

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 58 of 2008****Judgment reserved on 30.09.2020****Judgment delivered on 07.12.2020**

1. Sawan Singh, aged about 30 years, S/o Lachchhi Ram by caste – Gond, Resident of village Kandanara, Post Office – Garhgodhi, Tahsil – Sakti, District Janjgir-Champa (C.G.)

2. Bhagwatin Bai, aged 28 years, daughter of Lachchhi Ram, by caste Gond, resident of village Paterapalikhurd Post Office- Rageja, Tahsil Sakti, District Janjgir-Champa (C.G.)

----- Appellants/Plaintiffs**Versus**

1. Barat Ram (since deceased) through LRs:-

1 (a) Rajendra son of Barat Ram, aged about 60 years,

1(b) Ramkumar son of Barat Ram, aged about 40 years,

1(c) Manmohan, son of Barat Ram, aged about 30 years,

All are resident of Village Kandanara, Tahsil-Sakti, District Janjgir-Champa (C.G.)

2. Atma Ram, aged 45 years, son of Daulat Ram

3. Baboo Singh, aged 22 years, son of Lachchhi Ram

Above 1 to 3 resident of village Kandanara, Tahsil Sakti District Janjgir-Champa (C.G.)

4. Sukhari Bai, aged 56 years, daughter of Daulat Ram, wife of Dhana Ram

5. Sona Bai (since deceased) through LRs:-

5(a) Pratap, son of Sona Bai, aged about 40 years,

5(b) Suresh, son of Sona Bai, aged about 35 years,

Both are resident of Village-Khaira-Turri,
Tahsil-Sakti, District Janjgir-Champa (C.G.)

6. Deo Kunwar, aged 62 years, daughter of Daulat Ram, wife of Kala Ram

Above 4 to 6 by caste Gond, resident of village and Post Khaira, Tahsil Sakti, District Janjgir-Champa (C.G.)

7. Amar Kunwar (since deceased) through LRs:-

- 7(a) Bhuneshwar, son of Amar Kunwar, aged about 28 years, resident of Village- Minaga, P.S. Jobi, Tahsil- Kharsia, District – Raigarh (C.G.)

8. Amarmati (since deceased) through LRs:-

- 8(a) Kiran son of Amarmati, aged about 25 years, resident of Nimga, P.O.-Gorpar, Tahsil – Kharsia, District – Raigarh (C.G.)

9. Sonai Bai, aged 43 years, daughter of Daulat Ram, wife of Mohan Singh Gond, resident of village Loharakot, Post Office Hardi, Tahsil Sakti, District Janjgir-Champa (C.G.)

10. Bundari Bai, aged 26 years, daughter of Lachchhi Ram wife of Lakhan Lal Gond, resident of village Amlidih Post of Beladula Tahsil Malkharoda, District Janjgir-Champa (C.G.)

11. The State of Chhattisgarh, through the Collector, Janjgir-Champa (C.G.)

----- Respondents

For Appellants	: Mr. H.S. Patel, Advocate.
For Respondents No. 1 & 10	: None present, though served.
For Respondent No. 11	: Ms. Veena Nair, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment [C.A.V.]

(1) Final hearing of this second appeal has been conducted through video conferencing.

(2) The substantial question of law involved, formulated

and to be answered in this second appeal preferred by plaintiffs herein state as under:

"Whether both the courts below were justified in holding that partition has taken place between plaintiffs' father — Lachchhi Ram and defendant's father — Daulat Ram, by recording a finding, which is perverse to the record and thereby dismissing the suit of the plaintiffs ?"

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(3) The imperative facts required to be noticed for adjudication of this appeal are as under:

(3.1) Sadashiv had two sons namely Daulatram & Lachchhi Ram. Plaintiffs are son and daughter of Lachhiram, respectively. Defendants No. 4 & 11 namely Babusingh & Bundribai, respectively are also the son and daughter of Lachhiram whereas defendants No. 1,2,3 and 5 to 10 are the sons and daughters of Daulatram. Two plaintiffs namely Sawan Singh & Bhagwateen Bai filed a suit for declaration of title stating inter alia that the suit property as per schedule annexed with the plaint is the property of their grandfather — Sadashiv and since there is no partition took place between Daulatram & Lachchhiram during his life time, therefore, they preferred suit for declaration of title and partition, in which, the defendants set up a plea that partition has already been taken place between plaintiffs' father — Lachchhi Ram and defendants' father Daulat Ram and, therefore, plaintiffs are not entitled to

get the decree of declaration of title and partition.

(3.2) The trial court dismissed the plaintiffs' suit finding *inter alia* that the partition has already taken place between plaintiffs' father – Lachchhi Ram and defendants' father – Daulat Ram and, therefore, the suit property cannot be re-partitioned between the parties and, therefore, no decree of declaration of title and partition can be granted in favour of the plaintiffs.

(3.3) The Plaintiffs preferred first appeal there-against. The first appellate court, re-appreciating the entire evidence adduced in the case, affirmed the judgment and decree passed by the trial court, against which this second appeal has been preferred by the plaintiffs, in which substantial question of law has been formulated and set out in opening paragraph of the judgment for the sake of completeness.

(4) Shri H.S. Patel, Learned counsel for the appellants/plaintiffs would submit that both the courts below have concurrently erred in holding that partition of the suit property has already been taken place between plaintiffs' father – Lachchhi Ram and defendants' father – Daulat Ram and, therefore, the plaintiffs are not entitled for partition and separate possession by recording a finding, which is perverse and contrary to the records, as such, the instant second appeal deserves to be allowed and the plaintiffs' suit for partition and separate possession

deserves to be decreed.

(5) I have heard learned counsel appearing for the appellants/plaintiffs and considered his submissions made hereinabove and went through the record with utmost circumspection.

(6) Suit property was earlier held by one Sadashiv. He had two sons namely Daulatram & Lachchhi Ram. Plaintiffs are son and daughter of Lachhiram, respectively whereas defendants No. 4 & 11 namely Babusingh & Bundribai, respectively are also the son and daughter of Lachhiram whereas defendants No. 1,2,3 and 5 to 10 are the sons and daughters of Daulatram. Dispute relates to property left by Sadashiv. Plaintiffs filed a suit for partition and possession stating inter alia that they are entitled for partition and declaration and separate possession of the suit property. Though, in paragraphs 2, 5 and 9 of the plaint, they have clearly admitted the fact of earlier partition in the revenue records whereas it is the case of defendants No. 1, 2 and 4 to 9 that partition has already been made between the parties i.e. plaintiffs & defendants and they are cultivating the possession of their respective shares of the suit property.

(7) The trial Court as well as the first appellate Court came to the categorical finding that the suit land has already been partitioned between the parties and they are

cultivating the possession of their respective shares of the suit property and, therefore, declined to grant decree of declaration of title in favour of the plaintiffs.

(8) It is admitted position on record that suit property has already been partitioned between the parties and accordingly the revenue records have also been separated, which is clear from para 2, 5 (b) & (d) read with paragraph 9 of the plaint. It is also pertinent to mention here that plaintiffs' father Lachhiram is missing and it has been averred in the plaint that he has suffered civil death but no evidence has been brought with regard to his civil death. Plaintiff No. 1- Sawant Singh, in paragraph 9 of his statement before the Court, has clearly admitted the fact of partition between the parties in the revenue records but further stated that suit property has been partitioned arbitrarily. Defendant No. 1 - Barat Ram was cross-examined on behalf of plaintiffs through his counsel, in which, in paragraph 6 the defendant No. 1 has stated that partition has already made between the parties 50 years back and plaintiff No. 1- Sawant Singh has got his share in that partition proceedings. Plaintiff No. 1 - Sawant Singh, in paragraph 9 of his statement, has clearly stated that against the order of partition, he has also filed an appeal before the appellate authority but nothing has been brought on record to demonstrate the fact that partition made by revenue authorities are either arbitrary

or obtained by misrepresentation, fraud etc.

(9) The Supreme Court in the matter of **Ratnam Chettiar & others v. S.M. Kuppuswami Chettiar & others**¹ has laid down the proposition that a partition effected between the parties by their own volition and with their consent cannot be reopened unless it is shown that it was obtained by fraud, coercion, misrepresentation or undue influence. Relevant paragraph No. 19 of the report states as under :-

"19. Thus on a consideration of the authorities discussed above and the law on the subject, the following propositions emerge:

(1) A partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.

(2) When the partition is effected between the members of the Hindu Undivided Family which consists of minor coparceners it is binding on the minors also if it is done in good faith and in bona fide manner keeping into account the interests of the minors.

(3) Where, however a partition effected between the members of the Hindu Undivided Family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place. In such a case it is the duty of the Court to protect and safeguard the

1 (1976) 1 SCC 214

interests of the minors and the onus of proof that the partition was just and fair is on the party supporting the partition.

(4) Where there is a partition of immovable and movable properties but the two transactions are distinct and separable or have taken place at different times. If it is found that only one of these transactions is unjust and unfair it is open to the Court to maintain the transaction which is just and fair and to reopen the partition that is unjust and unfair.

The facts of the present case, in our opinion, fall squarely within propositions Nos. (3) and (4) indicated above.

(10) Reverting to the facts of the case in light of principle of law laid down by the Supreme Court in the matter of Ratnam Chettiar & others (supra), it is quite vivid that for re-opening the partition already made between the parties, plaintiffs have to prove that the earlier partition was obtained by fraud, coercion, misrepresentation or undue influence and the plaintiffs have to prove the facts of fraud, undue influence, misrepresentation etc. strictly. In the instant case, though the plaintiffs, in the plaint as well as in their statements, have made the allegation that earlier partition was made arbitrarily and they have also filed an appeal thereagainst but no document regarding the earlier partition demonstrating that it has been made arbitrarily and result of the appeal filed by them against the partition proceedings has also not brought on record.

Even, in the cross-examination, on behalf of the plaintiffs, question was raised, in which defendant No.1 has clearly stated that partition has already made between the parties 50 years back, in which plaintiff No. 1 was also called and the fact of that partition proceedings was done arbitrarily by revenue officers has been refuted by defendant No.1. As such, there is sufficient evidence on record to hold that the earlier partition has been made between the parties and the revenue records has also been accordingly corrected and the plaintiffs' challenge to the partition proceedings has already failed as the plaintiffs have not brought any evidence in line with the decision rendered by the Supreme Court in the matter of **Ratnam Chettiar & others (supra)** demonstrating fraud, misrepresentation, undue influence coercion etc. and, thus, the concurrent finding recorded by both the courts below that the partition has already been taken place between the parties and therefore, declined to reopen the partition proceedings in absence of strong evidence of fraud, undue influence, is a finding of fact based on material available on record. It is neither perverse nor contrary to the record and substantial question of law is answered accordingly in favour of the defendants and against the plaintiffs.

(11) Consequently, the second appeal, being devoid of merit, is liable to be and is hereby dismissed leaving the

parties to bear their own costs.

(12) An appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

