

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 308 of 2009**

1. Awadh Das (died) through LRs. :-

A. Karelia Bai W/o Late Awadh Das, Aged about 52 years.

2. Nadhuwa Das, S/o Ram Das, Aged about 52 years, (Dead on 26/07/2008) has following legal heirs :-

A. Bankunwar W/o Late Nadhuwa Das, Aged about 50 years.

B. Rajesh Das S/o Late Nadhuwa Das, Aged about 33 years.

C. Samundar Das S/o Late Nadhuwa Das, Aged about 30 years.

3. Anil Das S/o Tijan Bai, Aged about 42 years.

4. Aanand Das S/o Balkunwar, Aged about 50 years.

All Panika by caste R/o Village Harratikra, Tahsil Ambikapur, Distt. Surguja, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Raghu Das S/o Pila Das, Aged about 30 years.

2. Sodhan Das S/o Pila Das, Aged about 47 years.

3. Krishna Das S/o Pila Das, Aged about 45 years.

All Panika by caste R/o Village Harratikra, Tahsil Ambikapur, Distt. Surguja, Chhattisgarh.

4. State of Chhattisgarh, through the Collector Surguja, Chhattisgarh.

--- Respondents/Defendants

For Appellants	:- Mr. Shaktiraj Sinha, Advocate
For State	:- Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

19/08/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/plaintiffs under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which the trial Court dismissed the suit.
3. Mr. Shaktiraj Sinha, learned counsel for the appellants/plaintiffs would submit that the concurrent finding recorded by both the Courts below holding that plaintiffs are not entitled for relief of fresh partition, contrary to the order of the Tahsildar passed under Section 178 of the Chhattisgarh Land Revenue Code, 1959 on 29/06/2000, is unsustainable and bad in law,

therefore, the appeal be admitted by formulating substantial question of law for determination.

4. The suit property was originally held by Sundardas. He had three sons namely SheetalDas, Ramdas and Piladas. SheetalDas died issueless. Plaintiffs are the children of Ramdas whereas defendants are the children of Piladas.

5. It appears that in the proceedings initiated under Section 178 of Land Revenue Code, the Tahsildar finally passed the order for partition between the parties on 29/06/2000. The appeal preferred against that order was dismissed by the S.D.O. and thereafter, the suit was filed by the plaintiffs on 30/04/2001 alleging that partition made by the Tahsildar is unjust and unfair and equal share has not been allotted to the parties, therefore, they are entitled for decree for fresh partition and possession.

6. After evaluating the oral and documentary evidence on record, learned trial Court dismissed the suit, which was affirmed by the first appellate Court in the appeal preferred by the plaintiffs.

7. Both the Courts below have recorded a finding that the partition made by the Tahsildar is in accordance with law and there is no perversity in the said order. Even otherwise, the order of partition passed by the Tahsildar on 29/06/2000 duly affirmed by the S.D.O. has not been questioned expressly, as such, that order of partition has become final. Plaintiffs ought to have sought the consequential relief of setting aside the order dated 29/06/2000 passed by the Tahsildar under Section 178 of Land Revenue Code which they have not sought for. Consequently, I do not find any perversity or illegality in the impugned judgment and decree passed by the first appellate Court duly affirming the judgment and decree passed by the trial Court.

8. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet