

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 722 of 2017**

1. Santosh Banjare, S/o Lt. Sakharam Banjare, Aged About 44 Years R/o Village Haldi, Tehsil Gunderdehi, District Balod Chhattisgarh,
2. Domar Singh, Banjare, S/o Lt. Sakharam Banjare, Aged About 47 Years R/o Village Haldi, Tehsil Gunderdehi, District Balod Chhattisgarh,
3. Manoj Banjare, S/o Lt. Sakharam Banjare, Aged About 34 Years R/o Village Haldi, Tehsil Gunderdehi, District Balod Chhattisgarh,
4. Prahlad Banjare, S/o Lt. Sakharam Banjare, Aged About 33 Years R/o Village Haldi, Tehsil Gunderdehi, District Balod Chhattisgarh,
5. Hirabai Banjare, W/o Lt. Sakharam Banjare, Aged About 67 Years R/o Village Haldi, Tehsil Gunderdehi, District Balod Chhattisgarh,
6. Chainlata Bai, W/o Mahar Singh, Aged About 42 Years R/o Village Baseen, Tehsil Gunderdehi, District Balod Chhattisgarh,
7. Uttarrai Bai W/o Narottam Satnami, Aged About 40 Years R/o Village Potgaon, Tehsil Charama, District Kanker Chhattisgarh,

---- Appellants/Defendants**Versus**

1. Smt. Sukhrothin Bai W/o Dev Singh, Aged About 44 Years R/o House Of R. D. Patil, Steet No. 5, Azad Chowk, Kasardih, Durg, Durg Chhattisgarh, **(Plaintiff)**
2. State Of Chhattisgarh, Through The District Collector, District Balod Chhattisgarh,

---- Respondents

For Appellants	:	Shri B.P.Gupta, learned Advocate
For Respondent 1	:	Shri Praveen Dhurandhar, Advocate
For Respondent 2/State	:	Ms. Neha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order on Board****20.06.2019**

1. This appeal has been preferred by the Defendants under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the propriety of the judgment and decree dated 30.08.2016 passed

in Civil Appeal No.24-A/2016 by the First Additional District Judge, Balod, Dist. Balod, by which, the lower appellate Court, while modifying the judgment and decree dated 23.04.2016 passed by the trial Court in Civil Suit No. 20-A/2014, has decreed the Plaintiff's claim entitling her to 1/3rd share with regard to her father's share.

2. Briefly stated the facts of the case are that Plaintiff Smt. Sukhrotin Bai instituted a suit claiming 1/3rd share with regard to the suit land as described in plaint paragraph 4. It is pleaded in the plaint that the suit property is the ancestral property, which is in the hands of her father Nandlal Banjare, who expired in the year 1991. It is pleaded further that after the death of her father, partition was demanded from her brother Sakharam, however, it was refused and when she obtained the revenue papers, then only she came to know that her brother has already got his name recorded in the revenue papers, therefore, she has been constrained to file the suit in the instant nature.

3. While denying the aforesaid claim, it is pleaded by the Defendants that Plaintiff Sukhrotin Bai has already relinquished her right, title and interest over the property in question and accordingly the revenue papers were mutated in his name on 01.03.1993. It is contested further on the ground that since the suit was instituted much beyond the prescribed period of 12 years, as provided under Article 110 of the Indian Limitation Act, therefore, the suit, as framed, is liable to be dismissed.

4. After considering the evidence led by the parties, the trial Court arrived at a conclusion that suit as framed and instituted is within time and held further that Plaintiff, being a daughter of said Nandlal, is entitled to 1/3rd share over the property in question, as described in plaint paragraph 4 and accordingly decreed the suit entitling her to 1/3rd share over the same.

5. The aforesaid judgment and decree was modified by the lower appellate Court in an appeal preferred by the defendants. The appellate Court, though not adverted to the question of limitation as raised by the defendants, but after considering the nature of the property being ancestral property, assessed the notional share of Plaintiff's father Nandlal and awarded 1/6th share to the plaintiff.

6. Being aggrieved, the defendants have preferred this appeal. Shri B.P.Gupta, learned counsel for the appellants submits that the judgment and decree as passed by the appellate Court without considering the question of limitation is apparently contrary to law. He, therefore, submits that the judgment and decree is liable to be set aside.

7. I have heard learned counsel for the appellants and perused the entire record carefully.

8. A suit was instituted by Plaintiff Sukhrotn Bai claiming partition with regard to the suit land on the premises that the property in question is the ancestral property and after the death of her father Nandlal, she is entitled to 1/3rd share over it. From bare perusal of the record, it is revealed that the property in question is admittedly the ancestral property, and therefore, under such circumstances, the decree as passed by the trial Court was rightly modified by the lower appellate Court while assessing the notional share of the Plaintiff's father Nandlal as half share upon it. As a consequence, the lower appellate Court, while modifying the said judgment and decree of the trial Court, has awarded 1/6th share to the plaintiff. Considering the nature of the property in question, the Court below has rightly modified the judgment and decree of the trial Court by taking into consideration the notional share of father Nandlal.

9. As far as the question of limitation is concerned, it is emerged from the

evidence of the Plaintiff that she was always assured by her brother to provide share to her. Since assurance was always given by her brother, therefore, the suit was not instituted on an earlier occasion. However, when the Plaintiff obtained the revenue papers, then only it came to her knowledge in the year 2014 that her brother has got his name mutated in the revenue papers without her consent in order to deprive her from the suit property. In such circumstances, it is difficult to hold that Plaintiff was earlier known that her brother has refused to provide her share in the suit property. In view of the said fact, the lower appellate Court although not adverted to this issue, however, based upon the said fact, it cannot be held that the suit as framed and instituted is barred by time. The trial Court has, therefore, rightly held that suit is filed in time.

10. In view of the foregoing 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 merit, is liable to be and is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge