

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 383 of 2008**

1. Balram Singh, S/o Late Pancham Singh, Aged 63 years.
2. Jagannath Singh, S/o Late Pancham Singh, Aged 60 years.
3. Makhan Singh, S/o Late Pancham Singh, Aged 52 years.
4. Ishwar Singh (died and deleted).
5. Vidyadhar S/o Late Pancham Singh, Aged 44 years.
6. Krishna Kumar S/o Late Bhagwat Singh, Aged 53 years.

All R/o Village Petoli, Tahsil and P.S. Kanker,
Distt. Kanker, Chhattisgarh.

--Appellants/Plaintiffs

Versus

1. Purushottam S/o Late Damodar, Aged 64 years.
2. Prabhat S/o Late Gayadhar Singh, Aged 37 years.
3. Omprakash S/o Late Gayadhar Singh, Aged 35 years.
4. Kishore S/o Late Gayadhar Singh, Aged 34 years.
5. Santosh S/o Late Gayadhar Singh, Aged 31 years.
6. Kiran S/o Late Gayadhar Singh, Aged 29 years.
7. Ravindra Singh S/o Late Rajendra Singh, Aged 40 years.
8. Nilambar Singh S/o Late Rajendra Singh, Aged 38 years.
9. Jamuna W/o Late Gayadhar Singh, Aged 50 years.

(Sl. No. 1 to 9 R/o Village Petoli, P.O. Murdongri, Tahsil and Distt. North Bastar, Kanker, Chhattisgarh.

10. Tileschwari D/o Late Gayadhar Singh, Aged 32 years.

11. Chandramani W/o Chandradhwaj, Aged 45 years.

(Sl. No. 10 and 11 R/o Village Karatikli, P.O. Amtha, Distt. Kalahandi Orissa.)

12. Rukmani W/o Late Suresh Samant (died) through LRs. :-

(a). Udit Kumar S/o Late Suresh Samant, Aged about 55 years.

(b). Ajit Kumar S/o Late Suresh Samant, Aged about 53 years.

(c). Saubhagya Manjri D/o Late Suresh Samant, Aged about 51 years.

(d). Ratnaprabha Devi, D/o Late Suresh Samant, Aged about 48 years.

(e). Narayan Prasad Samant, Aged about 45 years.

(f). Rakesh Kumar S/o Late Vibhuti Deo, Aged about 25 years.

R/o Samant Quarter, Talcher, P.O. Talcher, Distt. Angul Orissa.

13. Saraswati W/o Umashankar (died) through LRs. :-

(a). Durga Das, Aged about 55 years, S/o Umashankar Singh, R/o Village Kodobhata, P.O. Mahaling, Distt. Kalahandi, Orissa.

(b). Madhav Ram, Aged about 53 years, S/o Umashankar Singh, R/o Village Kodobhata, P.O. Mahaling, Distt. Kalahandi, Orissa.

(c) Raghav, Aged about 37 years, S/o Umashankar Singh, R/o Village Kodobhata, P.O. Mahaling, Distt. Kalahandi, Orissa.

14. Laxmi W/o Mohan Singh, D/o Late Damodar Singh, Aged 65 years, R/o Village Khedapara, P.O. Therubali, Distt. Koraput, Orissa.

15. State of Chhattisgarh, through the Collector, Kanker, Distt. North Bastar, Kanker, Chhattisgarh.

--- Respondents/Defendants

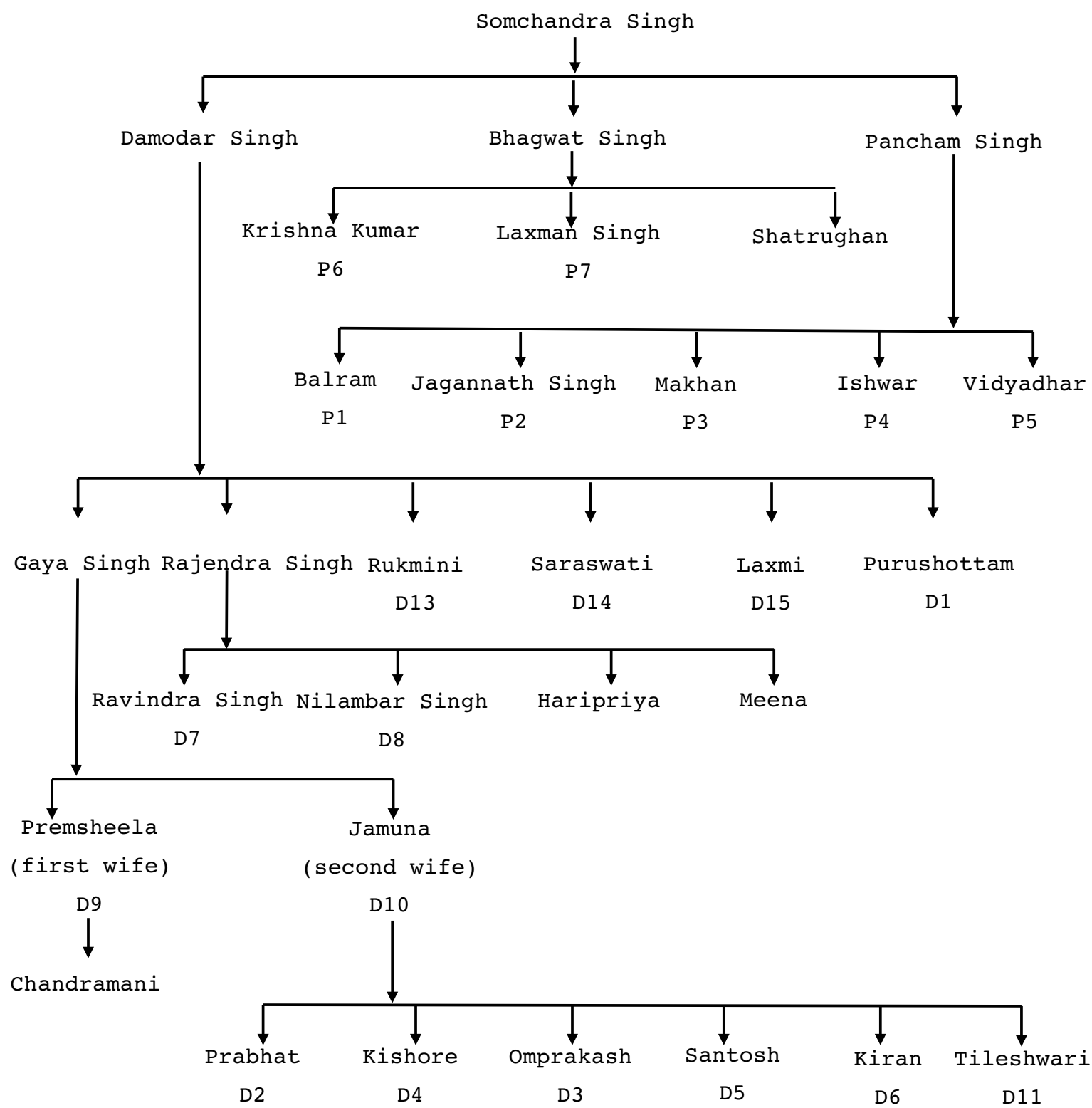
For Appellant :- Mr. Ravindra Agrawal, Advocate
For State :- Mr. Anshuman Rabra, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

19/02/2020

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 the trial Court dismissed plaintiffs' suit for declaration of title, partition and possession of suit land admeasuring 10.720 hectares situated at village Petoli, 11.96 hectares situated at village Tanhkapar, 7 hectares situated at village Muragaanv and 0.360 hectare situated at village Maandri as shown in Schedule 'A' annexed with the plaint.

2.The following genealogical tree would demonstrate the relationship between the parties :-



3.Suit land was originally held by Somchandra Singh. He had three sons namely Damodar Singh, Bhagwat Singh and Pancham Singh. Plaintiffs are the sons of Bhagwat Singh and Pancham Singh

whereas defendants are sons, daughter and grandsons of Damodar Singh. Plaintiffs, being the successors in interest of Bhagwat Singh and Pancham Singh, filed a suit for declaration of title, partition and possession stating *inter alia* that suit land shown in Schedule 'A' annexed with the plaint situated at four villages namely Petoli, Tanhkapar, Muragaany and Maandri, Tahsil Kanker was the joint family property of all the three brothers namely Damodar Singh, Bhagwat Singh and Pancham Singh and no lawful partition of the suit land has taken place between them, therefore, they are entitled for 1/3rd share in the suit land as defendants' predecessor in title Damodar Singh sold some part of suit land during his lifetime and cause of action arose on 14/03/2003.

4. Defendants filed their joint written statement and set up a defence that partition has already taken place amongst their predecessor in title Damodar Singh and plaintiffs' predecessors in title Bhagwat Singh and Pancham Singh and pursuant to the partition, they are in possession of their respective shares and a document was also executed with that regard which is in possession of the plaintiffs and they have

admitted the said fact in the proceeding before the Tahsildar on 20/02/2004 and have given the description of the land which fell in their respective shares.

5. Learned trial Court, upon evaluation and appreciation of oral and documentary evidence on record, dismissed the suit holding that suit land was partitioned in the year 1944-45 amongst Damodar Singh, Bhagwat Singh and Pancham Singh and plaintiffs have no right and title over the suit land, therefore, they are not entitled for any relief as claimed by them in the suit which was affirmed by learned first appellate Court in the appeal preferred by the plaintiffs holding that pursuant to the partition held in the year 1944-45, they are in separate and cultivating possession of their respective shares of the suit land and moreover, the partition held in the year 1944-45 has not been challenged by any of the parties and it is not the case of the plaintiffs that partition is unjust, unfair and detrimental to their interest. Learned first appellate Court further held that plaintiffs' suit is barred by limitation.

6. Mr. Ravindra Agrawal, learned counsel for the appellants/plaintiffs would submit that both the

Courts below have concurrently and legally erred in holding that partition has already taken place amongst Damodar Singh, Bhagwat Singh and Pancham Singh pursuant to which they are in separate and cultivating possession of their respective shares allotted to them during the partition held in the year 1944-45. The finding recorded by both the Courts below holding that suit land has already been partitioned amongst the parties in the year 1944-45 is a finding of fact which is perverse and contrary to the record, as such, the appeal deserves to be admitted by formulating substantial question of law in this regard.

7. Both the Courts below have concurrently held that partition has taken place amongst the three brothers namely Damodar Singh, Bhagwat Singh and Pancham Singh and thereby, dismissed the suit of the plaintiffs.

8. From a careful perusal of the evidence adduced on behalf of the plaintiffs, it would appear that Makhan Singh (P.W. 1) in paragraph 5 of his statement has clearly admitted that partition has taken place amongst the three brothers namely Damodar Singh, Bhagwat Singh and Pancham Singh and as per the said partition, plaintiffs are in cultivating possession of the land situated at

Village Petoli. In paragraph 10 he has also stated that during the lifetime of his father Pancham Singh, he did not challenge the mutation proceeding in the name of Damodar Singh.

9. Similarly, Purushottam (P.W. 2) in paragraph 1 of his cross-examination has stated that in the year 1944-45, the three brothers i.e. Damodar Singh, Bhagwat Singh and Pancham Singh have partitioned the suit land village-wise by allotting separate shares in the four villages and according to said partition, they are staying in the villages which fell in their share in the partition. In paragraph 2, he has also admitted that in Village Petoli, all the three brothers have got their share and he also detailed the land allotted to all the three brothers in each of the village.

10. Likewise, Krishna Kumar (P.W. 3) in paragraph 7 has admitted that partition took place amongst Damodar Singh, Bhagwat Singh and Pancham Singh. As such, there is a clear-cut admission made on behalf of the plaintiffs in their statements before the trial Court accepting the stand of the defendants which learned trial Court has accepted by recording the finding in paragraph 26 of its judgment which states as under :-

"26. साक्षियों के अनुसार 1944-45 में भागवत, दामोदर एवं पंचम सिंह के मध्य जो बटवारा हुआ था, उसकी लिखापढ़ी भी हुई थी, जो जगन्नाथ के पास है। ऐसी स्थिति में वादीगण को चाहिये था कि बटवारा संबंधी लिखापढ़ी को न्यायालय में पेश करते। इस संबंध में दिनांक 28/6/06 को आदेश पारित किया जाकर वादीगण को दस्तावेज प्रकट करने हेतु आदेशित किया गया था। इसके बाद भी वादीगण ने उक्त दस्तावेज को पेश नहीं किये हैं। ऐसी दशा में वादीगण के विरुद्ध ही उपधारणा की जायेगी। यह सुस्थापित है कि वादीगण को अपना वाद अपने बलबुते पर साबित करना होता है। इस संबंध में प्रतिवादीगण को किसी कमजोरी का लाभ प्राप्त नहीं कर सकते हैं। अतः यह प्रमाणित होता है कि वादग्रस्त भूमि संयुक्त परिवार की संपत्ति थी, जिसका वर्ष 1944-45 में दामोदर, भागवत एवं पंचम सिंह के मध्य बटवारा हो गया था। ऐसी स्थिति में वादग्रस्त भूमि पर केवल वादीगण का स्वत्व है, ऐसा नहीं माना जा सकता है। जब वादग्रस्त भूमि पर केवल वादीगण का स्वत्व नहीं है, तब उन्हें कब्ज़ा भी नहीं दिलवाया जा सकता, और ऐसी दशा में प्रतिवादीगण के पक्ष में हुए नामान्तरण को शून्य घोषित नहीं माना जा सकता है। अतः वाद प्रश्न क्रमांक - 01 का निष्कर्ष "उपरोक्तानुसार"; वाद प्रश्न क्रमांक - 02 से 04 के निष्कर्ष - "प्रमाणित नहीं में किया जाता है"।"

11. Learned first appellate Court, after minutely assessing the oral and documentary evidence on record and the finding recorded by the trial Court, reached to the categorical conclusion in paragraphs 41, 42 and 43 of its judgment which state as under :-

"41. इस प्रकार उभय पक्षों के द्वारा प्रस्तुत दस्तावेजिक एवं मौखिक साक्ष्य से इस बात की उपधारणा बनती है कि, उभय पक्षों अर्थात् दामोदर, पंचम व भागवत सिंह के मध्य सन 1944-45 में वादग्रस्त जमीनों का आपसी बटवारा हो चुका था और उनकी मृत्यु के बाद वादीगण एवं प्रतिवादीगण अपनी-अपनी भूमियों पर रहकर, काबिज काशत करते चले आ रहे हैं। तब ऐसी स्थिति में वादग्रस्त भूमि को अब " संयुक्त हिन्दू परिवार" की

संपत्ति होना नहीं कहा जा सकता। वाद भूमि का संयुक्त बटवारा 1944-45 में उपरोक्त तीनों भाइयों के मध्य होने से "संयुक्त हिन्दू परिवार" टूट गया है, और विवादित संपत्ति/भूमि का आपसी बटवारा वर्ष 1944-45 में होना प्रमाणित होता है। जिस आपसी बटवारा को किसी भी पक्ष के द्वारा सक्षम न्यायलय में कोई चुनौती नहीं दी गयी है। वादीगण के दावा को भी "अवधि बाह्य" होना पाया गया है।

42. तब ऐसी स्थिति में, वर्तमान वादग्रस्त भूमि में एक मात्र रूप से वादीगण का स्वत्व नहीं है और उनके पूर्वजों के मध्य बटवारा होना प्रमाणित होता है। तब ऐसी स्थिति में वादीगण वर्तमान वादग्रस्त भूमियों पर अपने स्वत्व की घोषणा और उस अंश का बटवारा कराकर, कब्ज़ा प्राप्त करने के अधिकारी नहीं हैं। ऐसी दशा में प्रतिवादीगण के पक्ष में हुए राजस्व अभिलेखों में नामांतरण को "शून्य" घोषित नहीं किया जा सकता।

43. निर्णय में पूर्व की कंडिकाओं में यह बताया जा चुका है कि, चूँकी सन 1944-45 के आसपास तीनों भाइयों दामोदर सिंह, भागवत सिंह एवं पंचम सिंह के मध्य वादग्रस्त भूमि का आपसी बटवारा हो चुका है। जिसे स्वयं वादीगण तथा उनके साक्षियों ने भी स्वीकार किया है। उनका मात्र यह कहना है कि, 'बटवारा असमान' था ? जिसे अपने जीवनकाल में पंचम सिंह एवं भागवत सिंह ने कभी कोई चुनौती सक्षम न्यायलय या फोरम में नहीं दी थी। तब सन 1944-45 में हुए बटवारा को अब इतने लम्बे अवधि के बाद न्यायलय में चुनौती देना, निश्चित रूप से वादीगण के दावा को समयावधि के बाहर होना पाया जाता है।

12. The well-reasoned finding recorded by the trial Court as affirmed by the first appellate Court in view of the categorical admission made by the plaintiffs' witnesses namely Makhan Singh (P.W. 1), Purushottam (P.W. 2) and Krishna Kumar (P.W. 3) holding that suit land has already been partitioned amongst plaintiffs' predecessor in title namely Bhagwat Singh and Pancham Singh and

defendants' predecessor in title namely Damodar Singh and thereafter, they are in separate and cultivating possession of the land which fell in their respective share during the said partition is a pure and simple finding of fact based on evidence available on record which is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

13. 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