

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.414 of 2006

Heera Lal, S/o Butan @ Butu, by Caste Ahir, aged about 40 years (at present aged about 55 years), Occupation Agriculture, R/o Village Dhondha, Tah. Pratappur, Distt. Surguja (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Mus. Fulawa (Died and deleted)
2. Mus. Dashmatiya, D/o Late Jagdev Ahir, R/o Village Dhondha, Tahsil Pratappur, Distt. Surguja (C.G.)
3. The State of Chhattisgarh, Through Collector, Surguja (C.G.)
(Defendants)
---- Respondents

For Appellant:	Mr. Rahul Mishra, Advocate.
For Respondent No.2:	None present, though served.
For Respondent No.3 / State:	-
	Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

09/01/2020

1. This second appeal preferred by the plaintiff (appellant) was admitted on the following substantial question of law: -

“Whether the first appellate Court, after having held that the suit property mentioned in 'Schedule A' of the plaint admeasuring 4.038 hectares was the self-acquired property of Late Butan, father of plaintiff and original defendant No.1 and he has sold the said suit property to the plaintiff by registered sale deed dated 18/02/1972 (Ex. P/7), was justified in holding that Late Butan has already partitioned the suit property during his lifetime giving $\frac{1}{2}$ of the share to his other son i.e. original defendant No.1, therefore, plaintiff will only be entitled for 1.845 hectares of land which is perverse and contrary to record?”

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

2. Plaintiff Heeralal and original defendant No.1 Jagdev both were brothers. Defendant No.1 died during the pendency of suit and his legal representatives were brought on record. The sole plaintiff filed suit for declaration and permanent injunction with regard to the property shown in Schedule 'Ka' of the plaint that he is the exclusive title holder of the suit property shown in Schedule 'Ka' i.e. total 14 Khasras, area 4.038 acres, whereas the property shown in Schedule 'Kha' of the plaint is the self-acquired property of their father Butan in which he is entitled for half share.
3. Original defendant No.1 setup a plea that the property shown in Schedule 'Ka' is the self-acquired property of his grand-father Devman from whom his father Butan has inherited by way of inheritance, as such, Butan, the plaintiff and defendant No.1 all three have equal share in the said property and likewise, the property shown in Schedule 'Kha' is also his self-acquired property, as such, the suit deserves to be dismissed.
4. The trial Court after appreciating oral and documentary evidence on record by its judgment & decree, held that so far as the property shown in Schedule 'Ka' is concerned, it is the ancestral property of Butan and the property shown in Schedule 'Kha' is the property of Jagdev as it was settled in his name and sale deed dated 18-2-1972 executed in favour of the plaintiff by Butan is forged & fabricated and partition took place between the parties with regard to the

disputed property in the year 1952 and total 1.846 hectares land was given to defendant Jagdev by Butan in the partition took place in the year 1952 and the property shown in para 2(c) of the written statement was given to the plaintiff by Butan. Finally, the trial Court dismissed the suit against which the plaintiff preferred first appeal before the first appellate Court. The first appellate Court by its impugned judgment & decree held that the property shown in Schedule 'Ka' of the plaint is self-acquired property of Butan and sale deed was executed on 18-2-1972 in favour of the plaintiff by Butan, but further held that area 1.846 hectares of land as mentioned in para 2(b) of the written statement was settled in favour of defendant Jagdev by way of partition, therefore, the plaintiff is only entitled for half share in the property shown in Schedule 'Ka' of the plaint and accordingly decreed the suit partly, whereas dismissed the suit with regard to Schedule 'Kha' of the plaint holding it to be the self-acquired property of defendant Jagdev against which this second appeal has been preferred by the plaintiff under Section 100 of the CPC in which substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

5. Mr. Rahul Mishra, learned counsel appearing for the appellant herein / plaintiff, would submit that the first appellate Court after having held that the suit property shown in Schedule 'Ka' of the plaint being the self-acquired property of Butan – father of the plaintiff & original defendant No.1 and further, after having recorded a finding that the sale deed Ex.P-7 dated 18-2-1972 is a valid document, clearly erred in holding that in the partition already

took place during the lifetime of Butan, he has given half of the scheduled property to original defendant No.1 Jagdev and therefore the plaintiff is entitled for half share in the property shown in Schedule 'Ka' of the plaint by recording a finding which is perverse, as the sale deed was never questioned by defendant No.1 by filing counter-claim and that finding has attained finality and even that has not been challenged in the cross-objection to be preferred.

6. None present for respondent No.2 herein / defendant No.1(b), though served.
7. I have heard learned counsel for the appellant herein / plaintiff and considered his submissions and also went through the record with utmost circumspection.
8. It is correct to say that the first appellate Court held that the suit property shown in Schedule 'Ka' of the plaint is the self-acquired property of Butan and further held that the sale deed executed by Butan in favour of the plaintiff is a valid document, it is not forged document and also while deciding issue Nos.4 & 5, the first appellate Court further held that the plaintiff himself has admitted the fact of partition. Heeralal (PW-1), Lalan (PW-2) and Kishorilal (PW-3) have admitted the fact of partition during the lifetime of Butan, but the share allotted is not proved.
9. In paragraph 37 of the judgment, the first appellate Court after having held that though the fact of partition is proved, but the year of partition is not proved and since after partition, the suit land has been sold by Butan in favour of the plaintiff and the fact of partition

is admitted by the plaintiff and his witnesses with reference to the property shown in Schedule 'Ka' of the plaint, the plaintiff is not entitled for declaration of the entire land shown in Schedule 'Ka' and accordingly, granted half share in the said property. The suit property area 4.038 hectares after having been partitioned, could not have been alienated by Butan in favour of the plaintiff that too for a consideration of ₹ 2,000/- and more than 10 acres of land has been said to be alienated which the first appellate Court has noticed. Keeping in view that after giving share of 1.846 hectares of land to defendant Jagdev, the entire suit land shown in Schedule 'Ka' of the plaint has been sold by Butan to the plaintiff, only decree to the extent of half share in 1.846 hectares has been granted in favour of the plaintiff in which I do not find any perversity or illegality. The finding arrived by the first appellate Court is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. The substantial question of law is answered accordingly and the appeal is dismissed leaving the parties to bear their own cost(s).

10. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge