

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.16 of 2008Judgment reserved on: 19-5-2020Judgment delivered on: 21-5-2020

1. Ramadhar, S/o Amar Singh Teli, aged about 62 years.

2. Shivadhar (Dead) Through Legal Representatives

2A. Smt. Ansuiya, W/o Shivadhar, aged about 46 years,

2B. Kumari Sushila, D/o Late Shivadhar, aged about 22 years,

2C. Kumari Savita, D/o Late Shivadhar, aged about 20 years,

All R/o Village Dokala, Tehsil Charama, District North Bastar Kanker
(C.G.)

(Defendants)

---- Appellants

Versus1. Kumari Bai, W/o Chamar Ram, aged about 55 years, R/o Village
Ramtara, Tehsil Gurur, Distt. Durg (C.G.)2. Daya Bai, D/o Rambharosa, aged about 40 years, R/o Village Dokala,
Tehsil Charama, District North Bastar Kanker (C.G.)3. Uma Bai, D/o Krishana Kumar Sahu, aged about 37 years, R/o Village
Lajouda, Tehsil Kondagaon, District North Bastar Kanker (C.G.)4. Pyari Bai, W/o Ajay Kumar Sahu, aged about 35 years, R/o Village
Dokala, Tehsil Charama, District North Bastar Kanker (C.G.)5. Kushram, S/o Rambharosa, Teli, aged about 52 years, R/o Village
Dokala, Tehsil Charama, District North Bastar Kanker (C.G.)6. Nandkumar, S/o Rambharosa, Teli, aged about 47 years, R/o Village
Dokala, Tehsil Charama, District North Bastar Kanker (C.G.)

(Plaintiffs)

7. Assi Kumar (died) Through LRs

(A) Smt. Wamin, Wd/o Assi Kumar, aged about 50 years

(B) Jaymal, S/o Assi Kumar, aged about 32 years

(C) Mukesh (Dead) Through Legal Representatives

7CI. Kamleshwari, Widow of Mukesh, aged about 32 years,

7CII. Khushboo Teli, D/o Mukesh, aged about 10 years, through Natural Guardian mother Kamleshwari, Widow of Mukesh, aged about 32 years,

Above mentioned both Respondents, R/o Village Pushwadha, Tehsil and District North Bastar, Kanker (C.G.)

(D) Lata, D/o Assi Kumar, aged about 29 years

(E) Kavita, D/o Assi Kumar, aged about 23 years

(F) Hasina, D/o Assi Kumar, aged about 18 years.

All are R/o Village Dokala, Tahsil Charama, Distt. North Baster Kanker (C.G.)

8. State of Chhattisgarh, through the Collector, Kanker, Distt. North Baster Kanker (C.G.)

(Defendants)
---- Respondents

For Appellants: Mr. Vishnu Koshta and Mr. Shobhit Koshta, Advocates.

For Respondents No.1 to 6 / Plaintiffs: -

Mr. Prakash Tiwari and Mr. Palash Tiwari, Advocates.

For Respondent No.8 / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

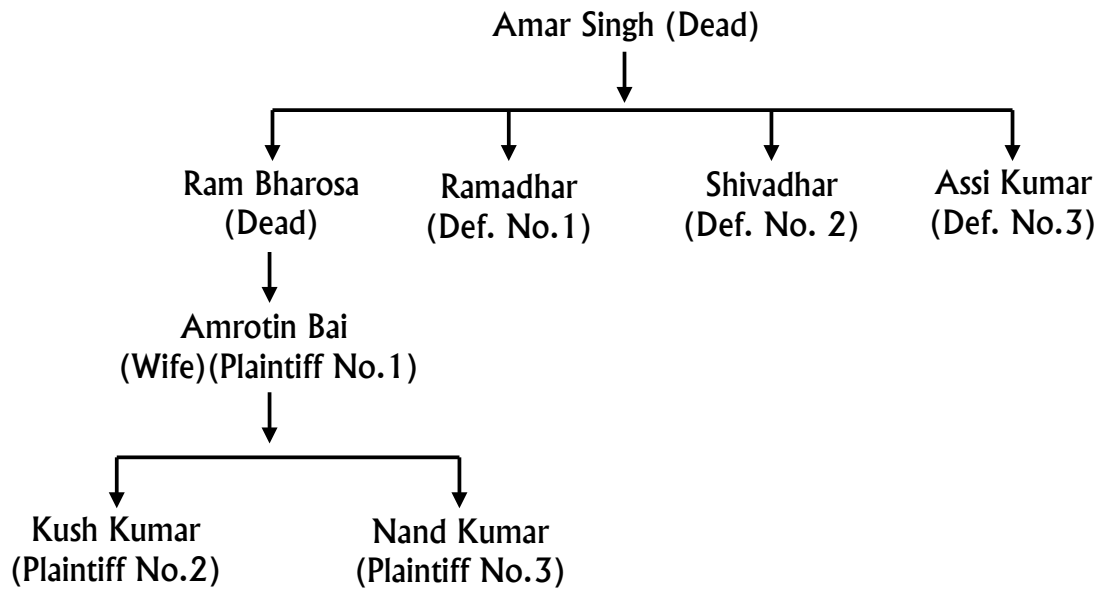
C.A.V. Judgment

1. The substantial question of law found involved, formulated and to be answered in this second appeal is as under: -

“Whether the Courts below were justified in granting decree in favour of the plaintiff in view of the documentary evidence, Ex.P-1 and Ex.D-1?”

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

2. The following genealogical tree would demonstrate the relationship among the parties: -



3. The suit property was originally held by Amar Singh. He had four sons namely Rambharosa, Ramadhar, Shivadhar and Assi Kumar. The plaintiffs are wife and sons of Rambharosa, whereas defendants No.1 to 3 are other sons of Amar Singh. The plaintiffs filed suit for declaration of title, partition, possession and permanent injunction stating inter alia that the suit property was originally held by Amar Singh and after death of Amar Singh, it was jointly cultivated by the plaintiffs' father Rambharosa and other defendants who are sons of Amar Singh. Thereafter, the defendants got their names mutated in the revenue records omitting the name of Rambharosa which led to filing of suit in which the defendants disputed the status of plaintiff No.1 as to be the legally wedded wife of Rambharosa and that plaintiffs No.2 & 3 are not sons of Rambharosa and further pleaded that during the lifetime of Amar Singh, the property of Amar Singh was partitioned and Rambharosa was given property of 12.73 acres of land in Village Dhokla, Tehsil Charama, Distt. Kanker out of which he had already sold 10.89 acres by registered sale deed dated 15-1-1971 and further on 16-10-1966 he had sold 1.34 acres to Shekharlal and now, only 1.83 acres of land was remaining in his possession, therefore, the plaintiffs are

not entitled for decree as aforesaid claimed.

4. The trial Court after appreciating oral and documentary evidence available on record decreed the suit finding inter alia that plaintiff No.1 is legally wedded wife of Rambharosa and plaintiffs No.2 & 3 are sons of Rambharosa and further held that the plaintiffs are entitled for $\frac{1}{4}$ share in the suit property his father being one of co-sharers in the property, as the defendants have failed to establish that the property shown in Ex.D-1 i.e. about 12.73 acres of land was given to Rambharosa – plaintiff No.1's husband and father of plaintiffs No.2 & 3. The trial Court also held that the erstwhile queen of Kanker estate (Rajmata) had appointed Rambharosa as Mukardam (Mukhiya) of Village Dokala and in lieu of the work done by Rambharosa, the erstwhile queen of Kanker estate had given 14.26 acres of land to him. The trial Court further held that so far as Ex.P-1 is concerned, it was jointly sold by all the four sons of Amar Singh to one Balaram, therefore, it cannot be held that the land shown in Ex.P-1 was given to Rambharosa.
5. The defendants questioned the judgment & decree of the trial Court by way of first appeal and the first appellate Court dismissed the first appeal and did not find favour with the submissions raised on behalf of the defendants leading to filing of second appeal in which one substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
6. Mr. Shobhit Koshta, learned counsel appearing for the appellants herein / defendants No.1 & 2, would submit that the two Courts below are absolutely unjustified in decreeing the suit of the plaintiffs omitting to

consider the oral and documentary evidence available on record, particularly paragraph 2 of the evidence of Bhikhari Ram (PW-1) and paragraph 2 of the cross-examination of Jalam Singh (PW-2) which go to show that partition had already taken place between the parties and even the finding with regard to Exs.P-1 & D-1 are totally perverse and therefore judgments & decrees of the two Courts below deserve to be set aside.

7. Mr. Prakash Tiwari, learned counsel appearing for the plaintiffs / defendants No.1 to 6 herein, would submit that the concurrent findings recorded by the two Courts below are based on the evidence available on record, it is neither perverse nor contrary to the record and as such, the second appeal deserves to be dismissed.
8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records of the two Courts below with utmost circumspection.
9. Admittedly, the suit property belongs to Amar Singh and the plaintiffs are wife and sons of Rambharosa – one of the sons of Amar Singh and the defendants are remaining sons of Amar Singh. The suit property was originally held by Amar Singh. It is the case of the plaintiffs that with respect to the suit property, partition has not taken place and therefore they are entitled for $\frac{1}{4}$ share, whereas in the written statement, the defendants setup a plea that the property mentioned in Ex.D-1 i.e. 12.73 acres of land was given to Rambharosa in partition, therefore, the plaintiffs have no right to seek further partition. The trial Court and the first appellate Court relying upon the testimony of the defendants' witnesses namely Itwari Ram (DW-1) and Ramadhar Sahu (DW-2), who

is one of the defendants, have clearly held that the predecessor-in-title of the plaintiffs – Rambharosa was appointed as Mukardam (Mukhiya) of Village Dokala by the erstwhile Rajmata (queen) of the said area and in lieu of the work done by Rambharosa, the erstwhile Rajmata had donated the land shown in Ex.D-1 (12.73 acres) to him, therefore, it is the self-acquired property of the plaintiffs' predecessor-in-title i.e. Rambharosa.

10. Mr. Shobhit Koshta, learned counsel for the appellants herein / defendants No.1 & 2, tried to assail the said finding as perverse relying upon the statement made by Bhikhari Ram (PW-1) and Jalam Singh (PW-2), but in view of the overwhelming and clear cut evidence much less the admission made by Ramadhar Sahu (DW-2), who is one of the defendants himself, in paragraph 10 that the said land shown in Ex.D-1 was given to the plaintiffs' predecessor-in-title – Rambharosa by the erstwhile Rajmata of the concerned estate in lieu of the work of Mukardam (Mukhiya) of Village Dokala which he was performing, it can be safely inferred that the said land was exclusively held by Rambharosa as the separate property. Therefore, the trial Court and the first appellate Court after marshalling the evidence on record and placing relying upon those statements, particularly relying upon the candid admission made by Ramadhar Sahu (DW-2) – defendant No.1, rightly came to the conclusion that partition has not taken place in respect of the suit property and the land mentioned in Ex.D-1 (12.73 acres) is the self-acquired property of Rambharosa, which in my considered opinion is based on evidence available on record and is not open for interference by this Court in view of the evidence available on record, rather it is

binding on this Court in the appellate jurisdiction under Section 100 of the CPC. Accordingly, the argument of Mr. Shobhit Koshta that the finding with regard to Ex.D-1 that the land was not held by the plaintiffs' predecessor-in-title – Rambharosa is perverse, deserves to be and is hereby rejected.

11. Coming to the next submission of Mr. Shobhit Koshta that the land shown in Ex.P-1 i.e. 8.24 acres was given to Rambharosa, it was sold jointly by Rambharosa, Ramadhar, Shivadhar and Assi Kumar – all four sons of Amar Singh. It is quite clear that all the four sons of Amar Singh have jointly sold the said property in favour of one Balaram vide Ex.P-1. Both the Courts have rightly and clearly held that it was jointly sold by all the four sons and therefore it cannot be held that it was given to Rambharosa exclusively in partition. As such, the finding with regard to Ex.P-1 that it was jointly sold by all the four sons of Amar Singh in favour of Balaram and the property shown in Ex.P-1 was not given to Rambharosa exclusively in partition is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record and I do not find any perversity or illegality in the said finding warranting interference by this Court in exercise of appellate jurisdiction under Section 100 of the CPC.

12. Concludingly, the finding of fact recorded by the trial Court with regard to Ex.P-1 sale deed dated 18-2-1970 and Ex.D-1 – copy of kishbandi khatauni is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. The substantial question of law is answered accordingly and I do not find any merit in this appeal. The second appeal deserves to be and is hereby dismissed.

13. The application under Order 41 Rule 27 of the CPC for production of additional evidence has been pressed into service by the appellants herein / defendants No.1 & 2. Similar application has already been rejected by the first appellate Court by a detailed order which has not been questioned and has become final. I do not find any merit in the said application in view of the finding recorded herein-above. Accordingly, the said application is rejected.

14. No order as to cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge