

HIGH COURT OF CHHATTISGARH, BILASPUR
Second Appeal No.83 of 2009

1. Silbia W/o Albis aged about 59 years
 2. Jerome S/o Jitiya Aged about 48 years
 3. Smt. Flora W/o Liban aged about 45, By Caste Orawn,
R/o Vilage Tukupani Tahsil Kunkuri, Distt.Jashpur
----- Appellants/Plaintiffs
- Versus

1. Polikar S/o Johan aged about 50 years
2. Jakhariyas S/o Johan aged about 40 years
3. Vijo Kumari D/o Johan, aged about 42 years
4. Paulus S/o Rodha, aged about 61 years
5. Ku. Ritta Eka D/o Biliyam
6. Ashok Kumar S/o Biliyam
7. Viddo Savita @ Anna W/o Biliyam
all by caste Orawn, No.1 to 4 all are R/o Village
Tukupani, Tahsil Kunkuri, Distt. Jashpur and No.5
to 7 present address Village Sundar Nagar, T.E.P.O.
Varun Nagar, Distt. Sirvadagar (Assam)
----- Defendants
8. The State of Chhattisgarh through Collector, Distt.
Jashpur
----- Respondents

For Appellants / Plaintiffs:-

Mr.Akhilesh Kumar, Advocate

For Respondent No.8 / State: -

Ms Veena Nair, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/07/2020

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

by the plaintiffs affirming the judgment and decree of the trial Court dismissing the suit for declaration of title, confirmation of possession and permanent injunction.

4. Mr. Akhilesh Kumar, learned counsel for the appellants/plaintiffs, would submit that both the Courts below concurrently erred in dismissing the suit by holding that the suit property was not received by the plaintiffs in partition and it was purchased by Rodha and Johan by sale deed dated 29.3.55 (Ex.D-1) and in cultivating possession, by recording a finding which is perverse to record and the appeal deserves to be admitted for hearing by formulating the substantial question for determination.

5. The parties are related to each other. The dispute relates to the suit land bearing Khasra No.88/8 area 1.21 acres situated at village Tukupani, which the plaintiffs claimed to be an ancestral property and received by them in family partition and in cultivating possession immediately thereafter, whereas the defendants who are successor-in-interest of Johan and Rodha claimed the suit property by sale deed dated 29.3.55 said to have been purchased from one Kamal vide Ex.D-1 and the plaintiffs' ancestral Jitiya has not given any money to Johan (father of defendants No.1 to 3 and

husband of defendant No.4) and Rodha (father of defendant No.5).

6. The trial Court after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 28.12.2004, dismissed the suit holding that the suit property is self-acquired property of Rodha and Johan which they purchased from one Kamal on 29.3.55 (Ex.D-1) and they are in cultivating possession immediately thereafter being self-acquired property of them. It is not ancestral property of the parties and at the time of purchase of said land, Paulus and Johan had already separated from the plaintiffs' ancestral Jitiya, which the first appellate Court also affirmed on appeal being preferred by the plaintiffs.

7. Finding recorded by two Courts below that the suit property was self-acquired property of Paulus (defendant No.5) and Johan (father of defendants No.1 to 3 and husband of defendant No.4), which they acquired by sale deed dated 29.3.55 (Ex.D-1) from one Kamal is pure and simple finding of fact based on evidence available on record. It is neither perverse nor contrary to record and since then they are in cultivating possession of the suit land, as such, both the Courts below have rightly held that the plaintiffs have no title over the

suit land and it is self-acquired property of defendants No.1 to 5, which is neither perverse nor contrary to 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.

8. 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/-