

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 284 of 2007**

Abhimanyu, Aged about 59 years, S/o Late Shri Santnam Satnami, R/o Village Pauni, Tahsil Mungeli, District Bilaspur, Chhattisgarh.

---Appellant/Defendant

Versus

1. Kanhaiya, Aged about 61 years, S/o Late Shri Santnam Satnami, R/o Village Pauni, Tahsil Mungeli, District Bilaspur, Chhattisgarh.

--- Plaintiff

2. State of Chhattisgarh, Through the Collector, Bilaspur, District Bilaspur, Chhattisgarh.

--- Respondents

For Appellant	:-	Mr. H.S. Patel, Advocate
For Respondent No. 1	:-	Mr. Prakash Tiwari and Mr. Palash Tiwari, Advocates
For State	:-	Mr. Anshuman Rabra, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15/01/2020

1. This second appeal preferred by the appellant/defendant was admitted for hearing on the following substantial question of law :-

"Whether the lower appellate Court was justified in recording a finding that the agreement Ex. P-1 and P-2 were executed by the appellant/defendant No. 1 - Abhimanyu in the year-1992 & 1995 respectively and on that basis reversing the judgment and decree passed by the trial Court ?"

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

2. Plaintiff Kanhaiya and defendant Abhimanyu, both are brothers. Plaintiff filed a suit for declaration of title and permanent injunction upon the suit land shown in Schedule 'B' appended with the plaint stating *inter alia* that the said suit land is exclusively held by him as it was given to him in partition during the lifetime of their father Santram and defendant has also executed a consent letter dated 05/07/1995 (Ex. P/1) and an agreement dated 22/05/1992 (Ex. P/2) in his favour acknowledging plaintiff's title over the suit land, yet he claimed partition of the suit land before the revenue authorities which necessitated the filing of the suit by the plaintiff wherein defendant took the plea of denial and pleaded that Ex. P/1 and P/2 are inadmissible in evidence for want of registration, therefore, plaintiff's suit deserves to be dismissed.

3. Learned trial Court vide its judgment and decree dated 10/12/2004 dismissed the suit, but on

appeal being preferred by the plaintiff, learned first appellate Court vide its judgment and decree dated 04/01/2005 reversed the judgment and decree of the trial Court and declared the title of plaintiff over the suit land shown in Schedule 'B' of the plaint and with respect to the land bearing Khasra No. 365 area 0.50 acre which fell in the share of plaintiff's as well as defendant's father Santram during partition, the first appellate court granted $\frac{1}{2}$ share i.e. 0.25 acre in favour of each one of them.

4. Mr. H.S. Patel, learned counsel for the appellant/defendant would submit that the first appellate Court committed legal error in relying upon Ex. P/1 and P/2 allegedly executed by defendant in favour of the plaintiff as both of these are unregistered documents and therefore, could not have been relied upon for granting decree in favour of the plaintiff, as such, the judgment and decree of the first appellate Court deserves to be set aside and that of the trial Court be restored.

5. Mr. Prakash Tiwari, learned counsel for the respondent/defendant would support the impugned

judgment and decree passed by the first appellate Court and submit that the second appeal deserves to be dismissed.

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

7. It is the case of the plaintiff that his father Santram, during his lifetime, made partition of the suit land between the plaintiff and the defendant and the suit land shown in Schedule 'B' annexed with the plaint fell in his share to which defendant has already agreed and executed Ex. P/1 dated 05/07/1995 and Ex. P.2 dated 22/05/1992 in his favour acknowledging plaintiff's title over the suit land whereas both of these documents have been contended to be inadmissible in evidence for want of registration which has been replied by learned counsel for the respondent/plaintiff stating that earlier oral partition held between the parties has been reduced in writing which has already been indicated by the defendant, therefore, both of these documents need no registration.

8. Though Ex. P/1 has been titled as relinquishment deed, but paragraph 4 of the said document states as under :-

4 - कैफियत - फिकरा न. ३ में बताई गई हमारी शामिलता भूमि है जिस पर हम शामिल कास्त करते चले आ रहे थे किन्तु मैं आपसी बटवारा मुताबिक अपने समस्त भूमि को बेच चुका हूँ अब शेष भूमि जो ऊपर बताई है उस पर अकेले कन्हैया वल्द सन्तराम का सतनामी साकिन पानी के नाम पटवारी अभिलेख दुरुस्त कर दिया जावे मेरा या मेरे दिगर वारसान को कोई आपत्ति उजर दवा नहीं है ना ही भविष्य में कोई तो इस हाकछोर इकरारनामा के सामने फूटा वो नाजायज माना जावे अस्तु यह इकरारनामा उपस्थित गवाहों के सामने लिखा दिया कि सनद रहे फ. ता. ०५/७/९५ ।

9. A careful perusal of the aforesaid document Ex. P/1 would show that earlier partition that took place between the plaintiff and the defendant has been acknowledged by the defendant stating that he has already alienated his share and the left out land belongs to the plaintiff. It is a case where defendant himself has only acknowledged the title of the plaintiff vide Ex. P/1 and he has not relinquished title already vested in him in favour of the plaintiff, therefore, it would fall within the meaning of 'family settlement/agreement' which, as already been held, is reduced in writing for future purposes, therefore, Ex. P/1 though wrongly titled as

relinquishment deed, would not take away the original colour of the document as it is only and only a family arrangement and it is well settled law that family arrangement which has been reduced to writing need not be registered. (See: Sita Ram Bhama v. Ramvatar Bhama¹, Roshan Singh and Ors. v. Zile Singh and Ors.² and Som Deva and Ors. v. Rati Ram and Anr.³). Even otherwise, though this plea of non-registration of Ex. P/1 and P/2 was taken by the defendant before the trial Court, but it was not pressed, as such, no finding has been recorded by the trial Court and the first appellate Court in this regard.

10. In my considered opinion, Ex. P/1 is an out and out family arrangement acknowledging the oral partition already made by plaintiff's and defendant's father during his lifetime, therefore, the said document (Ex. P/1) is not required to be registered and the first appellate Court committed no illegality in relying upon Ex. P/1 to hold that the suit land shown in Schedule 'B' annexed with the plaint is held by the plaintiff which he acquired in partition earlier made by his father which has been accepted and

1 (2018) 15 SCC 130

2 (2018) 14 SCC 814

3 (2006) 10 SCC 788

admitted by the defendant vide Ex. P/1. Thus, the finding recorded by the first appellate Court suffers from no illegality qua Ex. P/1. So far as Ex. P/2 is concerned, it is not seriously disputed by the parties as 25 decimal of land has already been given by the plaintiff to the defendant which has been fairly stated by learned counsel for the plaintiff before this Court. It is therefore placed on record.

11. In view of the aforesaid discussion, I do not find any perversity or illegality in the impugned judgment and decree passed by the first appellate Court. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

12. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge