

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 145 of 2009**

Shiv Singh, S/o Balgovind, aged about 45 years,
R/o village Jhabar, Tahsil Pendra Road, District
Bilaspur (C.G.)

-----Appellant/Plaintiff

Versus

1. Siyaram, S/o Balgovind, aged about 50 years,
R/o village Jhabar, Tahsil – Pendra Road, District
Bilaspur (C.G.) (Defendant
No.1)

2. Subesa Bai, D/o Balgovind, aged about 40 years,
R/o village Andi, Tahsil Pendra Road, District
Bilaspur (C.G.) (Defendant
No.2)

3. State of Chhattisgarh, Through the Collector,
Bilaspur (C.G.) (Defendant
No.3)

-----Respondents

For Appellant : Mr. Rakesh Pandey, Advocate
For Respondent No.3 : Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/03/2020

(1) Heard on the question of admission and formulation of substantial question of law of this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 27.03.2008 passed by Additional District Judge (Fast Track Court),

Pendraroad, District Bilaspur in Civil Appeal No.23-A/2005 affirming the judgment & decree dated 23.07.2005 passed by Civil Judge, Class-I, Pendra Road in Civil Suit No. 94-A/02, dismissing the suit finding no merit.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below have committed legal error in holding that the plaintiff is not the exclusive title holder of the suit land and the defendant No. 1 has also right and title over the suit land, by recording a finding, which is perverse to the record, and appeal involves substantial question of law for determination.

(3) Plaintiff and defendants No. 1 & 2 are the real brothers and sister. The plaintiff filed a suit for declaration of title stating *inter alia* that the suit land is originally held by his father and it has been given to him on partition, therefore, he be declared exclusive title holder over the suit land by granting decree of declaration, in which, defendant No. 1, by filing written statement, set up a plea that he had filed an application for partition before the Revenue Officer, in which, 1/2 share of the suit property has already been directed to be given to defendant No. 1 and some of the property is the self acquired property

of defendant No. 1.

(4) The trial Court after appreciating the oral and documentary evidence available on record dismissed the suit holding that suit property is not the exclusive property of plaintiff and, therefore, no decree of declaration of title can be granted in favour of the plaintiff, which has been affirmed by the first appellate Court on an appeal being preferred by the plaintiff.

(5) Both the courts below have concurrently recorded a finding that plaintiff has failed to establish his exclusive title over the suit land on the basis of partition. The said finding is a finding of fact based on material available on record and I do not find it either perverse and contrary to the record and no question of law much less substantial question of law is involved in this appeal.

(6) 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

D/-

