

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 409 of 2006**

1. Nanjhari, Widow of Kandu, Aged about 70 years.
2. Nan Sai S/o Kandu, Aged about 45 years.
3. Shivram S/o Kandu, Aged about 42 years.
4. Bagar Sai S/o Kandu, Aged about 40 years.
5. Baiju, S/o Kandu, Aged about 35 years (dead) through his legal representative, Tiha Bai, aged about 32 years, widow of Baiju.

All R/o Village Kot, P.S. Batauli, District Surguja, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. A. Geya S/o Late Mohar Sai, aged 40 years.
B. Jagdish S/o Late Mohar Sai, aged 25 years.
2. A. Heera Sai S/o Rama, aged 40 years.
B. Puran S/o Rama, aged 32 years.
3. Guddi W/o Choya, aged 45 years.

No. 2.A, 2.B and 3 are R/o Village Kot, District Surguja, Chhattisgarh.

4. State of Chhattisgarh, Through Collector, District Surguja, Chhattisgarh.

----Respondents/Defendants

For Appellants	:	Mr. Ravindra Agrawal, Advocate
For State	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

30/07/2019

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

2. Plaintiff's civil suit bearing No. 75-A/95 for declaration of title, partition and possession was dismissed by the trial Court by judgment and decree dated 10/12/1996, which was upheld by the first appellate Court in civil appeal No. 15-A/03 vide judgment and decree dated 18/01/2005, against which this second appeal has been preferred by the plaintiffs.
3. Mr. Ravindra Agrawal, learned counsel for the plaintiffs submits that both the Courts below are absolutely unjustified in holding that the suit property was not the self-acquired property of late Shri Sandhiya but, it was the property purchased by Rama, plaintiff's brother, thereby, holding that plaintiffs have no right title over the suit property shown in 'Schedule B' annexed with the plaint, which being perverse, gives rise to substantial question of law for determination in this second appeal.
4. I have heard learned counsel for the plaintiffs, considered his submissions and went through the records with utmost circumspection.
5. Plaintiff – Kandhu had three brothers namely Lohra, Rama and Choya. Defendants No. 1 (a) to 1(c) are the legal representatives of Lohra; defendants No. 2 (a) and 2(b) are the successors in the interest of Rama; defendant No. 3 is the successor in interest of Choya.
6. Plaintiff claimed the suit property to be the self-acquired property of his father i.e. Sandhiya, but learned trial Court as well as the first appellate Court did not agree to this and granted a finding that the suit property was purchased by plaintiff's brother, Rama, which is supported by Exhibit P-2. Learned trial Court further recorded a finding that the property shown in 'Schedule A' of the plaint has

already been partitioned between the four sons of Sandhiya namely Kandhu, Lohra, Rama and Choya, during his lifetime and therefore, partition cannot be claimed again by the plaintiff on the property shown in 'Schedule B', which has been agreed upon by learned first appellate Court.

7. The concurrent finding recorded by both the Courts below regarding previous partition between plaintiff and his brothers and that the suit property shown in 'Schedule B' is the property purchased by Rama, plaintiff's brother, is a finding of fact based on evidence available on record which is neither perverse nor contrary to record and does not give rise to any substantial question of law for determination in this second appeal.
8. The second appeal deserves to be and is accordingly dismissed *in limine* without noticing to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge