

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.388 of 2009**

Amardas, S/o Itwari Satnami, aged about 40 years, R/o
Village-Demar, Tahsil & District-Dhamtari (CG)

---Appellant/Plaintiff**Versus**

1. Amrit, S/o Sonwa Satnami, aged about 42 years,
2. Amru, S/o Sonwa Satnami, aged about 37 years,
3. Bharat, S/o Sonwa Satnami, aged about 34 years,
4. Khetyarin, D/o Sonwa Satnami, aged about 31 years,
5. Saraswati, D/o Sonwa Satnami, aged about 28 years
6. Bisahin, Wd/o Sonwa Satnami, aged about 62 years,
All Resident of Village-Demar, Tahsil & District-Dhamtari
(CG)

7. Pankin Bai, aged about 50 years, E/o Itwari Satnami,
W/o Dauaram Satnami, R/o Village-Demar, Tahsil &
District-Dhamtari (CG)

---Plaintiffs

8. State of Chhattisgarh, through Collector, Dhamtari
(CG)

For Appellant/Plaintiff :

Mr.D.N.Prajapati, Advocate

For Respondent No.8/State:

Dr.Veena Nair, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/08/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard this second appeal on admission and formulation of substantial question of law preferred by the appellant/plaintiff.
3. By the impugned judgment and decree, the first

appellate Court has dismissed the first appeal preferred by the appellant/plaintiff affirming the judgment and decree of the trial Court dismissing the suit.

4. Mr.D.N.Prajapati, learned counsel for the appellant/plaintiff, would submit that both the Courts below were absolutely unjustified in dismissing the suit for declaration of title ignoring the material evidence particularly the order of Tahsildar under Section 178 of the Chhattisgarh Land Revenue Code, 1959 directing partition of the suit land, as such, finding recorded by two Courts below that partition has not been taken place between the parties is perverse finding and the appeal deserves to be admitted by formulating the substantial question of law for determination.
5. The plaintiffs are sons of Itwari, whereas the defendants are sons, daughter and widow of Sonwa. Itwari and Sonwa both were brothers. The plaintiffs filed a suit that the suit land bearing Khasra No.432/1 area 0.75 decimal and Khasra No.536/1 area 1.5 decimals fell in their share in mutual partition, therefore, the defendants be restrained from interfering with their peaceful possession, which was opposed by the defendants holding that

partition in both lands have not been taken place and therefore, the plaintiffs are not entitled for permanent injunction. The trial Court dismissed the suit, which has been affirmed by the first appellate Court in first appeal.

6. Both the Courts below have concurrently held that the suit property is joint family property and partition has not been taken place and order directing partition by the Tahsildar has already been stayed by the higher revenue authorities though affirmed by the Sub-Divisional Officer and even order of Tahsildar has not been executed. The parties are in joint possession of the suit land and therefore, the plaintiffs are not entitled for permanent injunction as one co-owner cannot be injuncted at the instance of other co-owner. The said finding is finding of fact based on evidence available on record. I do not find any illegality or perversity in the said finding and even I do not find any substantial question of law for determination of this second appeal.
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