

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.144 of 2008**

1. Ramdeo S/o. Janki, aged about 41 years
2. Sukhdeo S/o. Janki, aged about 43 years
3. Anup Sai S/o. Janki, aged about 40 years
4. Dharmpal S/o. Ramsunder, aged about 39 years,
5. Jhunnulal S/o. Ramsundar, aged about 29 years,
6. Sahodari W/o. Late Ramsundar, aged about 84 years,
7. Ramsai S/o. Hiranman, aged about 44 years,
8. Injoriya (died and deleted)

All are Resident of Village Gonda, Tahsil Pratappur,  
District Surguja (CG)

----- Appellants/Defendants

**Versus**

1. Deomuniya W/o. Deeplal, aged about 38 years,

----- Plaintiff

2. Budhan S/o. Janki Prasad, aged about 40 years,
3. Shesh S/o. Janki Prasad, aged about 35 years,  
Respondent No.1 to 3 R/o. Village Gonda, Tahsil  
Pratappur, District Surguja (CG)
4. State of Chhattisgarh, Through Collector, Surguja,  
Ambikapur, District Surguja (CG)

----- Respondents/Defendants

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For Appellants/Defendants: Mr.Vivek Bhakta, Advocate  
For Respondent No.4/State: Mr.Ravi Bhagat, Dy.Govt.Advocate

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**10.02.2020**

1. Heard on admission and for formulation of substantial question of law in second appeal preferred by the appellants/defendants.
2. By the impugned judgment and decree, the Second Additional District Judge (F.T.C.), Surajpur, in Civil

Appeal NO.8A/2007 affirmed the the judgment and decree dated 9.1.2004 passed by the Civil Judge Class-I, Surajpur in Civil Suit No.48A/98, whereby the trial Court decreed the suit holding that the plaintiff is entitled for 1/2 share in the property appended with Schedule 'A' of the plaint.

3. Mr. Vivek Bhakta, learned counsel for the appellants/defendants, would submit that both the Courts below concurrently erred in holding that the suit property was not partitioned in the year 1962 and original plaintiff-Somriya has relinquished her share in favour of Ram Mohan/defendants and further erred in holding that the original plaintiff has sold some part of the suit property in favour of some person and therefore, the suit ought to have dismissed by both the Courts below, as such, findings recorded by both the Courts below are perverse and the appeal deserves to be admitted for final hearing by formulating the substantial question of law for determination.

4. The suit property was originally held by Shobha. He had two sons Ram Mohan and Bodhi. Original plaintiff was daughter of Bodhi and Gendal. Bodhi had one son Moti and one daughter Somariya, Moti has already died. Ram Mohan had three sons namely Ramsunder, Hiranman and Janki. The defendants are sons and daughters of sons of Ram Mohan. Original plaintiff died during pendency of the suit. The

plaintiff filed a suit stating inter-alia that the suit property shown in Schedule 'A' of the plaint is joint family property of Ram Mohan and Bodhi as they have inherited from Sobha, in which the plaintiff being daughter of Bodhi is entitled for 1/2 share in the suit property and 1/2 share, the defendants are entitled. It was further pleaded that the defendants have not given share to the plaintiff and got their names mutated in revenue records on the basis of order dated 13.2.1978 (namantan panji) passed by the revenue officer, as such, she be given 1/2 share in the suit property, which was opposed by the defendants by filing written statement that the suit property was already partitioned in the year 1962, in which the plaintiff has refused to take share and relinquished her share in favour of the defendants and also refused to maintain her mother Gendal and accordingly, the property was partitioned and further pleaded that the defendants have perfected their title by way of adverse possession and as such, the plaintiff is not entitled for any share in the suit property. In addition to that, they also pleaded that according to the custom prevalent in their community, daughters do not get any share in the property of their father (s). The trial Court after appreciating oral and documentary evidence available on record held that order dated 13.2.1978 partitioning the suit property is not

binding on the plaintiff and is illegal and the suit property belonged to Sobha and original plaintiff being daughter of one of the son of Sobha is entitled for 1/2 share in the suit property and further recorded a finding that neither partition in the year 1962 is proved nor it is proved that the plaintiff has relinquished her share to Ram Mohan or to the defendants and the defendants have not perfected their title over the suit property and granted 1/2 share in the suit property, against which, the defendants preferred first appeal. The first appellate Court has also dismissed the appeal affirming the judgment and decree of the trial Court and relying upon admission made by Ramsai (DW-1) that Bodhi was 1/2 share in the suit property and original plaintiff was daughter of Bodhi and now after death of Somriya now plaintiff-Devmuniya is sole surviving heir of Bodhi.

5. Both the Courts below have concurrently held that the defendants have failed to establish that in the year 1962 partition took place between them in which original plaintiff Somriya refused to take any share and relinquished her share in the suit property in favour of the defendants and further held that the defendants have also failed to plead and establish the plea of adverse possession. There is no written document on record evidencing relinquishment of her (plaintiff's) share in

favour of the defendants. Likewise, the defendants witness Ramsai (DW-1) has clearly admitted that after death of Bodhi, his widow Gendal, daughter Somriya and her son Moti who also died have not got any share in the suit property and as such, Somriya has 1/2 share in the suit property.

- 6.** Finding recorded by both the Courts below holding that fact of partition and relinquishment of share by original plaintiff Somariya has not been established is finding of fact based on evidence available on record. It is neither perverse nor contrary to record. Likewise, alleged sale made by the plaintiff's mother-Gendal has also not been established. Concurrent finding recorded by two Courts below holding that the plaintiff is entitled for 1/2 share in the suit property finding of fact based on evidence available on record. It is neither perverse nor contrary to record.
- 7.** 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

B/-