

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 44 of 2010

- Sanwal Das Satnamai S/o Shri Taturam @ Kubra,
aged about 50 years, R/o Village - Gatauri,
Tahsil & District - Bilaspur C.G.

---- Appellant

Versus

1. Moti Lal Satnamai S/o Balaram @ Munda;
2. Budhra, Satnamai S/o Taturam @ Kubra;
3. Sudhram Satnamai S/o Taturam @ Kubra;
4. Jawahir Satnamai S/o Taturam @ S/o Kubra;

All are R/o Village - Gatuari, Tahsil &
District - Bilaspur C.G.

5. State of Chhattisgarh, through Collector,
District Bilaspur, C.G.

---- Respondents

For Appellant :- Mr. Sourabh Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

22/09/2020

1. Proceedings of this matter have been taken
up through video conferencing.

2. Heard on admission and formulation of

substantial question of law in the second appeal preferred by the appellant/plaintiff.

3. By the impugned judgment, the first appellate Court has dismissed the appeal and affirmed the judgment and decree of the trial Court by dismissing the suit for declaration of title, partition and separate possession.

4. Mr. Sourabh Sharma, learned counsel for the appellant/plaintiff, submits that both the Courts below concurrently erred in dismissing the suit which was filed for partition and separate possession holding that there was prior partition between the parties by recording the finding which is perverse to the record, as such, the appeal involves substantial question of law for determination.

5. The suit property was held by Balaram. He had two sons namely, Moti Lal (defendant No.1) and Taturam, (father of plaintiff and defendants No.2 to 4). The plaintiff filed suit for declaration, partition and

possession stating *inter alia* partition had not taken place between the plaintiff's father and father of defendant No.1, therefore, he is entitled for decree for declaration of title, partition and separate possession in which the defendants set up the plea of prior partition. The trial Court, after appreciation by oral and documentary evidence available on record, dismissed the suit holding that the suit property has already been partitioned between the plaintiff's father and father of defendant No.1, which has been affirmed by the first appellate Court.

6. The two Courts below after appreciation of oral and documentary evidence available on record have correctly concluded that there was prior partition between the father of the plaintiff and father of defendant No.1 and they are in cultivating for possession on the basis of prior partition the said finding of fact is based on evidence available on record, which is neither perverse nor contrary to record.

7. I do not find any perversity in the second appeal. Accordingly, the instant second appeal being devoid of merit is liable to be and is hereby dismissed in limine without notice to other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit