

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 225 of 2017**

Dev Prakash Verma S/o Late Brijlal Verma, Aged About 55 Years
R/o Village Palari, P.S. And Tahsil Palari, District Balodabazar-
Bhatapara, ChhattisgarhDefendant,

---- Appellant**Versus**

1. Smt. Nirendri Bai W/o Late Brijlal Verma, Aged About 77 Years R/o Village Palari, P.S. And Tah. Palari, District Balodabazar-Bhatapara, Chhattisgarh,
2. Smt. Suman D/o Late Brijlal Verma, Aged About 53 Years R/o Village Palari, P.S. And Tah. Palari, District Balodabazar-Bhatapara, Chhattisgarh,
3. Smt. Ratna Bai D/o Late Brijlal Verma, Aged About 51 Years R/o Village Palari, P.S. And Tah. Palari, District Balodabazar-Bhatapara, Chhattisgarh
4. Smt. Pratibha Chandrakar D/o Late Brijlal Verma, Aged About 49 Years R/o Village Palari, P.S. And Tah. Palari, District Balodabazar-Bhatapara, Chhattisgarh,
5. Smt. Kumudni D/o Late Brijlal Verma, Aged About 38 Years R/o Village Palari, P.S. And Tah. Palari, District Balodabazar-Bhatapara, Chhattisgarh.
6. Shri Nand Kishor S/o Late Brijlal Verma, Aged About 54 Years R/o Village Palari, P.S. And Tah. Palari, District Balodabazar-Bhatapara, Chhattisgarh.
7. Shri Rajesh S/o Late Brijlal Verma, Aged About 41 Years R/o Village Palari, P.S. And Tah. Palari, District Balodabazar-Bhatapara, ChhattisgarhPlaintiffs

---- Respondents

For Appellant:

Shri H. V. Sharma, Advocate.

For Respondents:

None.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

10.05.2019

1. This second appeal has been preferred by Defendant No.1- Devprakash Verma under Section 100 of the Code of Civil Procedure, 1908 questioning the propriety of the judgment and decree dated 03.02.2017 passed by the Second Additional District Judge, Balodabazar

in Civil Appeal No.23-A/2013, by which, the lower appellate Court while affirming the judgment and decree dated 09.11.2006 passed by the Civil Judge, Class-II, Balodabazar in Civil Suit No.154-A/2001 has dismissed the appeal.

2. Briefly stated the facts of the case are that Plaintiffs instituted a suit claiming declaration of title, partition and separate possession by submitting *inter-alia* that the property in question admeasuring 12.270 hectare situated at village Palari as described in plaint paragraph 3 is recorded in the name of their father Brijlal Verma, who expired on 20.07.1987. It is pleaded further that after the death of father, entire property held by him was inherited by the Plaintiffs and the Defendants. According to further averments made in the plaint, the Defendants without their knowledge obtained their names recorded in the revenue paper vide order dated 03.05.1988 passed by the Revenue Inspector, Palari and based upon it, applied for partition before the Assistant Settlement Officer, Balodabazar. After knowing the said fact, an objection was raised by the Plaintiffs before the said authority, however, it was rejected on 14.01.2000, therefore, the Plaintiffs have been constrained to file the suit in instant nature, instituted on 24.07.2000.

3. While denying the aforesaid claim, it is pleaded by Defendant No. 1 that the Plaintiffs are not entitled to claim any share over the property in question as they have already relinquished their right, title and interest over the suit property. It is contested further on the ground that the alleged order of mutation passed on 03.05.1988 was never questioned by the Plaintiffs and since the suit was filed after twelve years, therefore, it is barred by time. The Plaintiffs' claim is, thus, liable to be dismissed.

4. After considering the evidence led by the parties, it has been held by the trial Court that the Plaintiffs have not relinquished their right, title and interest and are entitled to one-eighth share with regard to the property left by their father, who expired on 20.07.1987. As a consequence, the trial Court has decreed the suit.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal, preferred by Defendant No. 1.

6. Being aggrieved, Defendant No. 1 has preferred this appeal. Shri H. V. Sharma, learned counsel for the Appellant submits that the judgment and decree as passed by the Courts below holding that the Plaintiffs have not relinquished their right, title and interest over the property in question, is apparently contrary to law. He submits further that without ascertaining the nature of the property, the Courts below ought not to have granted one-eighth share to the parties. He submits further that the property is the ancestral property, and therefore, the Plaintiffs are not entitled to claim one-eighth share, as determined by the Courts below. The findings as recorded, are therefore, liable to be set aside.

7. I have heard learned Counsel for the Appellant and perused the entire records of the Courts below carefully.

8. A suit was instituted by the Plaintiffs claiming one-eighth share with regard to the property in question admeasuring 12.270 hectares situated at village Palari as described in plaint paragraph 3. According to the Plaintiffs, the suit property was recorded in the name of their father Brijlal Verma, who expired on 20.07.1987 and upon his death, it was inherited by both the parties. From perusal of the record, it appears that the property in question has been recorded in the name of father Brijlal Verma and upon

his death, his entire property was inherited by the parties to the suit. It appears further from the record that the order of mutation passed on 03.05.1988 was made in absence of the Plaintiffs. As such, no right or title could be claimed by the Defendants based upon it. Besides, no deed of consent, as contended by Defendant No. 1, showing that the Plaintiffs have relinquished their right, title and interest, was produced on record. Even otherwise, the right, title and interest of the Plaintiffs could be extinguished only by way of registered deed of document. In absence of any deed, much less the deed of registered document, the Courts below have rightly come to the conclusion that the Plaintiffs have not relinquished their right, title and interest in relation to the property in question. As far as the contention of Shri Sharma that without ascertaining the nature of the property, the Courts below ought not to have ascertained the share as such, is liable to be rejected as no defence plea has been raised specifically in this regard. As such, neither the issue was framed in this regard nor any evidence has been led to this effect. The findings, so recorded by the Courts below are based upon due and proper appreciation of the evidence led by the parties and I do not find any infirmity in the same. The findings are, therefore, deserve to be and are hereby affirmed.

10. In view of the forgoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. The Appeal being devoid of merits is, accordingly, dismissed at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE