

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 364 of 2007**

Umrao Singh, son of Malkha Caste Gond, aged about 57 years, Occupation Cultivation R/o village Kumhari Tahsil and Police Station Mohla, District Rajnandgaon (C.G.)

-----Appellant/Plaintiff

Versus

1. Baratnin Bai, W/o unknown, aged about 52 years, occupation Cultivation, R/o village Behari-tola, Post Gotatola, Tahsil and Police Station Mohla, District Rajnandgaon (C.G.)

2. State of Chhattisgarh through Collector District Office Rajnandgaon (C.G.)

-----Respondents/Defendants

For Appellant : Mr. Ram Kumar Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/01/2020

(1) Heard on the question of admission and formulation of substantial question of law of this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 14th February, 2007 passed by First Additional District Judge, Rajnandgaon in Civil Appeal No.23-A/2004 affirming the judgment and decree dated 22nd July, 2004 passed by Civil Judge, Class-I, Ambagarh Chowki, in Civil Suit No. 4-A/1994, dismissing the suit.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below are absolutely unjustified in dismissing the suit of the plaintiffs holding that suit property is not exclusively held by two plaintiffs namely Umrao Singh & Aasmoutin; and defendant No. 1 -Bartnin Bai Godin has also right & title over the suit property, by recording a finding, which is perverse and contrary to the record, therefore, appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) Civil Suit was filed by the two plaintiffs stating inter alia that they are exclusive title and possession holder of the suit land and, therefore, decree for declaration of title and permanent injunction be passed in their favour, in which, the trial Court has recorded a finding that plaintiffs have failed to prove exclusive title and possession over the suit land and dismissed the suit, which has been affirmed by the first appellate Court, in an appeal preferred by the plaintiff, against which, second appeal has been preferred.

(4) Suit property was originally held by Kadhe. He had three sons namely Malkha Gond, Amar Singh and Amru. Plaintiff No. 1 is son of Malkha Gond *whereas* plaintiff No. 2 is widow of Malkha Gond. Amar Singh and his wife died issueless and defendant No. 1 - Bartnin Bai claimed to be the wife of Amru. Plaintiffs filed a suit for declaration of title and permanent injunction stating that the suit property is their

exclusive property, in which, defendant No. 1- Bartanin Bai had no right or title as she is not the legally wedded wife of Amru, which the trial court negatived holding that though the fact of partition is proved but plaintiffs have failed to prove their exclusive title over the suit land; and that finding has been affirmed by the first appellate Court, in an appeal preferred by both the plaintiffs, against which instant second appeal has been preferred. Thus, the concurrent findings recorded by both the courts below that plaintiffs are not the exclusive title holder of the suit land as the Amru's wife Baratnin Bai (defendant No. 1) has also the title holder and possession holder of the suit land, is a finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(8) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed without notice to the other side.

Sd/-
Sanjay K. Agrawal)
Judge

D/-

(1) Whether the first appellate Court was justified in granting decree in favour of the plaintiff ignoring the fact that erstwhile owner of the suit land Raja..... and his son..... has already executed a title deed / sale deed dated 28.08.2002 (Ex.D-1) in favour of defendants No. 2 & 3, by recording a finding, which is perverse and contrary to the record ?

(2) Whether the first appellate Court was justified in not remitting the matter after holding that the permission for review was granted without affording opportunity of hearing to the plaintiff by virtue of provisions contained in Section 51 of the C.G. Land Revenue Code,