

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.441 of 2009**

Motilal Agrawal, S/o. Late Sagarmal, aged about 53 years, R/o. Nagar Ramanujganj, Ward No.9, Tahsil Pal, District Surguja (CG)

**----- Appellant/Defendant No.1****Versus**

1. Shiv Kumar Agrawal, S/o. Late Sagarmal Agrawal, aged about 48 years,
2. Rakesh Agrawal, S/o. Late Sagarmal Agrawal, Aged about 30 years,
3. Sankar Agrawal, S/o. Late Sagarmal Agrawal, aged about 38 years,
4. Umesh Agrawal, S/o. Late Sagarmal Agrawal, Aged about 36 years,
5. Mrs. Fulwanti Devi Wd/o. Late Sagarmal Agrawal, Aged about 70 years,

All above R/o. Nagar Ramanujganj, Ward No.9, Tahsil Pal, District Surguja (CG)

**----- Plaintiffs**

6. Smt. Geeta Devi D/o. Late Sagarmal Agrawal, W/o. Laxminarayan Agrawal, aged about 52 years, R/o. Tata Nagar, Jamshedpur (Mango Chowk), District Sinhmhu, Jharkhand
7. Smt. Meena Devi, D/o. Late Sagarmal, W/o. Sitaram, aged about 42 years, R/o. Dehri, Onson, Neelkothe, District Rohtas (Bihar)
8. Smt. Usha Devi, D/o. Late Sagarmal, W/o. Ramesh Gupta, aged about 40 years, R/o. Bandar Bagicha, Rajshtan Colony, Patna, Bihar
9. Ashok Kumar Agrawal, S/o. Late Sagarmal, aged about 45 years, R/o. Nagar Ramanujganj, District Surguja (CG)
10. State of Chhattisgarh, Through Collector, Surguja Ambikapur, District Surguja (CG)

**----- Respondents/Defendants**


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For Appellant/Defendant No.1: Mr. Manoj Paranjape, Advocate  
 For Res. No. 1 to 5/Plaintiffs: Mr. R.N. Pusty, Advocate  
 For Res. No. 6 to 9 : Mr. Ram Kumar Tiwari, Advocate  
 For Respondent No. 10/State : Mr. Ravi Bhagat, Dy. G.A. and  
 Mr. S.K. Agrawal, P.L.

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Judgment on Board**

**06.02.2020**

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellant/defendant No.1 is as under:-

“Whether in view of the findings recorded by the lower appellate Court in paragraphs 16 and 19 of its judgment regarding non-maintainability of the suit on account of non-joinder and mis-joinder of necessary parties, the appellate Court was justified in maintaining the judgment and decree passed by the trial Court ?”

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The suit property was originally held by one Pariman Gond. He is said to have executed a Will in favour of defendant No.1 on 24.1.1991. The plaintiffs and the defendants are brothers and sisters. Five plaintiffs filed a suit that they are joint owners of the suit property and defendant No.1 be restrained from using the property exclusively.
3. Defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia

that the suit property was earlier held by Alimana Uraon who sold the same to one Parbhan Gond on 20.12.1978 and Pariman Gond had executed a Will in his favour on 24.1.1991 and thereby he became owner of the suit property.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 19.10.2005, partly decreed the suit holding that the plaintiffs and defendants No.1 to 5 are joint owners of the suit property, but has granted conditional decree holding that decree will be applicable if the proceedings under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'the Code') are not initiated on or before 5.3.2006 by legal representatives of Pariman Gond, which was challenged by defendant No.1 before the first appellate Court, the said appeal Court partly allowed the appeal holding that the suit was not maintainable for non-joinder of necessary party, but has maintained the decree with regard to initiation of proceedings under Section 170-B of the Code by legal representatives of Pariman Gond. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant

No.1, in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.

5. Mr. Manoj Paranjape, learned counsel for the appellant/defendant No.1, would submit that the first appellate Court is absolutely unjustified in maintaining the decree with regard to initiation of proceedings under Section 170-B of the Code by legal representatives of Pariman Gond as substantive decree has already been set aside by the first appellate Court holding the suit to be not maintainable and no relief was sought by the plaintiffs with regard to legal representatives of Pariman Gond, therefore, the first appellate Court is absolutely unjustified in granting relief without there being any prayer/relief made by legal representatives of Pariman Gond in the plaint, as such, the judgment and decree of the first appellate Court deserves to be set aside.

6. On the other hand, Mr. R.N. Pusty, learned counsel for respondents No.1 to 5/plaintiffs, would support the judgment and decree of the first appellate Court.

7. I have heard learned counsel for the parties, considered their submissions made hereinabove and also went through the records with utmost circumspection.

8. The plaintiffs filed a suit only for declaration of

title that they are joint owners and for permanent injunction against defendant No.1. Admittedly, no relief was sought either by the plaintiffs or legal representatives of Pariman Gond for initiation of proceedings under Section 170-B of the Code, yet it was granted by the trial Court. In appeal preferred by defendant No.1 though the first appellate Court set aside substantive decree against defendant No.1 for declaration of title and for permanent injunction, but has maintained the decree for initiation of proceedings under Section 170-B of the Code by legal representatives of Pariman Gond.

9. At this stage, it would be appropriate to notice pertinent decision of the Supreme Court in the matter of Bachhaj Nahar v. Nilima Mandal and another<sup>1</sup>, in which Their Lordships of the Supreme Court have held that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings.

It was observed as under:-

"23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties etc., which require

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1 (2008) 17 SCC 491

pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

**10.** In the light of principle of law laid down by the Supreme Court in Bachhaj Nahar (supra), if plaint averments are examined, it would appear that no relief was sought either by the plaintiffs or by legal representatives of Pariman Gond for initiation of proceedings under Section 170-B of the Code, yet the trial Court relying upon the fact that defendant No.1 claimed Will of Pariman Gond in his favour though that was not found established, yet granted decree, which the first appellate Court has maintained.

**11.** Once no relief has been claimed by the plaintiffs or by legal representatives of Pariman Gond with regard to initiation of proceedings under Section 170-B of the Code and even legal representatives of Pariman Gond were not party to suit and no issue was framed with regard to that, therefore, altogether new

relief which was not sought could not have been granted by the trial Court and could not have been affirmed by the first appellate Court. Therefore, it cannot be re-affirmed and accordingly, it is set-aside and the plaintiffs' suit stand dismissed in toto. The substantial question of law is answered in favour of defendant No.1 and against the plaintiffs.

12. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

13. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)  
Judge

B/-