

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.377 of 2009

Rukmani Bai D/o late Chhabilal, aged about 70 years, R/o vill. Dhanora, Tah. Gurur, Distt. Durg (CG)

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

1. Hari Ram S/o late Latkhor, aged about 59 years, R/o Vill. Dhanora, Tah.Gurur, Distt. Durg (CG)
----- Plaintiff
2. State of C.G. Through Collector, Durg, Distt. Durg (CG)

----- Respondents

For Appellant/Defendant No.1:-

Mr.B.P.Gupta, Advocate

For Respondent No.2 / State: -

Ms Veena Nair, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/07/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard this second appeal on the question of admission and formulation of substantial question of law preferred by the appellant/defendant No.1.
3. By the impugned judgment and decree, the first appellate Court has dismissed the appeal preferred by defendant No.1 affirming the judgment and decree of the trial Court decreeing the suit for declaration of title and permanent injunction.
4. Mr.B.P.Gupta, learned counsel for the

appellant/defendant No.1, would submit that both the Courts below have concurrently erred in holding that the plaintiff is cultivating possession of the suit land and therefore, he is entitled for decree for declaration of title and permanent injunction, by recording a finding, which is perverse and contrary to record as there is no evidence on record to hold that the plaintiff is in possession of the suit land and as such, the appeal involves substantial question of law for determination.

5. Jairam had three sons namely Latkhor, Chhabilal and Tanguram. The plaintiff is son of Latkhor, whereas defendant No.1 is daughter of Chhabilal. It is the case of the plaintiff that the suit property was partitioned during lifetime of Jairam and it fell in share of his father Latkhor and after his death the plaintiff has inherited the suit property. Cause of action arose when defendant No.1 harvested the crop sown by the plaintiff. The trial Court has framed as many as 7 issues including the issue with regard to limitation and clearly came to the conclusion that the suit property fell in share of the plaintiff's father, the plaintiff is in possession of the suit land after death of his father and the suit filed by the plaintiff is within limitation, which has been affirmed by the first appellate Court.

6. Concurrent finding recorded by two Courts below holding that the suit property fell in share of the plaintiff's father and the plaintiff is in possession of the suit land is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any perversity or illegality in the said finding and even I do not find any substantial question of law for determination of this second appeal.

7. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-