

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.143 of 2008

Ujen Ram, S/o Parsu Ram Lodhi; age 46 years, R/o Village Baajguda; P.H.No. 24; Revenue Circle & Tahsil Khairagarh, District Rajnandgaon (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Motin Bai, W/o Deen Dayal Lodhi; age 56 years; R/o Village Baajguda, P.H.No.24, R.I. Circle and Tahsil Khairagarh; District Rajnandgaon (C.G.)
2. Gouri Bai, W/o Ram Swaroop Lodhi; age 41 years; R/o Contractor Colony, Supela, Bhilai; District Durg (C.G.)
3. Anoop Bai (Died and deleted)
4. State of Chhattisgarh; through Collector, District Rajnandgaon (C.G.)
(Defendants)
---- Respondents

For Appellant: Mr. R. N. Jha, Advocate.
For Respondents No.1 and 2: -
Mr. Rakesh Pandey, Advocate.
For Respondent No.4 / State: -
Mr. Anshuman Rabra, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay K. Agrawal, J

Order On Board

28/01/2020

1. Heard on admission and formulation of substantial question of law in the second appeal preferred by the plaintiff.
2. By the impugned judgment and decree, the first appellate Court has dismissed the appeal preferred preferred by the plaintiff affirming the

judgment and decree of the trial Court dismissing the suit finding no merit.

3. Mr. R.N. Jha, learned counsel appearing for the appellant herein / plaintiff, would submit that both the Courts below have committed an illegality in dismissing the suit of the plaintiff holding that the suit land is the ancestral property of the plaintiff by recording a finding which is perverse to the record and the appeal deserves to be admitted by formulating substantial question of law.
4. The suit property was originally held by one Parsu Ram Lodhi. The plaintiff is son, defendants No.1 & 2 are daughters and defendant No.3 was wife of Parsu Ram Lodhi. Defendant No.3 Anoop Bai died during the pendency of this second appeal. Sole plaintiff Ujen Ram filed suit for declaration of title and permanent injunction stating inter alia that he is the exclusive title holder of the suit property shown in Schedule A of the plaint and defendants No.1 & 2 – his sisters and defendant No.3 – his mother had no right and title, even no right to partition and as such, the proceeding pending before the Tahsildar for partition be stayed. The defendants opposed the averment of the plaintiff and stated that the suit property is the self-acquired property of Parsu Ram Lodhi as such, the plaintiff is not entitled for any share and the suit deserves to be dismissed.
5. The trial Court upon evaluation of oral and documentary evidence available on record, dismissed the suit holding that it is only proved that the suit property is the property of Parsu Ram Lodhi, but the nature of property, whether it is ancestral property or self-acquired property is not

proved and earlier partition is also not proved and the plaintiff's suit is barred by limitation. On appeal preferred by the plaintiff, the first appellate Court agreed with the judgment & decree of the trial Court and dismissed the appeal.

6. Admittedly, Parsu Ram Lodhi died in the year 1990 and the first appellate Court in paragraph 13 of the judgment has held the suit property to be the ancestral property and in that view of the matter, the first appellate Court has held that in view of the fact of partition having not been proved, the plaintiff is not the exclusive owner and the defendants are also entitled to have share in the property. The finding recorded by the first appellate Court that the suit property is the ancestral property and the plaintiff is not the exclusive title holder of the suit property and the defendants have also share in the property, is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. I do not find any question of law, much less the substantial question of law for determination in this appeal. The appeal being devoid of merit is dismissed *in limine*. No order as to cost(s). However, the plaintiff is at liberty to proceed in accordance with law.

Sd/-
(Sanjay K. Agrawal)
Judge