit for declaration of title, partition and permanent injunction stating *inter alia* that in the suit property bearing Khasra No. 776/2, area 0.42 decimal, he has 1/3rd share and, therefore, title be declared and he be given vacant possession of the same and in alternative pleaded that he has perfected his title over 0.06 decimal of land by way of adverse possession, in which defendant No. 1 set up a plea that the suit land bearing Khasra No. 776/2, area 0.42 decimal was purchased by his father namely Dharmu Marar in his own name and partition had already taken place between his father Dharmu Marar and Ghasiya & Dharam Lal and, as such, the suit property is not the joint family property and, therefore, the plaintiff is not entitled for declaration of title, partition and permanent injunction.

(4) Plaintiff preferred first appeal there-against. The first appellate court, on re-appreciation of evidence available on record dismissed the appeal affirming the judgment & decree of the trial Court, against which, instant second appeal under Section 100 of the CPC has been preferred.

(5) Two Courts below have clearly recorded a finding that suit property is not the joint family property and it is not available for partition at the instance of plaintiff – Motilal, S/o Dharamlal Marar and, therefore, plaintiff is not entitled for declaration of title, partition and permanent injunction and plaintiff has failed to prove and establish that he has perfected his title over 0.06 decimal of the land by way of adverse possession.

(6) It is well settled law that parties to the suit, can take inconsistent plea but cannot take a plea which is mutually destructive that is plea of title and plea of adverse possession both cannot stand together unless the party taking plea renounces the plea of title, but in the instant case, the plaintiff has not renounced his title over the suit land took the plea of adverse possession over 0.06 decimal of the land, as such, both the courts below are absolutely justified in dismissing the suit by recording a finding, which is finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(7) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

