

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.100 of 2009

Jagjeet Singh Arora, S/o Late Ishwar Singh Arora, Aged about 45 years,
R/o Ambikapur, District Surguja (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Surendranath, S/o Late Mohan Ram, Aged about 40 years,
2. Vishwanath, S/o Late Mohan Ram, Aged about 38 years,
- Both above R/o Namnakala, Ambikapur, District Surguja (C.G.)
3. Smt. Asmani Devi, Wd/o Late Kedar, Aged about 45 years,
4. Teju, S/o Late Kedar, Aged about 28 years,
5. Manmohan, S/o Late Kedar, Aged about 32 years,
6. Ramnarayan, S/o Late Kedar, Aged about 25 years,

Respondent No.3 to 6 are R/o Ring Road, Namnakala, Tahsil
Ambikapur, District Surguja (C.G.)

7. State of Chhattisgarh, Through Collector, Surguja, Ambikapur, District
Surguja (C.G.)

(Defendants)
---- Respondents

For Appellant / Plaintiff: -

Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.

For Respondent No.7 / Defendant No.8 / State: -

Miss Shivali Dubey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/03/2020

1. Heard on admission and formulation of substantial question of law in this
second appeal preferred by the plaintiff.
2. By the impugned judgment & decree, the first appellate Court has

reversed the judgment & decree of the trial Court and dismissed the suit finding no merit.

3. Mr. Manoj Paranjpe, learned counsel appearing for the appellant herein / plaintiff, submits that the first appellate Court is absolutely unjustified in reversing the judgment & decree of the trial Court by recording a finding which is perverse to the record and the appeal involves substantial question of law for determination, as such, it be admitted.
4. The suit property bearing Khasra Nos.394/2 & 395/1 was originally held by original defendant No.1 – Smt. Moharmaniya and Kedar which they sold in favour of the plaintiff by sale deed dated 8-4-1974 to the extent of total area 0.049 hectare which was later-on assailed by Smt. Moharmaniya and her sons respondents No.1 & 2 herein i.e. defendants No.2 & 3 in the present suit, stating that it was the ancestral property and could not have been alienated without partition which was decreed in Civil Suit No.164A/1996 and in that civil suit it was held that the plaintiffs (therein) are entitled for half share of the property mentioned in Schedule B of the plaint (Khasra Nos.394/2 & 395/1, total area 0.049 hectare) and remaining half share they can claim in the property mentioned in Schedule A of the plaint i.e. Khasra Nos.393, 394/1 & 395/2, and liberty to file suit for partition was given which was availed by the plaintiffs (therein) by filing second civil suit i.e. Civil Suit No.275A/2002 in which the trial Court by its judgment & decree dated 28-7-2005 decreed that after partition of the property mentioned in Schedule A, the plaintiffs (therein) will get the share of the property mentioned in Schedule B (Khasra Nos.394/2 & 395/1, total

area 0.049 hectare) against which defendants No.1 & 2 preferred appeal and the appellate Court reversed the judgment & decree of the trial Court and held that the plaintiff will be entitled to half share in the property mentioned in Schedule B (Khasra Nos.394/2 & 395/1, total area 0.049 hectare) as held by the earlier judgment & decree dated 10-10-1996 and half share of the property mentioned in Schedule A of the plaint (Khasra Nos.393, 394/1 & 395/2). The aforesaid finding recorded by the first appellate Court is in accordance with the judgment & decree of the earlier Civil Suit No.164A/1996 in which the trial Court has clearly held that the plaintiff is only entitled for half share in the property mentioned in Schedule B and half share in the property mentioned in Schedule A. As such, the judgment & decree of the first appellate Court is strictly in consonance with the judgment & decree of the earlier suit which is neither perverse nor contrary to the record.

5. For the foregoing reasons, I do not find any question of law much less substantial question of law for determination of this second appeal. The second appeal being devoid of merit is liable to be and is hereby dismissed *in limine* without noticing the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge