

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Second Appeal No. 262 of 2009**

1. Kumari Bai, D/o Badri Sahu, W/o Ratan Sahu, Aged 35 years, Occupation Housewife, R/o Village Harinchapra, P.S. Kawardha, District Kabirdham, Chhattisgarh.
2. Ram Bai, D/o Badri Sahu, W/o Vishram, Aged 32 years, Occupation Housewife, R/o Village Bemta, P.S. Simga, District Raipur, Chhattisgarh.

**--Appellants/Plaintiffs****Versus**

1. Gangotri Bai, Wd/o Badri Sahu, Aged 65 years, Occupation Agriculturist.
2. Ramkumar, S/o Badri Sahu, Aged 40 years, Occupation Agriculturist.
3. Sriram, S/o Badri Sahu, Aged 30 years, Occupation Agriculturist.

Respondents No. 1 to 3 are R/o Lenjakha, P.S. Bodla, Distt. Kabirdham, Chhattisgarh.

4. State of Chhattisgarh, through the District Magistrate, Kawardha, District Kabirdham, Chhattisgarh.

**--- Respondents/Defendants**


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| For Appellants | :- | Mr. Rajeev Shrivastava and<br>Mr. Sourabh Sahu, Advocates |
| For State      | :- | Mrs. Astha Shukla, Panel Lawyer                           |

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**Hon'ble Shri Justice Sanjay K. Agrawal****Order on Board****26/02/2020**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/plaintiffs under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which trial Court dismissed the suit finding no merit.
2. Mr. Sourabh Sahu, learned counsel for the appellants submits that the finding recorded by both the Courts below for dismissing the suit that earlier partition has taken place between the parties suffers from perversity and illegality, as such, the second appeal deserves to be admitted by formulating substantial question of law for determination.
3. The suit property was originally held by Badri Sahu. Plaintiffs are the daughters of Badri Sahu whereas defendant No. 1 is the widow of Badri Sahu and defendants No. 2 and 3 are the sons of Badri Sahu.
4. Plaintiffs filed a suit for declaration of title, partition and possession stating *inter alia* that they are entitled for 1/5<sup>th</sup> share each in the suit property held by their father

Badri Sahu and the partition which had taken place before the Tahsildar on 10/07/2003 (Ex. P/7) is not binding on them and they have not sold the suit property in favour of one Pradeep Kumar vide sale deed dated 31/05/2005 (Ex. D/13) in which defendants set up a plea that 1.50 acres of land out of the total land held by their husband/father was kept by their father in his own name which was to be given to the plaintiffs after his death and the rest of the land was partitioned between the parties vide order dated 10/07/2003 (Ex. P/7) passed by the Tahsildar after recording the statement of plaintiff No. 1 and accordingly, after the death of their husband/father Badri Sahu in the year 2004, that 1.50 acres of land was held by the plaintiffs which they alienated by sale deed dated 31/05/2005 (Ex. D/13) in favour of one Pradeep Kumar and thereafter, brought the suit on 02/03/2006, as such, their suit deserves to be dismissed.

5. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit holding that earlier partition has taken place between the parties by order dated

10/07/2003 (Ex. P/7) passed by the Tahsildar in which plaintiffs' father Badri Sahu kept 1.50 acres of land in his own name and after his death in the year 2004, the said land was given to the plaintiffs which they sold to Pradeep Kumar vide sale deed dated 31/05/2005 (Ex. D/13) and thereafter, filed this suit on 02/03/2006 which cannot be decreed. On appeal being preferred by the plaintiffs, learned first appellate Court affirmed the finding recorded by the trial Court and allowed the appeal.

6. The said finding recorded by the trial Court duly affirmed by the first appellate Court that partition has already taken place between the parties vide order of the Tahsildar dated 10/07/2003 (Ex. P/7) and according to the partition, after the death of Badri Sahu, plaintiffs acquired 1.50 acres of land which they sold vide sale deed dated 31/05/2005 (Ex. D/13) is a finding of fact which is based on evidence available on record. Even otherwise, it is not the case of the plaintiffs that partition is unequal or it was obtained by fraud or misrepresentation. The statement of

plaintiff No. 1 Kumari Bai was taken before the Tahsildar in the partition proceeding in which she unequivocally agreed to the said arrangement. As such, both the Courts below have concurrently and rightly dismissed the suit of the plaintiffs by recording a finding which does not suffer from any perversity or illegality warranting formulation of substantial question of law for determination in this regard.

7. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**

Harneet