

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.404 of 2009

Mani Ram, S/o Suna Ram Sande, aged about 40 years, R/o Village Jampali, Post Office Nandorkhurd, Tahsil Sakti, District Janjgir-Champa (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Dhanwa, S/o Sunaram, aged about 45 years,
2. Paharu, S/o Sunaram, aged about 35 years,
3. Lila Bai (died and deleted)
4. Birichh Ram, S/o Paharu, aged about 24 years, (at the time of filing appeal he was minor),
5. Tirith Ram, S/o Paharu, aged about 21 years, (at the time of filing appeal he was minor),

Above all are R/o Village Jampali, Post Office Nandorkhurd, Tahsil Sakti, District Janjgir-Champa (C.G.)

6. State of Chhattisgarh, Through the Collector, Janjgir-Champa, District Janjgir-Champa (C.G.)

(Defendants)
---- Respondents

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(Defendants)
---- Respondents

For Appellant / Plaintiff: -

Mr. Pushpendra Kumar Patel, Advocate.

For Respondent No.6 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

02/09/2020

1. Proceedings of these matters have been taken-up through video conferencing.
2. Heard on admission and formulation of substantial question of law in these two second appeals preferred by the plaintiff / appellant herein.
3. Since the two civil appeals namely, Civil Appeal No.2A/2002 (Dhanwa v. Maniram and others) and Civil Appeal No.3A/2002 (Maniram v. Dhanwaram and others), both, have been decided by the common judgment dated 17-4-2009 passed by the first appellate Court i.e. Additional District Judge, Sakti, which has been impugned in these two second appeals, the instant second appeals have been clubbed together, heard together and are being disposed of by this common order.
4. Mr. Pushpendra Kumar Patel, learned counsel appearing for the

appellant herein / plaintiff, would submit that the first appellate Court has committed grave illegality in granting the appeal preferred by defendant No.1 and dismissing the appeal of the plaintiff by recording a finding which is perverse to the record.

5. The plaintiff is son of Sunaram, defendant No.1 is also son of Sunaram, defendant No.2 is also son of Sunaram and defendants No.4 & 5 are sons of defendant No.2. The plaintiff filed suit for partition, possession and permanent injunction stating inter alia that though in the partition held in the year 1978-79, he received 0.03 acre of land bearing Khasra No.199, but the suit property total area 5.33 acres of land was not partitioned, therefore, he is entitled for partition, possession and permanent injunction with regard to the land bearing Khasra No.199, area 5.33 acre.
6. The trial Court after appreciating oral and documentary evidence available on record, partly decreed the suit of the plaintiff with regard to permanent injunction over Khasra No.199, area 0.03 acre, but dismissed the suit with regard to 5.33 acres of land holding that it is the self-acquired property of Dhanwa – defendant No.1 and the plaintiff has no right over the same. The plaintiff preferred appeal with regard to the property of 5.33 acres of land, whereas Dhanwa preferred appeal with regard to granting permanent injunction in favour of the plaintiff. The first appellate Court by the impugned judgment held that the suit property – area 5.33 acres of land was acquired by the defendants and it is the self-acquired property in which plaintiff Maniram has no right and interest, therefore, he cannot claim partition and similarly, set aside the mandatory injunction granted in favour of the plaintiff.

7. The two Courts below relying upon Exs.D-1 to D-5 have rightly held that the suit property bearing Khasra No.199, area 5.33 acre of land is the property acquired by the defendants vide Exs.D-1 to D-5 in which the plaintiff cannot claim share, as it is the self acquired property of defendant No.1. The said finding is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. Similarly, the first appellate Court has rightly interfered with the permanent injunction granted in favour of the plaintiff and rightly set aside that finding which is also a finding of fact based on the evidence available on record. I do not find any merit in these two second appeals, they are liable to be and are hereby dismissed *in limine* without noticing the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge